




Fairbanks North Star Borough

DEPARTMENT OF LAW

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MEMORANDUM

TO: Legislative Priorities Committee
CC: Bryce J. Ward, Mayor
FROM: Jill S. Dolan, Borough Attorney 
DATE: June 24, 2021
SUBJECT: Status of Legislative Priority for Title 29 PILT exemptions

The Assembly included as a legislative priority last year a possible state law change to allow property taxpayers that meet certain criteria to obtain a tax exemption for up to 20 years if they negotiate a payment in lieu of taxes (PILT) agreement with a municipality. The white paper submitted with the request provided that, "Eligible properties would be identified as businesses that provide or support high wage employment within the borough." These expressly included Class III value added industries defined by AS 36.30.332 that employ 20 or more FTEs, military support businesses in a military facility zone, private projects that implement all or part of an urban renewal plan, a mine that has a daily average of 100 or more FTEs, privately owned large scale renewable energy facilities, and municipal-owned real or personal property located in a separate municipality.

In January, Senator Bishop submitted a request to legislative legal services to have the bill drafted; after discussions between the borough attorney and legislative legal services, it was determined that a provision should be added to the legislation expressly providing that a PILT must be subject to amendment or repeal by the assembly in order to comply with Alaska constitutional requirements. Ultimately the FNSB requested that the bill not proceed last session so that the FNSB could further consider how to approach this priority.

The following were identified as considerations with the priority as proposed:

1. Any legislative purpose for an exemption must clearly articulate a rational basis for the difference in treatment; there must be a fair and substantial relationship between the exemption and the purpose behind the enactment. This could be articulated at the time of adoption of the exemption.
2. A PILT for Alaska-made goods¹ may be subject to challenge under the commerce clause as it may discriminate against interstate commerce.

¹ Class III value-added industries defined by AS 36.30.332 are those which produce or manufacture at least 75% of its goods within Alaska.

3. Whether a PILT agreement contracts away the power of taxation in contravention of article IX, sections 1 and 4 of the Alaska Constitution needs to be considered. According to a 2016 Attorney General opinion, exemptions must be (1) industrywide, (2) granted to induce new industry or outside investment, and (3) be subject to amendment or repeal by future legislatures.²

² A 2016 Attorney General Opinion addressed the question as to whether the State of Alaska, by legislation or by contract, could bind the State to a tax structure for a proposed Alaska North Slope liquefied natural gas project and thereby prevent future legislatures from amending that tax structure. 2016 Op. Alaska Att’y Gen. (June 23). Citing to article IX, section 1 of the Alaska Constitution, the AG opined that the sovereign power of taxation cannot be completely surrendered by an irrevocable legislative tax structure or contract. According to the AG’s analysis, the intent of the framers in Article IX’s provisions was to allow exemptions to incentivize new industries and encourage natural resource development, not to make tax relief available to specific companies with an industry that has been established in the state for decades. What is allowed under Article IX, section 1 and 4, according to the then-AG, is to provide for a tax exemption through general law or contract that induces new industry or outside investment and that a successive legislature can amend or repeal at any time. This allows a future legislature to meet its changing financial needs.

Other attorney general opinions have found that certain long-term, irrevocable tax exemptions are permissible under the Alaska Constitution. A 2006 Attorney General opinion found that sections 1 and 4 of article IX did permit the state to enter into a long-term fiscal contract under the Stranded Gas Development Act (SGDA). 2006 Op. Alaska Att’y Gen. (May 10). That opinion points to the adoption of industrial incentive acts immediately before and after the constitutional convention as evidence that the framers intended to leave the legislature the authority to suspend or contract away the power to tax as part of its power to grant tax exemptions by general law. Considerations there include that it was expensive to construct and bring gas to a global market; the term allowed the pipeline owners to recover their investment costs; and the state was an equity owner in the project and received revenues from the sale of gas shipped through the pipeline, all of which provided the basis for the length of the agreement and was in the long term fiscal interests of the state.