

ALASKA LEGISLATURE FILES, 2000-2000 0012

11727 SENATE COMMUNITY & REGIONAL AFFAIRS

Aleutians West CRSA Coastal Management Plan: Policy Analysis Table for OPMP and Agency Reviewers

Reviewer Name _____ Agency/Department _____ Phone _____ E-mail _____

4. Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
5. Does the policy use precise, prescriptive and enforceable language?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
6. Does the policy address a matter regulated by state or federal law? If Yes, please provide the citation and brief summary of the law:	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
7. If Yes to above, discuss the sufficiency of the following (to establish that it is a "matter of local concern"):	<input type="checkbox"/> Yes	
a. Does the policy relate to a specific coastal use or resource within a defined portion of the district's coastal zone? Is the area defined in narrative or on a map?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
b. Does the policy relate to a coastal use or resource that is sensitive to development?	<input type="checkbox"/> Yes	
c. Does the policy address a coastal use or resource that is not adequately addressed by state or federal law?	<input type="checkbox"/> No <input type="checkbox"/> Yes	
d. Does the policy relate to a coastal use or resource that is of unique concern to the district through documentation of local usage or scientific evidence?	<input type="checkbox"/> No	
e. Are the criteria to establish that the policy addresses a matter of local concern (above) documented?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
8. Does the policy arbitrarily or unreasonable restrict uses of state concern as defined at 46.40.210(12), referenced in 46.40.060, 114.260 and 114.270(e)(4) and discussed in CPC Resolution #13? (See http://www.alaskacoast.state.ak.us/Plans/PlanAmendmentResources.htm)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
9. Does the Resource Inventory and Analysis include sufficient analysis of the impacts to the resources and activities that are the subject of this enforceable policy? If No, please identify necessary information in the resource inventory and analysis needed to support the policy.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
10. Is there sufficient documentation of local usage or scientific evidence regarding a use or resource of unique concern that is the subject of an enforceable policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

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11. Does the policy allow or disallow a use or activity per 11 AAC 114.270(g)? If so, does the policy only apply to a designated area, AMSA or a SAMP?		
12. Is this policy only applicable in a designated area? If so, is it on State or private lands? Is it clear that the policy identifies the designation to which it applies and where the description maps and backup can be found?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
13. Are the maps adequate to support the enforceable policy they relate to? Is the scale sufficient to discern if a project is in or out of the area? Are labels, legends and references accurate?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
14. Can you recommend additional resources or maps that may be helpful to the coastal district regarding this policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
15. Geographic Location: Description (GLD) – Is it located on federal land? Does it adequately address the reasonably foreseeable coastal effects? Is it adequately mapped or described in narrative form?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
16. Please provide recommended changes or suggested alternative language:		

I. Historic, Prehistoric, and Archaeological Resources

District enforceable policies for historic, prehistoric and archeological resources apply in areas designated by a district. Enforceable policies related to this standard provide the specific management measures for addressing uses or activities within the designated area.

Enforceable policies in this section are applicable to designated resources as identified and described on the Alaska Heritage Resource Survey (refer to Volume II, Chapter 1).

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Policy Name and Text:	Response	Comments/Discussion
<p>I-1 Cultural and Historic Resource Areas</p> <p>The evaluation and protection of historic and archaeological values of an area proposed for development shall be part of project planning. The developer shall:</p> <p>a) evaluate the potential for encountering historic and archaeological resources by contacting the Museum of the Aleutians and the State Historic Preservation Office;</p> <p>b) report observations of undocumented cultural resources to the landowner, State Historic Preservation Office, and the Museum of the Aleutians.</p>		
<p>1. Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? (OPMP will make this determination)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>2. Is this a matter that the Department of Environmental Conservation has the authority to regulate? (DEC only)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>3. Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? If Yes, please provide citation and summary of relevant law:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>4. Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>5. Does the policy use precise, prescriptive and enforceable language?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>6. Does the policy address a matter regulated by state or federal law? If Yes, please provide the citation and brief summary of the law:</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	

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<p>7. If Yes to above, discuss the sufficiency of the following (to establish that it is a "matter of local concern"):</p> <p>a. Does the policy relate to a specific coastal use or resource within a defined portion of the district's coastal zone? Is the area defined in narrative or on a map?</p> <p>b. Does the policy relate to a coastal use or resource that is sensitive to development?</p> <p>c. Does the policy address a coastal use or resource that is not adequately addressed by state or federal law?</p> <p>d. Does the policy relate to a coastal use or resource that is of unique concern to the district through documentation of local usage or scientific evidence?</p> <p>e. Are the criteria to establish that the policy addresses a matter of local concern (above) documented?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>8. Does the policy arbitrarily or unreasonably restrict uses of state concern as defined at 46.40.210(12), referenced in 46.40.060, 114.260 and 114.270(e)(4) and discussed in CPC Resolution #13? (See http://www.alaskacoast.state.ak.us/Plans/PlanAmendmentResources.htm)</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>9. Does the Resource Inventory and Analysis include sufficient analysis of the impacts to the resources and activities that are the subject of this enforceable policy? If No, please identify necessary information in the resource inventory and analysis needed to support the policy.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<p>10. Is there sufficient documentation of local usage or scientific evidence regarding a use or resource of unique concern that is the subject of an enforceable policy?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
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<p>12. Is this policy only applicable in a designated area? If so, is it on State or private lands? Is it clear that the policy identifies the designation to which it applies and where the description maps and backup can be found?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	

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<p>13. Are the maps adequate to support the enforceable policy they relate to? Is the scale sufficient to discern if a project is in or out of the area? Are labels, legends and references accurate?</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>14. Can you recommend additional resources or maps that may be helpful to the coastal district regarding this policy?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>15. Geographic Location Description (GLD)— Is it located on federal land? Does it adequately address the reasonably foreseeable coastal effects? Is it adequately mapped or described in narrative form?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>16. Please provide recommended changes or suggested alternative language:</p>		

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Policy Name and Text:	Response	Comments/Discussion
<p>I-2 Resource Protection</p> <p>Uses and activities which may adversely affect cultural resource areas shall comply with the following standards:</p> <ul style="list-style-type: none"> a) to the extent practicable, archaeological, prehistoric, and historic resources shall be protected from significant adverse impacts caused by surrounding uses and activities; b) artifacts of significant historic, prehistoric, or archaeological importance shall not be disturbed during project development unless the State Historic Preservation Office in consultation with the landowner authorizes such disturbance. c) where previously undiscovered artifacts or areas of historic, prehistoric, or archaeological importance are encountered during development, the discovery shall be protected from further disturbance pending evaluation by the State Historic Preservation Office and the Museum of the Aleutians. 		
1. Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? (OPMP will make this determination)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Is this a matter that the Department of Environmental Conservation has the authority to regulate? (DEC only)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? If Yes, please provide citation and summary of relevant law:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
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<p>12. Is this policy only applicable in a designated area? If so, is it on State or private lands? Is it clear that the policy identifies the designation to which it applies and where the description maps and backup can be found?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
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<p>14. Can you recommend additional resources or maps that may be helpful to the coastal district regarding this policy?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>15. Geographic Location Description (GLD) – Is it located on federal land? Does it adequately address the reasonably foreseeable coastal effects? Is it adequately mapped or described in narrative form?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>16. Please provide recommended changes or suggested alternative language:</p>		

K. Sand and Gravel Enforceable Policies

The statewide sand and gravel extraction standard is a very broad standard. Enforceable policies related to this standard provide specificity for extraction activities. Other state and federal laws that deal with permitting of sand and gravel extraction are broad in scope and general in their application.

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Policy Name and Text : K-1 Siting of Material Sources	Response	Comments/Discussion
<p>To the extent practicable, sources of sand, gravel, rock and other construction materials shall be approved in the following sequence:</p> <ul style="list-style-type: none"> a) existing approved gravel pits or quarries operated in compliance with state and federal authorizations; b) reuse of material from abandoned development area, unless reuse could cause more environmental damage than non-use; c) new upland sites; and d) beaches that are not within designated important habitats or subsistence areas. 		
1. Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? (OPMP will make this determination)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
2. Is this a matter that the Department of Environmental Conservation has the authority to regulate? (DEC only)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
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16. Please provide recommended changes or suggested alternative language:		

Policy Name and Text:	Response	Comments/Discussion
K-2 Sand and Gravel Extraction Operation Sand and gravel mining operations in floodplains shall be located and designed to minimize adverse changes to channel hydraulics and the potential for channel diversion through the extraction site.		
1. Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? (OPMP will make this determination)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
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16. Please provide recommended changes or suggested alternative language:		

Policy Name and Text:	Response	Comments/Discussion
K-3 Overburden Disposal		
Whenever practicable, overburden in upland areas shall be saved and replaced on the disturbed area to conform to the natural topography as part of the reclamation process.		
1. Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? (OPMP will make this determination)	<input type="checkbox"/> Yes <input type="checkbox"/> No	
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Policy Name and Text:

K-4 Reclamation and Restoration

For all upland and floodplain sand and gravel extraction sites, a reclamation plan shall be developed. At a minimum, a reclamation plan shall include the following elements, as applicable:

- a) Topsoil and overburden shall be stored above the 25-year floodplain of

Response

Comments/Discussion

Aleutians West CRSA Coastal Management Plan: Policy Analysis Table for OPMP and Agency Reviewers

Reviewer Name _____ Agency/Department _____ Phone _____ E:mail _____

<p>watercourses.</p> <p>b) At the end of each mining season, all disturbed areas, shall be regraded to stable slopes. Within mean annual floodplains, regrading to ground contours which will not entrap fish nor significantly alter stream hydraulics shall occur at the end of each operating season. Permitted settling ponds and other essential facilities, including diversions of streams, may be retained in place until completion of their use.</p> <p>c) At the completion of gravel extraction, all disturbed areas shall be stabilized and re-vegetated to minimize adverse effects to important resources. Restoration shall include the following:</p> <ul style="list-style-type: none"> (1) all disturbed areas shall be graded to stable slopes that blend with the natural topography; (2) erosion control measures shall be implemented as appropriate to stabilize the site; (3) areas designated for re-vegetation shall be covered with topsoil to encourage establishment of native plant species; (4) All re-vegetation should occur as soon as possible with indigenous plant species when practicable. (5) where material sites which are excavated below groundwater may have value as habitat for waterfowl or fish, consultation with the resource agencies on the final design and schedule of the restoration plan. 		
<p>1. Does the policy address, or flow from, a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? <i>(OPMP will make this determination)</i></p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	
<p>2. Is this a matter that the Department of Environmental Conservation has the authority to regulate? <i>(DEC only)</i></p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	
<p>3. Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? If Yes, please provide citation and summary of relevant law:</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	

Aleutians West CRSA Coastal Management Plan: Policy Analysis Table for OPMP and Agency Reviewers

Reviewer Name _____ Agency/Department _____ Phone _____ E-mail _____

4. Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
5. Does the policy use precise, prescriptive and enforceable language?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
6. Does the policy address a matter regulated by state or federal law? If Yes, please provide the citation and brief summary of the law:	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
7. If Yes to above, discuss the sufficiency of the following (to establish that it is a "matter of local concern"):	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
a. Does the policy relate to a specific coastal use or resource within a defined portion of the district's coastal zone? Is the area defined in narrative or on a map?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
b. Does the policy relate to a coastal use or resource that is sensitive to development?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
c. Does the policy address a coastal use or resource that is not adequately addressed by state or federal law?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
d. Does the policy relate to a coastal use or resource that is of unique concern to the district through documentation of local usage or scientific evidence?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
e. Are the criteria to establish that the policy addresses a matter of local concern (above) documented?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
8. Does the policy arbitrarily or unreasonable restrict uses of state concern as defined at 46.40.210(12), referenced in 46.40.060, 114.260 and 114.270(e)(4) and discussed in CPC Resolution #13? (See http://www.alaska-coast.state.ak.us/Plans/PlanAmendmentResources.htm)	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
9. Does the Resource Inventory and Analysis include sufficient analysis of the impacts to the resources and activities that are the subject of this enforceable policy? If No, please identify necessary information in the resource inventory and analysis needed to support the policy.	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	
10. Is there sufficient documentation of local usage or scientific evidence regarding a use or resource of unique concern that is the subject of an enforceable policy?	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No	

Aleutians West CRSA Coastal Management Plan: Policy Analysis Table for OPMP and Agency Reviewers

Reviewer Name _____ Agency/Department _____ Phone _____ E:mail _____

11. Does the policy allow or disallow a use or activity per 11 AAC 114.270(g)? If so, does the policy only apply to a designated area, AMSA or a SAMP?		
12. Is this policy only applicable in a designated area? If so, is it on State or private lands? Is it clear that the policy identifies the designation to which it applies and where the description maps and backup can be found?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
13. Are the maps adequate to support the enforceable policy they relate to? Is the scale sufficient to discern if a project is in or out of the area? Are labels, legends and references accurate?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
14. Can you recommend additional resources or maps that may be helpful to the coastal district regarding this policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
15. Geographic Location Description (GLD) - Is it located on federal land? Does it adequately address the reasonably foreseeable coastal effects? Is it adequately mapped or described in narrative form?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
16. Please provide recommended changes or suggested alternative language:		



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Gary Stevens
Current Version: CSSB 102 (RES)
Contact: Doug Letch, 465-4925

Fact Sheet for: Senate Bill 102

Short Title: COASTAL MANAGEMENT PROGRAMS

Summary:

- Extends the deadline for coastal resource districts to submit revised district coastal management plans to the Department of Natural Resources.
- Moves the deadline to six months after the State's revised coastal management program is approved by the National Oceanic and Atmospheric Administration.

by 6 months [20 months last year date] the office is short of regulations

Benefits:

- Gives resource districts more time to submit revised coastal zone management plans while state and federal oversight agencies resolve outstanding issues.
- Gives Alaska's coastal districts a reasonable opportunity for meaningful participation in the development of their coastal management plan.

Background:

- In 2003 the Legislature passed House Bill 191, which streamlined the Alaska Coastal Management Program (ACMP). The ACMP was first enacted in 1977 to participate in the federal Coastal Zone Management Act of 1972. The federal program encourages states to adopt coastal programs by providing federal funds and the opportunity for federal consistency review, which allows the state to apply its authority to projects located on federal land where otherwise it would be preempted by federal law. HB 191 created a new coastal management program and required resource districts to submit a revised coastal management plan by July 1, 2005. This bill gives districts more time to comply.

Remarks: OCRM/state relations have been resolved.

Coastal Management Programs
Sponsor Statement for Senate Bill 102
Released: February 23, 2005
Doug Letch

The Alaska Coastal Management Program (**ACMP**) is a partnership between federal, state, and local governments providing state and local governments a voice in federal decision making. Alaska is one of 34 coastal and Great Lakes states and territories that utilize this program, a program that annually channels millions of dollars in federal grant money to the states. The ACMP has helped guide coastal development in the state since it was enacted in 1977.

Without the program the state and local governments lose their ability to control development on federal land and the Outer Continental Shelf. In addition the state will lose millions in federal coastal management planning money.

In 2003, **HB 191** substantially revised the state coastal program. The federal Office of Ocean and Coastal Resource Management (**OCRM**) must approve the revised program. OCRM has determined that additional revisions are necessary before they can grant approval.

The 2003 legislation included state-imposed deadlines for revisions to local coastal programs. Coastal Districts are attempting to follow the statutory directive to revise their programs to meet the new requirements. However, OCRM has identified problems with the state's guidance to local districts regarding the scope and content of their program. The state will have to revise regulatory guidelines for the local districts before the new program can be approved by OCRM. In turn, the local districts will have to re-revise their programs to meet the new guidelines. It is a waste of time, money and effort for districts to revise their plans before the state's program is federally approved and any necessary changes have been made.

SB 102 bases the deadline for district coastal program revisions and annulment of the existing program on federal approval of the state's program. This extension will ensure an orderly and efficient transition to the new program.

###

http://www.akrepublicans.org/stevensg/24/spst/steg_sb102.php

[Return to Previous Page](#) | [Print This Page](#)

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for the Alaska State Legislature
To Report Technical Problems or Contact Webmasters
Ken Erickson Bud Curtis

(to draft Sen Fin. Cent. CS)

This committee substitute does four things:

- 1) **It extends the deadlines contained in HB 191 largely in accordance with what the governor indicated he would support—six months.**
- 2) **It provides for a sunset of the entire program four years after it has transitioned to its new standards and achieved complete implementation**
- 3) **It clarifies the scope and provides specific direction on the development of district coastal management plans.**
- 4) **It automatically makes changes to the old district plans that the Legislature has asked for twice in the past three years.**

-
- Secs.1-13:** Clean-up language made necessary by the sunset provisions.
- Sec. 4:** Provides specific direction on scope of district enforceable policies.
- Sec.15:** Makes the extensions necessary to carry the process out to the date necessary to get OCRM approval of the state's new program.
- Sec.16:** Extends the deadline for coastal districts to submit their revised programs two months after the old state standards have been annulled and, presumably, the new state standards have been approved by OCRM.
- Sec.17:** Repeal section necessary to affect the sunset provisions.
- Sec.18:** Makes changes to the old district policies that the Legislature has asked for twice in the past three years. First, it conforms the old plans to the scope requirements of 46.40 030(b) under the old state standards (previously federally approved). Second, it conforms the old plans to the statewide standards and criteria of 46.40.040 after the new state standards have been federally approved.
- Sec.19:** Annuls the old state standards.
- Sec.20:** Effective date for the sunset. 2011 will give the program the time necessary to transition into the new standards set out in HB 191 and then allow four years to operate prior to its sunset review.
-

New
draft blank CS:

Sen. Gary Stevens CS
5-1-05

CS FOR SENATE BILL NO. 102(RES)

"An Act relating to an extension for review and approval of revisions to the Alaska coastal management program; providing for an effective date by amending the effective date of sec. 45, ch. 24, SLA 2003; and providing for an effective date."

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

* Section 1. The uncodified law of the State of Alaska enacted in sec. 46(c), ch. 24, SLA 2003, is amended to read:

(c) Notwithstanding any contrary provision of ch. 24, SLA 2003 [THIS ACT], the repeal of the Alaska Coastal Policy Council enacted by sec. 44, ch. 24, SLA 2003 [OF THIS ACT], and the repeal of the Alaska Coastal Policy Council's duties in AS 46.40.040, as amended by sec. 10, ch. 24, SLA 2003 [OF THIS ACT], a district coastal management program, including its enforceable policies, approved by the former Alaska Coastal Policy Council remains in effect for purposes of AS 46.39 and AS 46.40 until January 1, 2007 [JULY 1, 2006], unless the Department of Natural Resources disapproves or modifies all or part of the program before January 1, 2007 [JULY 1, 2006].

* Sec. 2. The uncodified law of the State of Alaska enacted in sec. 47(a), ch. 24, SLA 2003, is amended to read:

(a) Within eighteen months [ONE YEAR] after the effective date of the regulations adopted by the Department of Natural Resources implementing changes to AS 46.40.010 - 46.40.090, enacted by secs. 8 - 15 and 44 of ch. 24, SLA 2003 [THIS ACT], or by January 1, 2006 [JULY 1, 2005], whichever is later, coastal resource districts shall review their existing district coastal management program and submit to the Department of Natural Resources for review and approval a revised district coastal management plan meeting the requirements of AS 46.40 [AS AMENDED BY THIS ACT,] and the implementing regulations.

* Sec. 3. The uncodified law of the State of Alaska enacted in sec. 49, ch. 24, SLA 2003, is amended to read:

Sec. 49. Section 45, ch. 24, SLA 2003 [OF THIS ACT], takes effect January 1, 2006 [JULY 1, 2005].

* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

Feb. (to accommodate
late NEPA)
or
March

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 102
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title: Coastal Management Programs RDU: Comm Assist & Ec Dev (405)
 Component: Community Advocacy
 Sponsor: Stevens G. Olson
 Requester: Senate 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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--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 would extend the deadline for coastal districts to amend their plans. It would have no fiscal impact on the operations of the division.

Prepared by: Michael Black, Director Phone 907 269 4580
 Division: Community Advocacy Date/Time 3/8/05 2 29 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/8/2005
 Agency: Commerce, Community, and Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: S.B. 102
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
 Title: Coastal Management Programs RDU: _____
 Sponsor: Senator Gary Stevens Component: _____
 Requester: Senate Community & Regional 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	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

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

Passage of this legislation would have no fiscal impact.

Prepared by: Sarah Gilbertson
 Division: Legislative Liaison
 Approved by: Acting Commissioner Wayne Regelin
 Agency: Alaska Department of Fish & Game

Phone 465-6137
 Date/Time 3/8/05 4:49 PM
 Date 3/8/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 102
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title: Act relating to coastal management programs; RDU: Division of Water
and providing for an effective date Component: Water Quality
 Sponsor: Senators Gary Stevens and Olson
 Requester: Senate Community & Regional Affairs Component No.: 2062

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--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 bill extends the deadline for submission of revised district coastal management plans by coastal resource districts pursuant to AS 46.40 as amended by ch. 24, SLA 2003. The department anticipates no fiscal impact.

Prepared by: Dan Easton Phone 465-5135
 Division: Water Date/Time 3/9/05 10:55 AM
 Approved by: Kurt Fredriksson Date 3/14/2005
 Agency: Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB102-DNR-ACMP-03-1
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Natural Resources
 Title: Relating to District Coastal Management RDU: Resource Development
Programs Component: Alaska Coastal Management
 Sponsor: Senators Gary Stevens, Olson Program: _____
 Requester: Senate C&RA Component No: 2680

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		199.1				
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	199.1	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF		199.1				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	199.1	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Check 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)

HB191 required districts to have plans submitted by 6/30/2005, with the ACMP review process to be complete by 6/30/2006. Implementation of SB102 extends the district deadline to 6/30/2006, with the ACMP completion by 6/30/2007. Funding is available for existing staff through 6/30/2006, under the original plan. SB102 will require us to retain 2-3 positions an additional year, resulting in this fiscal note request.

Prepared by: Bill Jeffress, Director Phone: 269-8429
 Division: Office of Project Management & Permitting Date/Time: 3/11/2005
 Approved by: Tom Irwin, Commissioner Date: 3/11/2005
 Agency: Natural Resources

SB

1 1 2



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee

4853517

Sponsor Statement

Senate Bill 112

“An Act imposing a tax on residents of regional educational attendance areas; and providing for an effective date.”

Currently, residents who live in organized, home-rule and first class cities all contribute some amount of local revenue for the operations and capital projects of their schools. This local contribution is an important aspect of education funding, both by expressing a real desire to contribute to the quality of education for Alaskan students and by aiding in the ever-increasing cost of providing an adequate education.

SB 112 provides an equal opportunity to all residents of Alaska to support education. Currently, there are 19 Regional Education Attendance Areas (REAs) in Alaska that do not have local taxes to provide funding for local schools. SB 112 imposes an annual tax on residents living in REAs that have no local tax authority to help support their schools. The Alaska Department of Revenue estimates residents living in unorganized boroughs earned an income of \$505 million dollars in fiscal year 2004. This bill allows schools and Alaska's children to benefit from this earned income.

SB 112 provides that the annual tax will be calculated by using the average dollar amount residents of organized boroughs contribute to local schools. This number will be used as a base for the contribution of residents 21 years and older who live in REAs.

SB 112 advances the State of Alaska twofold. First, the proposed tax would generate nearly 13 million dollars in the first year alone that would directly benefit Alaska's schools. Secondly, it would bring Alaska more in line with the ideals that the Constitution of the State is founded on. Article 1, Section 1, reads, in part "...that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and the State".

I urge your support and passage of SB 112.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 112
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue 04
 Title Tax on REAA Residents RDU Treasury and Tax
 Component Tax Division
 Sponsor Senators Bunde and Wilken
 Requester (s) CRA Component No. 2476

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	184.3	626.0	742.1	742.1	742.1	742.1
Travel	2.0	13.0	18.0	18.0	18.0	18.0
Contractual	95.4	116.1	119.3	119.3	119.3	119.3
Supplies	5.0	9.5	11.0	11.0	11.0	11.0
Equipment	56.0	36.0	12.0			
Land & Structures						
Grants & Claims						
Miscellaneous						
TC AL OPERATING	342.7	800.6	902.4	890.4	890.4	890.4

CAPITAL EXPENDITURES	147.0					
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CHANGE IN REVENUES ()	0.0	8,400.8	12,910.9	12,910.9	12,910.9	12,910.9
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	342.7	800.6	902.4	890.4	890.4	890.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	342.7	800.6	902.4	890.4	890.4	890.4

Estimate of any current year (FY2005) cost: 0.0

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

POSITIONS

Full-time	5	10	11	11	11	11
Part-time						
Temporary	2	2	2	2	2	2

ANALYSIS: (Attach a separate page if necessary)

(see attached)

Prepared by: Chuck Harlamert & Brett Fried Phone 465-2320
 Division: Tax Division Date/Time 3/3/2005
 Approved by: Tom Boutin Date 3/4/2005
 Agency: Revenue

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. SB 112

ANALYSIS CONTINUATION

Cost Discussion

We project peak filing volume under the bill at approximately 16,000 returns annually comprised of 12,000 individual filings and 4,000 returns from an estimated 1,400 employers. This volume represents a 50 percent increase over our current levels although, on average, the returns will be simpler than existing returns. Our projected operating costs are largely driven by enforcement and collection activities appropriate for collecting tax from individuals and by recognition of the challenges associated with a tax based on the place of residence within the state. These estimates assume a number of key administrative tools and requirements will be added to the bill. Foremost among these assumed changes is a requirement to report a physical place of residence data on Permanent Fund dividend applications. This information will provide the department with critical information necessary to enforce the tax and significantly reduce personnel requirements.

Capital expenditures represent the cost of incorporating the program into existing information systems and facilitation of electronic filing.

Revenue

For the revenue estimate we used the total local required contribution for boroughs in FY 2005 of \$161,743,619 divided by the 2004 organized-borough adult (21+) population of 379,136 for CY 2004. The result is an estimated per-organized-borough-adult contribution of \$426.61. This bill imposes a tax "on each individual 21 years of age or older residing in a regional educational attendance area." However, eighteen first-class and home-rule cities fall within the regional educational attendance areas and are subject to the same school contribution requirement as the organized boroughs (AS 14.17.410(b)(2)). Consequently, we adjusted the estimated total number of adults residing in REAAs (49,964) by subtracting out the estimated number of adults who reside in first class and home rule cities (19,700) for an estimate of 30,264. The source of the contribution data is the Alaska Department of Education and Early Development and population estimates are from the Alaska Department of Labor and Workforce Development. No adjustment was made for changes in population or required contribution amounts over time.

The bill has an effective date of January 1, 2006. Taxpayers have until "November 1 of the calendar year following the year for which it is imposed" to file their taxes. In the first fiscal year we assume we will receive the employer withholding. Here we are assuming that all employers withhold the required amount for all employees that reside within the unorganized borough but outside of first class or home rule cities and remit this amount to the Department within the first six months of 2006. We used a 2003 Alaska Department of Labor estimate of workers over 21 years of age (19,692) that reside within the Unorganized Borough but outside of first-class or home rule cities to derive the FY 2006 revenue estimate. In FY 2007, we assume that we will receive returns from all adults who are subject to the tax but have not had their taxes paid by an employer.

We did not adjust for noncompliance with the tax. Identifying individuals who reside in the Unorganized Borough but outside of first class or home rule cities may be difficult because many work within organized areas or cities and often list their address on their PFD application as a Post Office Box. In addition, many of these areas are remote.

24-LS0505F
Kurtz
3/9/05

CS FOR SENATE BILL NO. 112()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS BUNDE, Wilken, Wagoner

A BILL

FOR AN ACT ENTITLED

1 "An Act imposing a tax on residents of regional educational attendance areas and
2 relating to permanent fund dividend applications; and providing for an effective date."

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

4 * Section 1. AS 43.23.015(b) is amended to read:

5 (b) The department shall prescribe and furnish an application form for
6 claiming a permanent fund dividend. The application must include notice of the
7 penalties provided for under AS 43.23.035 and contain a statement of eligibility and a
8 certification of residency. The department shall require applicants to supply a
9 physical address as well as a mailing address.

10 * Sec. 2. AS 43 is amended by adding a new chapter to read:

11 Chapter 45. Regional Educational Attendance Area Tax.

12 Sec. 43.45.011. Tax imposed. (a) There is imposed a tax each year on each
13 individual who is 21 years of age or older on January 1 of the tax year and resides in a
14 regional educational attendance area.

1 (b) The commissioner shall determine the amount of tax due each year from
2 each individual subject to the tax imposed under (a) of this section by dividing the
3 amount of the total local contributions to schools required of organized boroughs
4 under AS 14.17.410(b)(2) by the estimated population of individuals 21 years of age
5 and older in the organized boroughs.

6 **Sec. 43.45.021. Collection of tax.** (a) The tax imposed under AS 43.45.011
7 shall be paid before January 15 of the calendar year following the year for which it is
8 imposed. An individual who is subject to the tax shall file a return on a form
9 prescribed by the department, and, if the individual has not had the tax withheld from
10 the individual's salary or other compensation, shall remit the tax directly to the
11 department.

12 (b) If an employee resides in a regional educational attendance area, the
13 employee's employer shall deduct and send to the department one-half of the tax or 10
14 percent of the employee's gross compensation, whichever is less, on each regular
15 payroll until the full tax due under this chapter has been deducted. The department
16 shall prescribe a return form for the tax collected under this subsection.

17 (c) A deduction of the tax may not be made in the salary or other
18 compensation of an individual who provides proof to the employer that

19 (1) the tax imposed under AS 43.45.011 for that tax year has already
20 been withheld by another employer;

21 (2) the individual has already paid the tax directly to the department; or

22 (3) the individual was not 21 years of age or older on January 1 of the
23 tax year.

24 **Sec. 43.45.031. Record of withholding.** An employer who withholds tax
25 under AS 43.45.021 shall furnish to the employee upon request a record of the amount
26 of tax withheld from the employee. The department shall provide a form for that
27 purpose.

28 **Sec. 43.45.041. Refunds.** An individual who has paid more than the amount
29 of tax due for a calendar year may claim a refund under AS 43.05.275.

30 **Sec. 43.45.051. Disposition of tax proceeds.** (a) The tax collected under
31 AS 43.45.021 shall be deposited into the general fund and accounted for separately.

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(b) The legislature may appropriate the estimated amounts to be collected and separately accounted for under (a) of this section for education.

(c) The deposit required and appropriation authorized by this section are not intended to create a dedication in violation of art. IX, sec. 7, Constitution of the State of Alaska.

* Sec. 3. This Act takes effect January 1, 2006.

March 4, 2005

Senator Con Bunde
Alaska State Legislature
Alaska State Senate
State Capital
Juneau, Alaska 99801-1182

RE; Senate Bill 112

Dear Senator Bunde:

I am writing to comment on Senate Bill 112, which you sponsored. After reviewing the context of the proposed bill, I would like to let you know that I oppose this bill. First, I would like to explain that the State Legislature tried numerous times to enact a state tax. Nobody wanted a state tax and the answer was clear. However, it seems that every time the State Legislature is in session, they are doing everything to enact some type of a tax. I don't have the slightest idea, how enacting a tax of some sort compares with the State Constitution.

I understand the provisions of the State Constitution. In my synopsis of the bill, I could not see how it would put the rural areas in line with the constitution. I understand the paragraph, which you quoted as to say that all citizens who are residents of the state of Alaska are entitled to equal rights, opportunities and protection. This provision should speak for itself. Even under the US Bill of Rights, as United States citizens, we are also guaranteed these inalienable rights.

Let me elaborate more on what I am saying. I believe that every town, village or settlements in Alaska have the same rights guaranteed under different charters and bylaws. All these cities within the State of Alaska were all first class cities at one time. I also believe that the residents of these cities voted for the form of government that best meet their needs. That is why we have boroughs. For the bigger cities, I see no problem of them becoming whatever form of government they choose.

Afterall, the bigger cities have more people, developments, businesses and other infrastructures. They can impose taxes for the services they get. If these cities didn't want this form of government, they would have voted against it. The tax base in the rural areas is different than in the cities. The cities are more economically feasible, because there are more businesses in these areas. They can sustain the taxes. If all of the remote areas in the State of Alaska wanted a different form of government, believe me, they would have pursue this a long time ago. Maybe the way the State can address budget is to start some developments in the rural areas to offset the economy.

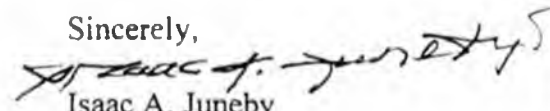
It would seem feasible for the legislature to put money into the rural areas for some prolong feasible development or business. Then it would be no problem to enact some legislation to this effect. As you stated, you believe that the State Constitution is our only option to make the rural areas more independent, then we should do some research and find a feasible means and then pour state some money into it. I think that would have more merit than imposing something, such as a tax that people don't want.

Why do I feel the way I do? It is because, under the constitution, the State of Alaska has the fiduciary responsibility for education, K-12. As I understand, this means that education should be the number one priority and the appropriations to justified this. It is the sole responsibility of the state to meet the needs of the students from K-12. If the state of Alaska does not do their fiduciary responsibilities for education, then why did they take it over from the federal government.

I am appalled at the way the legislature is going about this by either amending or enacting new laws to get at the people. Thank you for giving me the opportunity to comment. I am opposing this Senate Bill 112 as to the reasons I stated. As I read the bill, it is not right, to impose anything on people, that they do not want, which is not feasible and above all just plain failure.

If you have any questions or comments, please feel free to call me either at my (office) 907-547-2271 or (home) 907-547-3030.

Sincerely,



Isaac A. Juneby

Box 86

Eagle, Alaska 99738

C / C

File

All Member, Alaska State House of Representatives

All Members, Alaska State Senate

Conceptual Outline

Education Head Tax on Individuals 21+ Years of Age Residing in the Unorganized Borough Outside Home-Rule and First-Class Cities

Annual Determination of the Amount of the Tax.

Conceptually, it has been proposed that the amount of the education head tax would be determined annually by dividing the total local contributions required of borough school districts under AS 14.17.410(b)(2) by the total estimated population of individuals 21 years of age and older residing within organized boroughs.

Of course, the particular terms of the components of the tax formula would have to be carefully defined in the law. For example, the law might require the State Demographer to annually estimate the population of individuals 21 years of age and older residing within organized boroughs. That formal estimate might then be used in the calculation of the amount of tax to be levied annually.

Ballpark Estimate of the Amount of the Head Tax Based on Most Current Data Available.

For FY 2005, AS 14.17.410(b)(2) required a total of \$161,827,356 in local contributions from organized boroughs.

The Demographics Unit of the Alaska Department of Labor and Workforce Development, Research & Analysis, estimates that there were 574,377 individuals residing within the 16 organized boroughs in 2004. Further, the Demographics Unit also provided data that indicate, on average, approximately 66.0 percent of the population in those 16 organized boroughs was 21 years of age or older at the time of the 2000 census. Applying that percentage to the estimated 2004 population results in an estimate that 379,136 individuals 21 years of age and older resided within the 16 organized boroughs in 2004.

Using the foregoing figures, the FY 2005 local contributions in support of schools required of boroughs under AS 14.17.410(b)(2) was equivalent to \$426.83 for each of the estimated 379,136 individuals 21 years of age and older residing within the 16 organized boroughs in 2004.

Ballpark Estimate of the Amount of Revenue That Would be Generated by the Education Head Tax.

The aforementioned Demographics Unit estimates that 81,058 individuals resided within the unorganized borough in 2004. The Demographics Unit also provided data that indicate, on average, approximately 61.6 percent of the population in the unorganized borough was 21 years of age or older at the time of the 2000 census. Applying that percentage to the estimated 2004 population results in an estimate that 49,963 individuals 21 years of age and older resided within the unorganized borough in 2004.

There are 18 home-rule and first-class cities in the unorganized borough. Each of those cities is required to operate a city school district. Moreover, each city school district is subject to the same requirement as a borough school district for a local contribution under AS 14.17.410(b)(2). Thus, if the policy objectives of a head tax are strictly to (1) provide taxpayer equity statewide and (2) remove a major disincentive for borough incorporation among residents of the unorganized borough outside home-rule and first-class cities, then residents of those 18 home-rule and first-class cities should be exempt from the tax.

The Demographics Unit estimates that 28,510 individuals resided within the 18 home-rule and first-class cities in the unorganized borough in 2004. The Demographics Unit also provided data that indicate, on average, about 69.1 percent of the population within the 18 home-rule and first-class cities in the unorganized borough was 21 years of age or older at the time of the 2000 census. Applying that percentage to the estimated 2004 population, results in an estimate that 19,700 individuals 21 years of age and older resided within the 18 home-rule and first-class cities in the unorganized borough in 2004. If that figure is subtracted from the 49,963 individuals noted above, it is projected that 30,263 individuals 21 years of age and older resided within the unorganized borough outside of home-rule and first-class cities in 2004.

If each of those 30,263 individuals paid a head tax of \$426.83, it would generate \$12,917,156.

Selected 2000 Census Characteristics & 2004 Estimates for Boroughs/Census Areas

Organized Boroughs	April 1, 2000 Census				
	Total Population	Age 18+	% of Pop	Age 21+	% of Pop
Aleutians East	2,697	2,243	83.2	2,136	79.2
Anchorage	260,283	184,212	70.9	173,564	66.7
Bristol Bay	1,258	864	68.7	825	65.6
Denali	1,893	1,443	76.2	1,398	73.9
Fairbanks North Star	82,840	57,921	69.9	53,732	64.9
Haines	2,392	1,779	74.4	1,719	71.9
Juneau	30,711	22,294	72.6	21,153	68.9
Kenai Peninsula	49,691	34,832	70.1	33,091	66.6
Ketchikan Gateway	14,070	10,106	71.8	9,594	68.2
Kodiak Island	13,913	9,399	67.6	8,901	64.0
Lake & Peninsula	1,823	1,134	62.2	1,043	57.2
Mat-Su	59,322	40,212	67.8	37,938	64.0
North Slope	7,385	4,566	61.8	4,229	57.3
Northwest Arctic	7,208	4,218	58.5	3,881	53.8
Sitka	8,835	6,436	72.8	6,063	68.6
Yakutat	808	581	71.9	560	69.3

Unorganized Borough	April 1, 2000 Census				
	Total Population	Age 18+	% of Pop	Age 21+	% of Pop
Aleutians West	5465	4526	82.8	4374	80
Bethel	16006	9629	60.2	8909	55.7
Dillingham	4922	3045	61.9	2871	58.3
Nome	9196	5780	62.9	5405	58.8
Prince of Wales-Outer Ketchikan	6146	4243	69	4024	65.5
Skagway-Hoonah-Angoon	3436	2516	73.2	2397	69.8
Southeast Fairbanks	6174	4150	67.2	3925	63.6
Valdez-Cordova	10195	7176	70.4	6824	66.9
Wade Hampton	7028	3754	53.4	3416	48.6
Wrangell-Petersburg	6684	4699	70.3	4530	67.8
Yukon-Koyukuk	6551	4257	65	3972	60.6

Source: 2000 Census of Population & Housing, Demographic Profiles & Dept. of Labor & Workforce Development, Research & Analysis, Demographics Units

Selected 2000 Census Characteristics & 2004 Estimates for Home Rule & First Class Cities with less than

Home Rule & First Class Cities	April 1, 2000 Census				
	Total Population	Age 18+	% of Pop	Age 21+	% of Pop
Total					
Pelican	163	123	75.5	120	73.6

Tanana	308	201	65.3	185	60.1
Hydaburg	308	201	65.3	185	60.1
Skagway	862	685	79.5	671	77.8
St. Mary's	862	685	79.5	671	77.8
Klawock	854	597	69.9	562	65.8
Kake	710	470	66.2	452	63.7
Hoonah	860	609	70.8	562	65.3
Nenana	402	291	72.4	279	69.4
Galena	675	422	62.5	392	58.1

Selected 2000 Census Characteristics & 2004 Estimates for Home Rule & First Class Cities with more th

Home Rule & First Class Cities	April 1, 2000 Census				
	Total Population	Age 18+	% of Pop	Age 21+	% of Pop
Craig	1,397	952	68.1	907	64.9
Wrangell	2,308	1,630	70.6	1,574	68.2
Unalaska	4,283	3,659	85.4	3,549	82.9
Cordova	2,454	1,768	72.0	1,677	68.3
Dillingham	2,466	1,612	65.4	1,538	62.4
Petersburg	3,224	2,263	70.2	2,177	67.5
Nome	3,505	2,387	68.1	2,268	64.7
Valdez	4,036	2,838	70.3	2,702	66.9

DOLWD 2004
Population Estimate

2,629	2,088
277,498	185,091
1,096	719
1,842	1,361
84,979	55,151
2,245	1,614
30,966	21,336
50,980	33,952
13,030	8,886
13,466	8,618
1,603	917
70,148	44,895
7,104	4,071
7,306	3,931
8,805	6,040
680	471
574,377	379,136

Projected 2004
Population Age
21+

DOLWD 2004
Population Estimate

5,239	4,191
16,853	9,387
4,845	2,825
9,403	5,529
5,548	3,634
3,101	2,164
6,192	3,938
9,959	6,663
7,394	3,593
6,247	4,235
6,277	3,804
81,058	49,863

Projected 2004
Population Age
21+

in 250 Resident Students Enrolled
DOLWD 2004
Population Estimate

304	78
304	1
870	5
870	5
848	558
663	422
841	549
394	273
717	417
5,929	4,025

an 250 Resident Students Enrolled

DOLWD 2004

Population Estimate

1,127	731
2,023	1,380
4,366	3,619
2,298	1,570
2,422	1,511
3,123	2,108
3,473	2,247
3,749	2,508
22,581	15,675

Appendix B

Synopsis of *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391 (Alaska 1997)

In 1997, the Alaska Supreme Court ruled on an appeal over whether the divergent funding scheme violated the equal-protection clause under Alaska's Constitution. *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391 (Alaska 1997).

The ruling, written by Justice Compton, followed a number of prior cases by employing "a sliding scale approach to determine the level of scrutiny that is required in reviewing a challenged statute." *Id.*, 396. That approach involved three steps.

The initial step was to determine "what weight should be afforded the constitutional interest impaired by the challenged enactment." *Id.* The Court noted that this first step was "the most important variable in fixing the appropriate level of review." *Id.*

In undertaking that first step, the Court followed its 1985 ruling on the constitutionality of the State oil and gas corporation income tax in *Atlantic Richfield Co. v. State*, 705 P.2d 418, 437 (Alaska 1985), holding that " '[t]he interest involved here, freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause.' "¹ *Matanuska-Susitna*, 398.

The second step in determining the level of scrutiny to be given by the Court was an examination "of the purposes served by a challenged statute." *Id.*, 396.

¹ This holding that "[t]he interest involved here, freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause." was from *Atlantic Richfield* in which the statement was followed by footnote 55. That footnote stated, "See *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 547, 103 S.Ct. 1997, 2002, 76 L.Ed.2d 129, 138 (1983). See generally P. Hartman, *supra* note 8, § 3.1, at 131-38."

In applying the second step in *Atlantic Richfield*, the Court addressed the purpose of the statute in terms of why oil companies were treated differently than other corporations with respect to taxation.

Regarding the statute's purpose, the oil companies claim that greed and other improper motives led the Alaska legislature to enact the Oil Tax. The state, however, has adequately established that a primary purpose of the Oil Tax was to rectify a perceived underestimation of oil production and pipeline transportation income that occurred with the application of an apportionment formula. The goal was to insure that the tax rate assessed to the oil companies on this income was commensurate with the rate applicable to the income of other corporations in the state. Ch. 110, § 1, SLA 1978. Taxing the oil companies differently to rectify a perceived inequity was the legislature's attempt to prevent disparate treatment; thus, the validity of this purpose in light of the companies' interest is established.

Atlantic Richfield, 437.

In terms of the second step undertaken with respect to the disparate taxation issue in *Matanuska-Susitna*, the Court held that:

Because the individual plaintiffs' interests affected lie "at the low end of the continuum," we need only examine whether the state's objectives were legitimate. . . . The stated purpose of the public school foundation program that provides for operating cost aid is "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state." AS 14.17.220. This purpose easily meets the required standard of legitimacy.

Matanuska-Susitna, at 399.

The LBC perceives a critical distinction between the two cases in terms of the second step. In *Atlantic Richfield*, the Court clearly established that the purpose of the challenged statute had a direct bearing on the different tax treatment accorded oil companies as compared to other corporations. The Court noted that the "primary purpose" of the statute "was to rectify a perceived underestimation of oil production and pipeline transportation income." Moreover, the Court observed that the goal of the statute "was to insure that the tax rate assessed to the oil companies on this income was commensurate with the

rate applicable to the income of other corporations in the state." Indeed, the Court even stated that "[t]axing the oil companies differently to rectify a perceived inequity was the legislature's attempt to prevent disparate treatment."

However, the second step taken in *Matanuska-Susitna*, offers no explanation as to how the imposition of a tax burden on one group of Alaskans (i.e., citizens of boroughs and city school districts) but not on others (i.e., citizens of REAAs and FTREAAAs) serves the purpose of the statute (i.e., "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state." ²). Instead, the Court simply declared that the statement of purpose covering the entire chapter in AS 14.17 "easily meets the required standard of legitimacy." Again, the stated purpose of AS 14.17 was "to assure an equitable level of educational opportunities for those in attendance in the public schools of the state." The LBC does not perceive how disparate treatment of Alaskans with respect to taxation promotes "an equitable level of educational opportunities."

It is particularly puzzling when juxtaposed with the *Regan* case cited in *Atlantic Richfield* (see n. 6 above) on which the Court relied in its analysis. In *Regan* the U.S. Supreme Court stated:

The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized ... The passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, **the**

²It should be noted that in 1998, AS 14.17.010 - 14.17.250, including this "purpose" statement, were repealed. New provisions were enacted and are codified as AS 14.17.300 - 14.17.490. The statement of the legislative purpose of the new provisions is substantially similar to the one examined by the Court. The new statement is set out in sec. 1, ch. 83 Temporary and Special Acts.

presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it." *Madden v. Kentucky*, 309 U.S. 83, 87-88, 60 S.Ct. 406, 407-408, 84 L.Ed. 590 (1940) (footnotes omitted).

Regan, at 547 (emphasis added).

It is certainly arguable that requiring a local contribution for education only by boroughs and home-rule and first-class cities in the unorganized borough and none by REAAs and FTREAAAs is a type of classification. Given the increasing burden that the "local contribution" requirement (i.e., tax) has placed on boroughs and cities that operate schools – more than \$800 million over the past five years alone – it is further arguable that it has become an oppressive discrimination that should be remedied.

In terms of the final step in *Matanuska-Susitna*, the Court again followed rulings in several previous cases. The Court stated:

Because the individual interests affected lie "at the low end of the sliding scale," we need only find a "fair and substantial relationship" between means and ends. . . .

. . . REAAs are constitutionally unable to tax. Alaska Const. Art. X, § 2. The State argues that "[t]he statutory treatment of municipal districts and REAAs is warranted based on the constitutional differences between these two entities." The individual plaintiffs argue that the State itself could tax REAAs for REAA school expenses, since "[t]he legislature . . . may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough." Alaska Const. Art. X, § 6. They argue that the availability of this option of directly taxing REAAs for REAA school purposes undermines the State's justification for the disparate treatment inherent in the means chosen.

The plaintiffs demand more of the State than equal protection requires, however.

Id., at 399.

The same conclusions regarding the *Regan* analysis applies equally here.

While the Court determined in *Matanuska-Susitna* that concerns over perceived inequities regarding taxation did not violate the equal-protection clause under Alaska's Constitution, concerns over the issue remain. As noted by Justices Matthews and Rabinowitz in their concurring statements in *Matanuska-Susitna*, the proper venue for resolution of the issue is the Alaska Legislature. Justices Matthews and Rabinowitz noted that "any available remedy must be pursued through majoritarian processes rather than through the courts." *Id.*, at 406.

It is noteworthy that no fewer than nine proposals were introduced in the Alaska Legislature over the past decade to address the issue of equity. For example Senate Bill No. 30 in the 20th Legislature included a finding that "the rights, opportunities, and obligations of borough residents are not equal to those of residents in the unorganized borough, particularly in respect to education, taxation, and land use regulation, and that this is not in keeping with art. I, sec. 1, of the Constitution of the State of Alaska, that states in part, ' . . . that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State.'" SB 30 provided for the levy of a six-mill property tax levy within each of several unorganized boroughs (excluding the territory within home-rule and first-class cities) established along the model boundaries identified by the LBC.³

While not addressed by the Court in *Matanuska-Susitna*, adding to the concerns over inequity is the fact that the overwhelming majority of those subject to the local contribution requirement live in districts that were incorporated by a 1963 legislative mandate to incorporate eight specific areas of Alaska. More than 95 percent of borough residents live in boroughs that were mandated to incorporate under the 1963 Mandatory Borough Act. The Legislature has made no similar enactment subsequent to 1963 to ensure that residents of other areas of the unorganized borough that possess the fiscal and administrative capacity to operate boroughs incorporate boroughs.

³Other bills addressing the issue of equity include HB 470 in the 23rd Legislature; HB 2, in the 22nd Legislature; SB 142, SB 146, SB 337, and HB 205 in the 20th Legislature; and SB 280 and HB 250 in the 19th Legislature.

troubled state of affairs regarding incorporation of boroughs is viewed by some as the product of deferring difficult decisions over challenging issues. If progress is going to be made in that regard, those challenging issues must be addressed.

Senator Sturgulewski remarked in that



regard to the LBC at its January 5, 2005, meeting that ". . . about the controversy, it's never easy, but you're also in a position as members of this constitutionally-

mandated commission to take the overview and to really identify those areas that need to be taken care of."

1. Tax the Unorganized Borough.

The previously cited Task Force of Governmental Roles established by the 1991 Legislature took the position that, "All citizens should bear a fair portion of the cost of basic health, education and public protection services." *Task Force Final Report*, p. 2. Moreover, the Final Report of the Task Force stated:

Task Force members stopped short of endorsing mandatory borough formation legislation but agreed that continued formation of additional borough governments should be a primary state policy goal.

Experience has shown establishment of boroughs to be primarily a function of the economic self-interest of residents. While local control is an incentive, it is generally outweighed by residents' aversion to paying local taxes for services (e.g., education in [regional educational attendance areas]) that are currently provided by the state at no cost.

The Task Force position is that the inequity in tax burden between residents of municipalities and residents of the unorganized borough is better addressed via state fiscal policies (taxes, shared revenue programs, education foundation funding and municipal grants) than by imposing areawide government on people who do not want it.

Id., at 15, emphasis added.

An example of such aversion is readily apparent in a bulletin furnished to LBC staff in 2004 and set out on page 117. It is noteworthy that the bulletin opposes borough formation but at the same time acknowledges that the economy of the area (Delta/Greely) is prosperous. A sound economy is one

"All citizens should bear a fair portion of the cost of basic health, education and public protection services."

1991 Task Force on Governmental Roles

of the key reasons supporting borough formation. This issue is well-covered in *Borough Government in Alaska*:

it was decided that, although voluntary incorporation would be preferable, organized boroughs could be created without the approval of the people within the area. The rationale behind this position of unilateral state actions was that the borough:

. . . is more than just a unit of local government. It is also a unit for carrying out what otherwise got carried out as state functions; and **when a certain area reaches a position where it can support certain services and act in its own behalf, it should take on the burden of its own government.**

Id., at 61, emphasis added, footnotes omitted.


A 1984 study by the University of Alaska concluded that the prospect of taxes was one of the foremost disincentives to borough formation. See *Alaska's Urban and Rural Governments*, p. 43.

The State could eliminate that fundamental deterrent to borough formation by imposing an appropriate tax burden on the unorganized borough. Four options are explored below.

(a) Property Taxes.

Among the various tax options, the LBC anticipates that residents of the unorganized borough might least prefer property taxes, because all residents would not uniformly share the burden of such. That concern, however, exists with respect to property taxes levied by any municipal government in Alaska. (See AS 29.45.030 for mandatory exemptions from municipal property taxes.) Thus, the anticipated concern is not unique to the unorganized borough.

Notwithstanding its anticipated unpopularity, imposition of a property tax on the unorganized borough would aid the Legislature and executive branch in planning. (See AS 14.17.510(a)). Moreover, establishment of property tax rolls for the unorganized borough would facilitate transition of areas to



**WILL YOU SURRENDER YOUR FREEDOM?
or STAND FAST in your LIBERTY?**
*Is there freedom in a society where one is
held hostage by PROPERTY TAX?*

Anyone could have hardship and loose their property. It could be you!
Most boroughs result in property taxation which makes you a permanent renter.

Откажитесь ли Вы от Вашей Свободы? Или Постоите за Свою Свободу?
Есть ли свобода в обществе где каждый является заложником таксы на землю?
Любого могут постичь финансовые проблемы и потерять свою землю. Это может случится с Тобой!
Большинство областей (boroughs) принуждают земляную таксу и делают Тобя вечным квартирантом

HISTORY SPEAKS FOR ITSELF.
Government always grows and reaches deeper into your pockets. Do not believe
otherwise. Have you ever seen property taxes decrease? A resource tax could hinder business growth
you now have a prosperous economy without oppressive government interference. Keep it!

**DID YOU KNOW THE ALASKA CONSTITUTION PROVIDES FOR THE UNORGANIZED
BOROUGH TO CONTINUE INDEFINITELY?**

Any mandatory borough legislation would be ruled as unconstitutional. This is the opinion shared by many
great Alaskans including one of the writers of the Constitution, former Lt. Governor, Jack Coghil. He said
"nobody, not the Legislature, not the Governor, not the Local Boundary Commission... nobody can force local
government on people without their consent. It's all in our Constitution, Article IX, Sec. 2, Source of Government."

**Will you abandon apathy and join the effort to educate Delta and strengthen
the statewide WOLFPAC (Watching Over the Last Frontier Preserving Alaska's
Constitution) movement? For more information call 895-4647, 895-5076 or 895-5011.
www.watchingoverthelastfrontier.org**

2004 WOLFPAC bulletin opposing borough formation

organized status, since local contributions required of boroughs under AS 14.17.410(b)(2) are based on the taxable value of property.

Given the general lack of property tax rolls for the unorganized borough, the LBC recognizes that an *ad valorem* property tax on the unorganized bor-

ough would require an inaugural investment.⁵¹ To pay the cost of establishing the tax, the State could use what would be a relatively small portion of its windfall from recent higher oil prices. Any cost could be recovered through future tax levies on the unorganized borough.

The LBC notes that a property tax on territory, including that which today is the entire unorganized borough, has a precedent. The Territory of Alaska established a territory-wide property tax fifty-six years ago. As noted below, that tax was specifically intended to address the very issue of tax inequity:

⁵¹The office of the State Assessor, currently staffed by two individuals, has spent considerable time since August 2004 estimating the value of taxable property in the Upper Tanana Basin portion of the unorganized borough (Delta Greely REAA and Alaska Gateway REAA). The effort is designed to give local residents (including those developing a petition for borough incorporation) and State policy makers an up-to-date estimate of the region's tax base. The project does not, however, involve the development of formal tax rolls. The State Assessor projects that the field work will be completed by the end of January 2005 and that the property value estimates will be prepared by mid-February. To undertake similar efforts throughout the remainder of the unorganized borough would require additional resources for the office of the State Assessor.



The 1949 Territorial Legislature eliminated inequities in taxes for schools through a Territory-wide property tax.

Under Territorial law, those who lived in a city or school district were required in all instances to provide a substantial portion of the cost of education. . . .

The Territorial Legislature of 1949, which was controlled by the Democratic Party and operated under the influence of a strong Democratic governor, Ernest Gruening (now United States Senator), made an initial attempt to provide some relief from these inequities by enacting a Territory-wide general property tax. The proceeds were refunded to the local entity if collected in an incorporated city, school district, or public utility district. If the area was not incorporated, the proceeds went into the treasury of the Territory. The merits of a property tax are not germane to this chapter. What is pertinent

is that the measure was an attempt to equalize the tax burden by requiring those in the unincorporated areas to contribute something to the cost of the services received. This reform, however, was short-lived.

The matter of a Territorial tax became a partisan political issue. The election of a Republican President of the United States and the appointment of a Republican governor for the Territory of Alaska resulted in the repeal of the property tax act by the 1953 Republican-controlled Territorial Legislature. There were substantial mining and fishing interests which were greatly opposed to the tax; as were the homesteaders, trappers, Indians, and Eskimos. This combination firmly re-established the tax inequity

favoring those who were getting free services from the Territory by refusing and failing to incorporate. It appeared that to equalize taxes in Alaska one would need – and perhaps must create – a vested interest to protect the tax reform and combat the interests which benefited financially from the inequity.

Metropolitan Experiment, pp. 87 - 88.

State Legislators have introduced a number of proposals to impose property taxes on the unorganized borough in the past. None, however, has passed. A recent example of such a proposal is House Bill No. 2 introduced in the 22nd Legislature, which proposed a 10-mill property tax on the unorganized borough outside home-rule and first-class cities.

The provision in House Bill No. 2 exempting home-rule and first-class cities in the unorganized borough presumably stemmed from the fact that those cities have most of the same duties as organized boroughs (education, platting, planning, and land use regulation). While justified if the policy debate is limited strictly to the issue of equity, such an exemption eliminates the incentive for residents of those cities to become part of a borough government.



House Bill No. 2, 22nd
Legislature

If the Legislature considers a property tax levy on the unorganized borough in the future, the LBC urges prudent consideration of alternatives to an across-the-board exemption for home-rule and first-class cities in the unorganized borough. If inclined to recognize the local responsibilities of home-rule and first-class cities in the unorganized borough but retain some degree of incentive, the Legislature could provide for a *partial* rebate of taxes to home-rule and first-class cities. Given the public policy set long ago by the Legislature in AS 14.12.025 to promote new school districts with at least 250 students, the Legislature might consider limiting any partial rebate to just those home-rule or first-class cities with at least 250 resident students.⁵²

⁵²Ten of the eighteen home-rule and first-class cities in the unorganized borough have fewer than 250 resident students.

(b) Sales Taxes.

The 1991 Task Force on Governmental Roles offered the following insights regarding the prospect of a sales tax:

The sales tax is not particularly costly or difficult for the state to administer, hence its popularity among states. Since it is collected from sellers at the retail level, there are fewer returns to deal with than in the case of an income tax. Many states with both state and local general sale taxes gain administrative efficiency by piggybacking local tax collection onto the state tax system. The main advantages of a sales tax are that it can be designed so that revenue grows in proportion with the economy, it is relatively popular with voters (probably because it is paid in small amounts), and it captures revenues from nonresidents. The main disadvantages are its regressivity [sic] and the fact that it is not deductible from federal income tax.

Task Force members brought up additional considerations. To be efficiently collected by the state, a sales tax would have to be uniform with respect to exemptions. This would eliminate the local option to apply the sales tax narrowly (e.g., only on fish sales, hotel/motel use, tobacco sales, etc.) or broadly. A state-



wide sales tax would infringe on municipalities' ability to express social policy with respect to taxation of food, residential rent, home heating oil, etc. Municipal officials might also be leery of piggybacking onto a state sales tax for fear that the state would gradually take over the entire sales tax and leave little or nothing for municipalities.

Task Force Final Report, pp. 41-42.

The LBC is aware that the Alaska Municipal League opposes the prospect of a statewide sales tax:

The League vigorously defends sales tax as a local option to maintain control over this key

local revenue source. Imposition of a State sales tax would jeopardize local economics and cause a reduction in municipal sales tax.

Alaska Municipal League, *2005 Policy Statement*, Part I-A-1-e.

The Alaska Municipal League might oppose a sales tax on the unorganized borough as well. The LBC notes, however, that such a tax would be the equivalent of a sales tax imposed by a borough assembly, since it would be enacted by the Legislature under its authority to act as the assembly of the unorganized borough.

The preceding comments by the LBC regarding the prospect of exempting home-rule and first-class cities in the unorganized borough from a property tax apply here as well. In the Commission's view, there is yet another significant reason for not exempting home-rule and first-class cities from a sales tax on the unorganized borough. Unorganized borough residents who live in areas adjoining home-rule and first-class cities in the unorganized borough, but shop in those cities, would effectively receive the exemption. For example, an estimated 162 individuals reside in the unincorporated area adjoining the boundaries of the home-rule City of Petersburg. See: *Petition for Annexation to the City of Petersburg*, October 2004, p. 8.

(c) Employment Tax.

As is the case with property taxes, legislators have previously introduced measures to levy employment taxes on the unorganized borough. For example, Senate Bill No. 146, introduced in the 20th Legislature, proposed to levy an employment tax upon each employee who receives compensation for services performed in the unorganized borough outside of a home-rule or first-class city. Earnings from business activities of self-employed individuals conducted in the unorganized borough outside of a home-rule or first-class city would also have been subject to the tax.

The Commission's views regarding the prospect of exempting home-rule and first-class cities in the unorganized borough from a property tax or sales tax apply here as well. Residents of the unorganized borough who live in unincorporated areas adjoining home-rule and first-class cities in the unorganized borough but are employed in those cities would have, effectively, received the exemption. As noted above, for example, an estimated 162 individuals reside in the unincorporated area adjoining the boundaries of the home-rule City of Petersburg.

A head tax on the unorganized borough is equivalent to the school tax paid by residents of organized boroughs would generate between \$15 million and \$23 million annually, depending on policy decisions regarding applicability of the tax.

(d) Head Tax.

Imposition of a uniform tax on residents of the unorganized borough is another option. One of the obvious advantages of such a tax is its simplicity.

As was previously discussed with regard to other prospective taxes on the unorganized borough, a policy determination would be necessary to decide who would be subject to the tax. If the purpose of the tax were limited to equity and fiscal considerations, the tax might apply only to those residents of the unorganized borough outside of home-rule and first-class cities. If, in addition to equity and fiscal considerations, the tax policy were aimed at promoting consolidation of small school districts (those with fewer than 250 resident students per AS 14.12.025), the tax might also apply to residents of the ten home-rule and first-class cities that serve fewer than 250 resident students. If the tax

policy were also intended to promote borough incorporation, the tax might apply to all residents of the unorganized borough.

In FY 2005, organized boroughs were compelled by AS 14.17.410(b)(2)

to pay \$161,827,356 in "local contributions" for schools. That is equivalent to \$285.24 for each of the 567,343 residents of organized boroughs. An equivalent tax on each of the 52,618 individuals residing in the unorganized borough outside of home-rule and first-class cities would generate \$15,008,758. If the 5,869 residents of city school districts with fewer than 250 resident students were also subject to the tax, it would increase the annual revenue by \$1,674,074. If the tax were applied to all residents of the unorganized borough, it would generate an additional \$6,557,097. Thus, a head tax on the unorganized borough that is equivalent to the school tax paid by residents of organized boroughs would generate between \$15 million and \$23 million annually, depending on policy decisions regarding applicability of the tax.

(b) Motor vehicles subject to the motor vehicle registration tax under AS 28.10.431 shall be treated as taxable property under this section.

3. Concerns Over the Required Local Contribution Provision.

Concerns have long been expressed by some that the "required local contribution" (i.e., the "State tax" selectively levied on organized boroughs and cities that operate school districts) is problematic in two fundamental respects. The first is that it is inequitable – perhaps even unconstitutional. The second is that it amounts to a breach of promise on the part of the State of Alaska.

(a) Concerns Over Inequity.

The concerns over inequity stem from the fact that the provision for the required local contribution applies only to a particular class of Alaskans (i.e., residents of boroughs and residents of home-rule and first-class cities in the unorganized borough) and that no rational basis exists (e.g., fiscal capacity to support schools) to distinguish that class from the remainder of Alaskans (i.e., residents of REAAs and FTREAs).

In 1997, the Alaska Supreme Court ruled on an appeal over whether the divergent funding scheme violated the equal-protection clause under Alaska's Constitution. *Matanuska-Susitna Borough School District v. State*, 931 P.2d 391 (Alaska 1997). In large part because the Court held that "freedom from disparate taxation, lies at the low end of the continuum of interests protected by the equal protection clause," the Court concluded that there was no violation of the equal protection clause. A synopsis of the *Matanuska-Susitna* case is provided in this report as Appendix B. Readers are encouraged to review the synopsis when considering the issue of equity.

The Court ruling has certainly not curtailed concerns over the issue. The conclusion by the 1991 Task Force on Governmental Roles that such inequity "is a perennial area of conflict in Alaska politics is as true today as it was then.

In their concurring statements in *Matanuska-Susitna*, Justices Matthews and Rabinowitz indicated that the proper venue for resolution of the issue is the Alaska Legislature. Justices Matthews and Rabinowitz noted that "any available remedy must be pursued through majoritarian processes rather than through the courts." *Id.*, at 406.

It is noteworthy that no fewer than nine proposals were introduced in the Alaska Legislature over the past decade to address the issue of equity. For example, Senate Bill No. 30 in the 20th Legislature included a finding that:

[T]he rights, opportunities, and obligations of borough residents are not equal to those of residents in the unorganized borough, particularly in respect to education, taxation, and land use regulation, and that this is not in keeping with art. I, sec. 1, of the Constitution of the State of Alaska, that states in part, . . . that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State'.

SB 30 provided for the levy of a six-mill property tax levy within each of several unorganized boroughs (excluding the territory within home-rule and first-class cities) established along the model borough boundaries identified by the LBC.⁶⁹



Members of the 1963 Legislature.

While not addressed by the Court in *Matanuska-Susitna*, adding to the concerns over inequity is the fact that the overwhelming majority of those subject to the local contribution requirement live in districts that were incorporated by the 1963 legislative mandate to incorporate eight specific areas of Alaska. More than 95 percent of borough residents live in boroughs that were mandated to incorporate under the 1963 Mandatory Borough Act. The Legislature has made no similar enactment subsequent to 1963 to ensure that residents of other areas of the unorganized borough that possess the fiscal and administrative capacity to operate boroughs incorporate boroughs.

⁶⁹Other bills addressing the issue of equity include HB 470 in the 23rd Legislature; HB 2, in the 22nd Legislature; SB 142, SB 146, SB 337, and HB 205 in the 20th Legislature; and SB 280 and HB 250 in the 19th Legislature.

Suzanne Mullen

From: Terry and Krystie Depue [eagle123@gci.net]
Sent: Tuesday, March 08, 2005 9:43 PM
To: Sen. Ben Stevens; Sen. Gary Stevens; Sen. Johnny Ellis; Sen. Con Bunde; Sen. Kim Elton; Sen. Charlie Huggins; Sen. John Cowdery; Sen. Hollis French; Sen. Albert Kookesh; Sen. Bette Davis; Sen. Lyda Green; Sen. Donny Olson; Sen. Gene Therriault; Sen. Fred Dyson; Sen. Gretchen Guess; Sen. Ralph Seekins; Sen. Tom Wagoner; Sen. Lyman Hoffman; Sen. Bert Stedman; Sen. Gary Wilken
Subject: Senate Bill 112 - REAA tax

Dear Senator,

I am writing to urge you to vote against SB 112 – REAA Tax.

Spent the
I live in a rural community and am continually baffled by the idea that we do not help pay our "fair share" for education and other programs simply because we are not in an organized borough. Although I live in Eagle, I do 90 % of my grocery, clothes, building supplies and other shopping in either Anchorage or Fairbanks. The \$1000's that I spend each year in Anchorage or Fairbanks helps the economy of both communities and it is people who live in the bush communities that bring extra funds into an area, but do not use the services (fire, medical, trash etc).

The second reason I urge you not to vote in favor of the bill – is simply this – we need to cut spending, not find new ways to bring in money – cut something out to help fund education. Let's be reasonable and cut a few things rather than put extra burdens on individuals who have chosen to live more simply and who cannot afford the additional tax.

Krystie DePue
P.O. Box 123
Eagle, AK 99738
9075472306

Suzanne Mullen

From: Terry and Krystie Depue [eagle123@gci.net]

Sent: Tuesday, March 08, 2005 10:39 PM

To: Sen. Ben Stevens; Sen. Ben Stevens; Sen. Gary Stevens; Sen. Johnny Ellis; Sen. Con Bunde; Sen. Kim Elton; Sen. Charlie Huggins; Sen. John Cowdery; Sen. Hollis French; Sen. Albert Kookesh; Sen. Bettyo Davis; Sen. Lyda Green; Sen. Donny Olson; Sen. Gene Therriault; Sen. Fred Dyson; Sen. Gretchen Guess; Sen. Ralph Seekins; Sen. Tom Wagoner; Sen. Lyman Hoffman; Sen. Bert Stedman; Sen. Gary Wilken

Subject: Senate Bill 112 - REAA tax

Dear Senator,

Please vote against SB112, which taxes bush residents. This tax will cause many people to not be able to live in the bush of Alaska as they traditionally have. We have a very low income, as do many people in the bush because that is the only way to make it in our communities. We don't take in much money but can afford to live here because we do not spend much either. We work hard for the minimal income that we make and do not take any assistance from the State for our income, we are not on welfare. Most taxes are based on income so those that do not have do not get taxed. A blanket tax unfairly hits the low income households the hardest and is the worst type of tax. Frankly, I do not know where we would get the money to pay this tax. Life here is hard enough without adding a flat state tax.

Thank you for your consideration. Please do not make Alaska another tax burdened state.

Sincerely,

Terry J. Depue

P.O. Box 123

Eagle, AK 99738

Barry Westphal

From: "Barry Westphal" <bweagle@aptalaska.net>
To: <frank.murkowski@gov.state.ak.us>
Cc: <Senator Albert Kookesh@legis.state.ak.us>; <Senator Ben Stevens@legis.state.ak.us>; <Senator Gary Stevens@legis.state.ak.us>; <Senator Johnny Ellis@legis.state.ak.us>; <Senator Lyda Green@legis.state.ak.us>; <Senator Gary Wilken@legis.state.ak.us>
Sent: Tuesday, March 08, 2005 11:56 AM
Subject: SB112

car leaders.

SB112 is being heard Wednesday by the Community & Regional Affairs Committee. Please take the time to consider the circumstances of rural dwelling people. Most cannot afford to pay \$426 per year. For a couple, that means \$852 per year. Most of these people live on a very limited income. Their lifestyle consists of using subsistence means to eat and put a roof over their head. They cut wood to heat their cabins, carry water to drink and wash, and go to the outhouse when nature calls. What will it mean to them to have to pay such a tax? Will it be clothes on their back? The few tangibles they may be able to buy and have shipped to them? Maybe just their kid's Christmas. Not everyone in the rural areas are as such but many are. Many have retired here and live off limited incomes.

To relieve a "head tax" is unfair and will put a huge burden on many. If we must be taxed in a state that has huge income from oil and mineral revenues, there must be a reasonable way to do this. Maybe based on property or income. Still, just what is the reasoning?

When our school was built here, the city of Eagle objected to it on the grounds that one day the state would want to tax us some way to pay for it and we would never be able to afford such taxation. We were assured this would never be the case but it seems that day has come if SB112 is passed.

In the rural world, we don't have running water unless we drill a well. We don't have sewers unless we put in a septic stem. We don't have paved roads. We don't have the services that are paid for by local taxes. Our community is run on volunteers.

This money would in most likelihood not be spent to meet the unmet needs in our school. Our kids do have running water at the school but they can't drink it because of the plumbing. Their drinking water has to be brought from the community well and often run out. The boiler system is faulty and there is often no hot water for washing dishes or taking showers or washing towels. Our funds are annually cut past the point of meeting the children's basic needs. This past year, it was a choice of buying some much needed books or keep our teacher aids. We compromised, cut aid time and bought a few books. We only have two teachers for k-12. Yet, in other schools, they even have athletic teams that can travel to other schools for games. We have a food program in our school now that never has the supplies that it needs or the equipment. Our district buys us equipment that we can't even use because the kitchen isn't wired for it. Sports in our school means someone is volunteering to organize it and supervise. There are no special ed teachers but we have kids with special needs. We do the best we can.

It could go on and on but I hope you are understanding our situation here a little better. We feel as if we are being betrayed by those who would impose such a tax on us. Will you bring some paying jobs so we can earn the \$426 per person, per year?

Please consider the minority here. We seem to be at your mercy.

BARRY -

3/8/2005

LEGAL SERVICES

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

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

MEMORANDUM

March 9, 2005

SUBJECT: CSSB 112 () (Work Order No. 24-LS0505F)

TO: Senator Con Bunde
Attn: Lauren Wickersham

FROM: Kathryn L. Kurtz *KLK*
Legislative Counsel

Enclosed is the draft bill you requested.

You asked about whether the bill could be interpreted to impose the tax on individuals in cities with school districts. The bill imposes a tax on individuals residing in regional educational attendance areas. By definition, a regional educational attendance area (REAA) is an educational service area in the unorganized borough containing one or more public schools under the management and control of a single school board. AS 14.60.010. So, an REAA is a type of school district. See AS 14.30.350(8), 14.30.720(2), AS 29.60.599(7). Boroughs are school districts, AS 29.35.160, as are home rule and first class cities located outside organized boroughs. AS 29.35.260(b). Second class cities located outside an organized borough, however, are NOT school districts, AS 29.35.260(b), and so are within REAAs. So, the tax in the enclosed bill would fall on residents of second class cities in the unorganized borough, but not on residents of home rule and first class cities, as those would not be within an REAA.

Also, I have not made any changes in the bill relating to the appeals process; this means that appeals would proceed under the statutory default mechanism, which I believe is the same as for permanent fund dividend appeals.

KLK:m .d
05-168.med

Enclosure

Fairbanks Daily News-Miner

Head tax to pay for schools proposed for unorganized areas

By DANIEL RICE

Thursday, March 10, 2005 - News-Miner Juneau Bureau

JUNEAU--Residents of unorganized areas have so far reacted with strong opposition to forced borough formation and its ensuing property taxes. But now one state senator has plans for collecting taxes from those residents to pay for schools even if they don't incorporate into a borough.

Sen. Con Bunde, R-Anchorage, is floating a bill to charge a head tax on all people 21 or older who live outside an organized borough, a move he estimated could generate about \$12 million to \$13 million extra for education every year.

Residents would be required to pay regardless of whether they have a job, with the exact figure calculated based on the average amount that residents of organized boroughs contribute to schools.

That would currently amount to an annual tax of a little more than \$400 for every person required to pay.

Bunde said his proposal, Senate Bill 112, is intended as a means for collecting alternative sources of education funding. Every year, school districts come to the state pleading for more money, he said, while local areas are not contributing what they could.

"It's not something that they relish," Bunde said of residents in unorganized areas paying a head tax. "But we have to point out that the state treasury is not the only source of funding for education."

Bunde's head tax proposal is being considered by the Senate Community and Regional Affairs Committee, the first panel to hear the bill. To pass the Legislature, the bill would need the support of that committee, at least one other Senate panel, the full Senate, plus committees in the House of Representatives and the full House.

Although Bunde considers a head tax a separate issue from mandatory borough formation, many are already drawing direct links. One of the Legislature's leading proponents of creating new boroughs, Sen. Gary Wilken, R-Fairbanks, has signed on to Bunde's bill as a co-sponsor.

Richard Schultz of Tok, a former state senator, said he opposes the idea of borough formation and would be willing to pay a head tax to get supporters of the idea to back off.

"I would rather pay up than be forced into a borough," Schultz said.

Schultz's view is opposite from the connection that the state's Local Boundary Commission hoped for when members proposed a head tax in the unorganized areas in an annual report to the Legislature that detailed ways to promote more borough government.

The constitutionally mandated body that handles municipal incorporation and boundary issues wrote in the report, released prior to Bunde's bill, that the concept of a head tax could remove a disincentive to becoming a borough.

Many areas are discouraged from becoming boroughs because they don't want taxes that would come with the new government, said commission chair Darroll Hargraves.

If a head tax were in place, people might be more agreeable to the idea of living in a borough because they would already be paying taxes anyway, said Hargraves.

Hargraves' commission considers more boroughs consistent with the vision of framers of the Alaska Constitution. Alaska's unorganized areas are currently grouped together in state law as one giant "unorganized borough," with the Legislature considered its assembly.

Wilken has tried in the past to push legislation through to turn some of that unorganized borough into new organized boroughs, but his efforts have been unsuccessful.

According to Bunde, many residents in unorganized areas see a head tax as a way to address the criticism that they don't pay their fair share to education but avoid the forced imposition of a new local government.

"More than once I've heard them say, 'You, the Legislature, sit as our assembly. If you feel we should pay more taxes or taxes at all, you as our assembly impose them. Just don't add another layer of government,'" Bunde said.

But Sen. Albert Kookesh, D-Angoon, noted that nothing in Bunde's bill guarantees that a head tax will end forced borough formation efforts.

Kookesh, whose huge district covers many rural unorganized areas, said he opposes the head tax bill for several reasons.

For one, he said, the money collected would go to the education pot used to fund all state schools, not directly to the schools in the area where the money comes from. Unorganized areas would receive less money than they put in.

If the Legislature is truly interested in making education contributions fairer between residents of organized and unorganized areas, Kookesh said, it should implement a statewide income tax.

Bunde's bill is not the only proposal in the Legislature that could have an impact on the future of new boroughs or the expansion of existing ones.

Another bill by Rep. John Coghill, R-North Pole, would require residents of an affected area to vote in favor of an annexation or new borough before the process could proceed, a change from current policy allowing the changes to be considered without the consent of the affected residents.

If House Bill 133 is approved and withstands legal scrutiny, the change could carry significant repercussions for the Fairbanks North Star Borough and Mayor Jim Whitaker's idea for annexing a massive block of land that would roughly double the size of the borough.

Coghill's bill passed the first panel to consider it and is scheduled to be heard next by the House State Affairs Committee.

Reporter Daniel Rice can be reached at drice@newsminer.com or (907)463-4893.

DOT LAKE VILLAGE COUNCIL
BOX 2279
DOT LAKE, AK 99737
phone (907) 882-2693

Reply to
attr. of: William Miller
Subject: SB 112
To: SCRA COMMITTEE

03/09/05
~~03/09/05~~

MY NAME IS WILLIAM MILLER, I AM PRESIDENT OF DOT LAKE VILLAGE COUNCIL, THE LEGAL GOVERNING BODY FOR THE NATIVE VILLAGE OF DOT LAKE. I ALSO SERVE ON THE ALASKA GATEWAY SCHOOL DISTRICT (REAA).

RECOMMENDATIONS FOR CHANGES TO SB 112:

1. PAGE 1, LINE 6 & 7: DELETE "RESIDING" AND INSERT "EMPLOYED"
2. PAGE 1, LINE 8: AFTER "TAX" INSERT " NOT TO EXCEED 1% OF INDIVIDUALS GROSS INCOME".
3. PAGE 1, LINE 9 THRU 11: PLACE A PERIOD AFTER "SECTION" AND DELETE REMAINDER OF THE SECTION.
4. PAGE 2, LINE 6: AFTER THE WORD "DEPARTMENT", ADD "ALL TAXES WITHHELD EACH QUARTER" (THESE TAXES COULD BE SUBMITTED ALONG WITH EMPLOYER'S UNEMPLOYMENT CONTRIBUTIONS)
5. PAGE 2, LINE 6 THRU 8: AFTER THE WORD DEPARTMENT, DELETE REST OF SENTENCE.

QUESTIONS

1. THE BILL DOES NOT ADDRESS INDIVIDUALS THAT ARE DISABLED, UNEMPLOYED, ON SOCIAL SECURITY, RETIRED, ETC.
2. I FEEL THAT THIS TYPE TAX SHOULD BE BASED ON A PERCENTAGE OF INCOME AND WITHHELD FROM EACH PAYCHECK. THIS WOULD BE LESS OF A BURDEN ON THE INDIVIDUAL.
3. TAX COULD BE SUBMITTED QUARTERLY TO THE STATE ALONG WITH EMPLOYER'S UNEMPLOYMENT CONTRIBUTIONS, ON A FORM PROVIDED BY THE STATE.
4. SELF-EMPLOYED INDIVIDUALS COULD ESTIMATE THEIR GROSS INCOME AND MAKE ADJUSTMENTS AT THE END OF THE YEAR.
5. BILL DOES NOT ALLOW FOR SCHOOLS AND CHILDREN TO BENEFIT, BECAUSE THE TAXES ARE NOT DEDICATED FOR SCHOOL USE.
6. AS NOTED ON THE "FACT SHEET" BASED ON 505 MILLION INCOME 13 MILLION COULD BE COLLECTED IN TAX. THIS WOULD BE 2.5% OF THE EARNED INCOME.

7. I FEEL THAT IF WE ARE TO PAY A TAX, WE SHOULD BE ON EQUAL FOOTING WITH ANCHORAGE, FAIRBANKS AND OTHER AREAS, AND BE ABLE TO RAISE FUNDS FOR SCHOOL REPAIRS AND PAY A PERCENTAGE OF THE REQUIRED COST AND HAVE THE STATE PAY THE REST. SOMETHING LIKE THE 30 - 70 OR 20 - 80 SPLIT.

SB

1 1 4

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MEMORANDUM

March 9, 2005

SUBJECT: Service areas in second class boroughs (CSHB 121(CRA))

TO: Representative Bill Thomas,
Co-chair, House Community and Regional Affairs Committee
Attn: Kaci Schroeder

FROM: Tamara Brandt Cook
Director *TBC*

You have supplied me with a letter from Michael Black, Director of the Division of Community Advocacy, and a copy of comments by Dan Bockhorst. You ask whether the analysis of CSHB 121(CRA) in these materials is correct. It is.

AS 29.35.450 applies as a home rule limitation. This means that home rule municipalities are bound by the requirements in this statute. (AS 29.10.200(46)) Subsection (c) of AS 29.35.450 is amended in CSHB 121(CRA) by creating an exception to the voting requirements of that subsection in certain circumstances to permit a borough to abolish a service area or consolidate service areas. However, the exception, by its terms, applies only to service areas of second class boroughs. The exception does not apply in unified municipalities or home rule boroughs.

TBC:med
05-167.mod

Post-It® Fax Note	7671	Date	4/5	# of pages	1
To	Melanie	From	MB		
Co./Dept.		Co.			
Phone #		Phone #	3517		
Fax #		Fax #			

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". *pg 2, line 4*
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 one year; or
22. (3) there are no road maintenance contracts in effect for the
23. service area."

DRAFT

LEGAL SERVICES

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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."

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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

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	♦	x	♦	○
Transportation Systems	♦	x	x	NA	♦	x	x	x	NA	♦	x	♦	○
Water Pollution Control	♦	x	x	NA	♦	x	x	x	NA	♦	x	♦	○
Air Pollution Control	♦	x	x	NA	♦	x	x	x	NA	♦	x	♦	○
Regulation of Animals	♦	x	x	NA	♦	x	x	x	NA	♦	x	♦	○
License Day Care Facilities	♦	x	x	NA	♦	x	*	*	NA	♦	x	♦	○
Regulate Fireworks	♦	★	★	NA	♦	x	x	x	NA	♦	x	♦	○
Solid Waste	♦	★	★	NA	♦	x	x	x	NA	♦	x	♦	○
Housing Rehab	♦	★	★	NA	♦	x	x	x	NA	♦	x	♦	○
Economic Development	♦	★	★	NA	♦	x	x	x	NA	♦	x	♦	○
Roads & Trails	♦	★	★	NA	♦	x	x	x	NA	♦	x	♦	○
EMS Communications	♦	★	★	NA	♦	x	x	x	NA	♦	x	♦	○
Regulate Motor Vehicles	♦	★	★	NA	♦	x	x	x	NA	♦	x	♦	○
Development Projects	♦	★	★	NA	♦	x	x	x	NA	♦	x	♦	○
Hazardous Substance Control	♦	★	★	NA	♦	x	x	x	x	♦	x	♦	○
Other Powers Not Prohibited	♦	★	★	NA	♦	x	*	*	NA	♦	x	♦	○

- 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.
- x May be exercised by ordinance.
- * 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.

MEMORANDUM**State of Alaska**

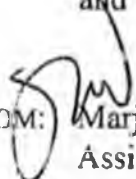
Department of Law

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.

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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 Ketchikan*, 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.

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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*.



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: COMMUNITY & REGIONAL AFFAIRS
Current Version: SB 114
Contact: Melanie Lesh, 465-4989

Fact Sheet for: Senate Bill 114

Short Title: SERVICE AREAS IN SECOND CLASS BOROUGHS

Summary:

- Enables Second Class Boroughs to eliminate or consolidate service areas that are non functional or operating at below minimum standards.
- Allows local governments to decide which consolidations or eliminations will take place.
- Protects service areas that tax at an adequate level to maintain good roads.

Benefits:

- Protects boroughs from any liability associated with poorly maintained roads in service areas.

Background:

- The elimination of municipal revenue sharing slashed the amount of road maintenance funds available to local road service areas. Some roads are not getting the proper maintenance necessary to provide safe transportation. Dangerous roads are a potential liability to boroughs. SB 114 permits boroughs to consolidate or eliminate service areas that are not properly maintaining roads.