SB
113

Alaska State Legislature

House of Representatives

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Memorandum: To Whom It May Concern

From: Representative Mike Miller

Representative John Huber has requested that you receive this copy of the proposed Municipal Code with the additional educational amendment.

He has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Enclosures:

SB 113
CSSB 113
CSHB 208

Please note: This material was mailed to you at the personal expense of Representative John Huber.

REPRESENTATIVE MIKE MILLER

COMMITTEES
CHAIRMAN, LOCAL GOVERNMENT COMMITTEE
MEMBER, RULES AND STATE AFFAIRS COMMITTEE

TO WHOM IT MAY CONCERN:

The following materials were sent to the Fairbanks area at the request of Representative John Huber:

1. Cover letter from Rep. Mike Miller

2. House Local Government Committee Report re education amendments.

3. Copy of CSHB 208

4. Copy of CSSB 113 with 3 comparisons stapled inside

5. Copy of SB 113

These materials were sent to the following persons:

City of Fairbanks

Hon. Julian Rice - Mayor
Mr. Ernie Carter - Councilman
Mr. Wallace F. Burnett - Councilman
Mr. Joseph M. Jackovich - Councilman
Mr. Thosmas Miklautsch - Councilman
Mr. Robt. Parsons - Councilman

Mr. Wallis C. Droz - City Manager
Mr. Ben T. Delahay - City Attorney
Miss Sally Rusnell - City Clerk
Mr. Clifford J. Rogers Jr. - City Treasurer
Mr. Richard Levine - City Engineer
Mr. Robt. Wolting - Finance Director
Mr. James A. Movius - General Manager, MUS

City of North Pole

Mr. J. Wright - Mayor

Fairbanks North Star Borough

Mr. John A. Carlson - Borough Chairman
Mr. John O. Gustafson,- Presiding Officer
Mr. Robt. H. Bettisworth - Assemblyman
Mr. Lynne Carpenter - Assemblyman
Mr. Foye L. Gentry - Assemblyman
Mr. Tom Kouremetis - Assemblyman
Mr. Joseph P. Lawlor - Assemblyman
Mr. Con B. Miller - Assemblyman
Mr. Joe Marshall - Assemblyman

Mr. James Bruce - Borough Attorney
Mr. Kenneth W. Anderson - Borough Clerk
Mr. Earl Wyman - Borough Assessor
Mr. Walter H. Peirce - Borough Engineer
Mr. Donald Gilmer - Borough Planning Director
The Chairman - Fairbanks N. Star Borough Planning & Zoning Commission

addendum :

at Rep. Huber's expense to :

Mr. Thos. Fenton, President
Fairbanks N. Star Borough
School Board
c/o Borough offices

Mr. Robert Claus, Pres. Fairbanks Real Property Taxpayers Assn.
301 Cushman ST.

Mr. Joe Vogler
P.O. Box 7, Fairbanks

Mr. Don Gilbert
c/o Ranch Motel - 22nd Ave. & Cushman ST., Fairbanks

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Honorable John A. Carlson
Chairman,
Fairbanks North Star Borough
P. O. Box 1267,
Fairbanks, Alaska 99701

Dear John:

Representative John Luker has requested that you receive this copy of the proposed Municipal Code with the additional educational amendment.

He has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Sincerely,

Mike Miller
Chairman,
House Local Government Committee

Enclosures:

SB 113
CSSB 113
CSHB 208

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Mr. Wallis C. Droz
Manager,
City of Fairbanks,
Fairbanks, Alaska 99701

Dear Mr. Droz:

Representative John Luber has requested that you receive this copy of the proposed Municipal Code with the additional educational amendment.

He has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Sincerely,

Mike Miller
Chairman,
House Local Government Committee

Enclosures:

SB 113
CSSb 113
CSLB 208

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Honorable Julian C. Rice
Mayor,
City of Fairbanks
Fairbanks, Alaska 99701

Dear Mayor Rice:

Representative John Huber has requested that you receive this copy of the proposed Municipal Code with the additional educational amendment.

He has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Sincerely,

Mike Miller
Chairman,
House Local Government Committee

Enclosures:

SB 113
CSSB 113
CSHB 208

APRIL 12, 1971

HOUSE LOCAL GOVERNMENT COMMITTEE REPORT

ON

COMMITTEE SUBSTITUTE HOUSE BILL NO. 208

House Bill 208 and CSHB 208 are identical in every respect to SB 113 and CSSB 113 respectively. Accordingly, as a committee report, the Local Government committee is submitting three documents: (1) a Foreword and Synopsis of Amendments; (2) a Comparison of CSSB 113 and Existing Municipal Law, and (3) a Comparison of CSSB 113 and SB 113.

In addition, House members should be aware that the Local Government committee met April 10th and unanimously adopted amendments in the educational field which change the substance of the bill as it relates to education and which, also, when incorporated into the total concept of the bill, make the summaries no longer accurate as they affect education.

Briefly, the House Local Government education amendments were designed to preserve the status quo as far as education is concerned in the field of municipal law. Currently, there is court litigation in process which should clarify the position of education and its relationship to home rule and general law municipalities. The amendments virtually remove education from the Municipal Code and place the entire field of education in Title 14 (the education title of state statutes). By removing education from the Code, it is the intent of the committee to maintain the status quo and thus to provide for guidance in this matter from the courts.

Mike Miller, Chairman
House Local Government
Committee

April 19, 1971

Mr. Robert E. Sharp
City Manager
City of Anchorage
P. O. Box 400
Anchorage, Alaska 99501

Dear Bob:

Thank you for your letter concerning CSSB 113.

I have read the memorandum written by the Budget Advisory Commission last year and I am forwarding a copy of your letter to the House Local Government Committee for their consideration.

I plan to discuss the matter with some of the other Anchorage legislators and we will see what we can do about amending the bill.

Thank you for bringing this matter to my attention.

Sincerely,

Gene Guess
Speaker of the House

cc: Rep. Mike Miller

CITY OF ANCHORAGE ALASKA

International
Polar air crossroads of the world

POST OFFICE BOX 400
ANCHORAGE, ALASKA
99501

April 16, 1971

Honorable Gene Guess, Speaker
Alaska House of Representatives

Honorable John Rader, Chairman
Senate Local Government Committee

Gentlemen:

This will confirm my wire today concerning the adverse affect of Section 29.48.190, CSSB 113, on the City of Anchorage.

The matter of changing the City's fiscal year was brought up last fall. At that time the City Council asked the Budget Advisory Commission to study the matter and make a recommendation. A copy of this study, dated November 20, 1970, is enclosed.

It was the unanimous decision of the study group that the City of Anchorage not effect the change to the June 30 fiscal year. The report contains seven reasons in support of continuation of the present January 1-December 31 fiscal year.

There has been no difficulty, insofar as we have been made aware, of the use of the present fiscal year of the City of Anchorage in connection with any Federal or State-shared revenue program.

Again, we urge that CSSB 113 be amended to delete home rule cities from Section 29.48.190.

Sincerely yours,

Robert E. Sharp
City Manager

RES:AFR
Enclosure

cc: Mr. Don Berry, Alaska Municipal League
Honorable Edward A. Merdes

M E M O R A N D U M

TO: Mayor and Council DATE: November 20, 1970

FROM: Budget Advisory Commission

SUBJECT: Fiscal Year

Dear Mayor Sullivan:

In response to a recent request of this Commission, Members Johnson and Brighton investigated the consequences of a change to a 30 June fiscal year.

That investigation raised technical questions of sufficient magnitude to warrant opinions by specialists in activities affected by the accounting cycle.

The attached report prepared by John Johnson briefly describes the remarkable concurrence of the panel to the effect that a change to June 30 would not result in a real or potential gain to the City---but would more likely result in significant costs during the changeover.

It was also suggested at that meeting that the proposed unification charter be mute on the cycle, thereby allowing the major components of that government to use their "natural cycle," i.e. City-calendar year, schools-fiscal year, and so forth.

We trust this report by the Commission is sufficient to your present needs.

Very truly yours,

BUDGET ADVISORY COMMISSION — 1) Fiscal 2) Charter Comm

By: H. R. Lee
H. R. Lee, Chairman

cc: Commission Members
Mayor
Council
City Manager
Messrs. Rettig, McKee, Orwoll, Morrison, Surrell, Sherwood and Siddle

Enclosures

HRL:ld

November 18, 1970

TO: Harry Lee, Chairman
Budget Advisory Commission

FROM: John M. Johnson, Member

RE: Whether the City should establish a fiscal year ending June 30th

On November 13, 1970, the members of the City Budget Advisory Commission met at the Captain Cook Hotel and discussed whether or not the City of Anchorage should change from a fiscal calendar year basis to a June 30th basis.

Budget Advisory Commission members present were: Harry Lee, Chairman· members, Dick Smith, Charles Leveige, Desmond Edwards, Everett Brighton, John M. Johnson, and Norman Levesque.

Attending the meeting and participating in the discussion were the following individuals, all of whom have had direct contact with the question:

1.	Robert Sharp	City Manager, City of Anchorage
2.	R. L. Rettig	State Legislator
3.	Pat McKee	Greater Anchorage Area Borough Assessor
4.	Earling Orwoll	Greater Anchorage Area Borough Comptroller
5.	Bob Morrison	Budget Officer, City of Anchorage
6.	Fred Surrell	Public Service Commission
7.	Clyde M. Sherwood	Certified Public Accountant
8.	Jay Siddle	Certified Public Accountant and Greater Anchorage Area Borough Assemblyman

It was the unanimous decision of the group that the City of Anchorage not effect the change to the June 30th fiscal year.

Although the Greater Anchorage Area Borough and the School District are on a fiscal year ending June 30th, the administrative officers of the respective contiguous entities, the Greater Anchorage Area Borough and the City of Anchorage, stated they were experiencing no fiscal difficulties as a result of being on different fiscal periods.

No major arguments were advanced with regard to a change to the June 30th date. On the contrary, strong arguments were made to maintain the present calendar year basis; they were:

1. Fiscal funds for the Capital Improvement Program would experience a year's delay; such loss would be non-recoverable.

2. The acceleration of tax payments during the transition would be detrimental to all.

3. The various governing agencies of municipal utility operations have set forth calendar year reporting, and since utility funds make up the greater part of the City's operations, the change would appear undesirable.

4. There is really no correlation between the receipt of funds from revenue sharing programs and participating funds grants and applicable fiscal periods, and as a consequence, the City is on a modified cash basis in its budgeting programs for such resources.

5. Budget planning and preparation time is at the most ideal time under the present accounting period as springtime budgeting is not the most feasible date for budget preparation because of the seasonal nature of various workloads in the Anchorage areas.

6. The planning and sale of bonding programs likewise appear to be more suited to the existing fiscal period.

7. The commitments of the subdividers, because of their inherent problems, financial and climatical, are better coordinated with the December 31st fiscal year.

Inasmuch as there were no major disadvantages and rather significant advantages to the December 31st fiscal period, we recommend the City continue the calendar year reporting basis.

Very truly yours,

John M. Johnson

City of Anchorage
Budget Advisory Committee

I. Question: Whether the City should establish a fiscal year ending June 30.

A. Legal Opinion: Rendered January 15, 1968 by Karl A. Walter, Jr., City Attorney

The question has been asked as to whether the City may establish a fiscal year other than a calendar year.

The answer to the question is that under Section 6.1 of the City Charter, the Council may establish a fiscal year other than one which coincides with a calendar year.

Section 6.1 of the City Charter provides as follows:

> "The fiscal year of the City shall be as established by the Council, unless otherwise provided by law."

At the present time the City fiscal year is the calendar year. As the City Charter gives the City Council the power to establish the fiscal year, the City may lawfully change and establish a different calendar year from, for example, July 1 to June 30. Although there is no "provision" which definitely established the calendar year as the fiscal year, Section 2-10 of the Code of Ordinanaces in prior City practice does establish the calendar year. Section 2-10 of the Code would, therefore, have to be changed.

In conclusion, there is no legal impediment to the City Council establishing a different City fiscal year other than the calendar year.

April 19, 1971

The Honorable John H. Huber
Alaska State Representative
Alaska State House
Juneau, Alaska 99801

Dear John:

Thank you very much for your letter of April 16 setting forth your concerns with the revised Municipal Code (CS HB 208). I hope I can answer your difficulties as well as you stated them.

1) Sec. 29.48.033 (b), (c), & (d) relating to private garbage collection firms in annexed areas: The joint Local Government Committees felt it was vital to retain existing law on such controversial issues rather than jeopardize the bill. As you know, the language in CS HB 208 regarding garbage was enacted last session. Another bill on the subject has passed the House, but is languishing in the Senate Rules Committee. We felt any change in existing law should go to the floor as separate bills and be decided on their own merits. The garbage provision in CS HB 208 is existing law.

2) Sec. 29.13.100 (18) establishing July 1 to June 30 as the fiscal year in all municipalities: We have been informed many times by reputable fiscal advisors and bond houses that having different fiscal years makes it very difficult to compare spending patterns and financial conditions of various municipalities. This problem may adversely affect the credit ratings of some local governments. In addition, Federal and State officials have problems making statistical comparisons. The greater amount of shared revenues from the State (or Federal) government, the more complex the problems when a locality receives its money halfway through its fiscal year. Finally, and most important now, I have been told that Fairbanks has to keep higher cash balances on hand than it would if the schools (on a July 1 fiscal year) did not have to wait six months or more for property tax revenues.

3) Sec. 29.53.220, providing for enforcement of personal property tax liens: Distraint and sale might not raise the amount of tax due because this is not a true market transaction. The buyer is willing, perhaps, but the seller is not. Besides, if the sale is delayed some time, and this happens, the property may have depreciated.

4) Sec. 29.53.135 allowing the assembly or council to delegate equalization disputes to a board: The case for this provision is that it will save the governing body's time for the most important equalization disputes and that it makes it possible to have a more experienced, longer-serving board to hear complaints. If this does not work, the assembly can always go back to hearing every dispute. The joint committee realizes this method could result in non-elected fficials taking "the heat" for elected councilmen, but the committee felt that the possible expertise developed by a regular committee would be in the public interest. Our decision could be wrong, but we could also end up being right.

5) Sec. 29.48.050 (c) and Sec. 29.48.100 relating to franchises and permits: The bill says the governing body "may" grant franchises (page 65, line 2); clearly, they could refuse one. You feel the locality should have the final word on reasonable terms, conditions, etc., for the use of streets by public utilities. But the utilities can always go to the courts over what is "reasonable". The idea of having the Alaska P.U.C. hear the matter was, hopefully, to avoid this. It would save considerable time and money for both parties. The joint committee felt it is not in the public interest to afford a municipality a veto on such a vital public interest area concerning customers outside the municipality.

Please contact me if you wish to discuss these matters further.

With best wishes, I am,

Cordially yours,

EDWARD A. MERDES

EAM:sb

April 16, 1971

M E M O R A N D U M

TO: Representative Mike Miller

FROM: Greg Machyowsky, Legislative Counsel

SUBJECT: Attached amendments

As requested I've prepared an amendment for CSHB 208 (as amended) setting the regular municipal election date on the first Tuesday in October rather than the Tuesday after the first Monday in November. The amendment is prepared for the Senate. It should be noted that does not affect the present provision of the bill setting the election every two years at the time of the state election, rather only sets that regular election date in October. Thus, if adopted, the amendment would result in local elections in October every two years, followed by state elections the next month, unless municipalities choose by ordinance to provide for local election every year on the first Tuesday of October, as under present law. If regular local elections every two years in the off-year of the state election are intended, then the amendments made on pages 35 and 123 in the attached amendment should read:

> Page 35, line 23: Strike "Tuesday after the first Monday in November every even-numbered year" and substitute "first Tuesday of October every odd-numbered year"
>
> Page 123, lines 24 - 25: Strike "Tuesday following the first Monday in November of even-numbered years" and substitute "first Tuesday of October of odd-numbered years"

As indicated, the bill still leaves the option to local governments to provide for an election every year (or even at longer intervals than every two years).

Senator Mordes hasn't specifically requested a Senate amendment to change election dates. I'm furnishing the amendment to you in accordance with your request yesterday to have the amendment ready.

Another, shorter amendment, is enclosed, also; it would make a few desirable technical improvements and corrections. If other amendments to the bill are adopted in the Senate, I would recommend that the amendments on the enclosed sheet (for pages 17, 25, 65, 73, 106 and 124 of the bill respectively) be also adopted. The first two,

on page 17 are for clarification only (as now worded the lines seem to contemplate an election only in state election years, whereas elections every year at the option of the local government are also intended). The amendment on page 25 corrects an error; the line in the bill (line 28) erroneously stipulates a general law city council election every year. As to this one amendment, the lengthier amendment to change election dates also includes the correction (in effect deleting the phrase "every year" on page 25, line 28).

The amendments following clear up ambiguity in the use of the term "general" election when "regular" election is meant; the ambiguity developed in the process of integrating existing recently enacted statutes on franchise and property disposal elections into the committee substitute bill. Except possibly for the correction on page 25, none of the amendments would appear to me important enough to complicate or delay passage of the code, and if necessary can be recommended as corrections in the revisor's bill next year. (There undoubtedly will be a number of other minor technical matters cropping up in the course of detailed examination of the committee substitute bill as enacted.)

I've also made a minor technical improvement, at page 124, line 17, making clear that incumbents in office at the time the Act takes effect serve until the October expiration date of their terms, and the elections for immediate successors are held in October, notwithstanding the present provisions for November elections.

Encl.

GM:lc

A M E N D M E N T No. 1

IN THE SENATE

TO: CS FOR SENATE BILL NO. 113

Page 17, line 28: Strike "at the time of the general election" and substitute "on the first Tuesday of October"

Page 18, line 1: Strike ", unless provided otherwise by ordinance"

Page 22, line 29: Strike "Tuesday after the first Monday" and substitute: "first Tuesday of October"

Page 23, line 1: Strike "in November"

Page 25, lines 28 - 29: Strike "every year on the Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 27, lines 12 - 13: Strike "Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 29, line 8: Strike "municipal"

Page 29, line 9: Strike "Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 29, lines 22 - 23: Strike "municipal election on the Tuesday following the first Monday in November" and substitute "election held on the first Tuesday of October"

Page 35, line 23: Strike "Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 123, line 24: Strike "Tuesday following the first Monday in November" and substitute "first Tuesday of October"

Page 124, lines 18 - 19: Strike "are elected on the date provided before enactment of this title and"

A M E N D M E N T No. 2

IN THE SENATE

TO: CS FOR HOUSE BILL NO. 208 as amended

Page 17, line 27: Strike "an election" and substitute "a regular election"

Page 17, line 28: Strike "at the time of the general election"

Page 25, line 28: Strike "every year"

Page 65, line 15: Delete "general" and substitute "regular"

Page 73, line 12: Delete "general" and substitute "regular"

Page 106, line 19: After "question" insert "at a regular or special election"

Page 124, line 19: After the period add the following new matter: "Insofar as the temporary provisions of this section conflict with other provisions of this Act relating to municipal elections and terms of office, the other provisions of this Act are superseded until the temporary provisions of this section have been fully implemented."

Alaska State Legislature

House of Representatives

Pouch V,
State Capitol Bldg.
Juneau, Alaska 99801
April 12, 1971

Memorandum: To Whom It May Concern

From: Representative Mike Miller

Representative John Huber has requeste that you receive this copy of the proposed Municipal Code with the additional educational amendment.

He has requested if you have any questions or comments that you transmit them immediately. I am hoping to take action on this bill before the end of this week.

Enclosures:

SB 113
CSSB 113
CSHB 208

Please note: This material was mailed to you at the personal expense of Representative John Huber.

REPRESENTATIVE MIKE MILLER

COMMITTEES
CHAIRMAN, LOCAL GOVERNMENT COMMITTEE
MEMBER, RULES AND STATE AFFAIRS COMMITTEE

Alaska State Legislature

House

JUNEAU ALASKA

Local Government Committee

April 9, 1971

Mr. James A. Anderegg
Director, Division of Environmental Health
State Department of Health and Welfare
Pouch H
Juneau, Alaska 99801

Dear Mr. Anderegg:

Chairman Miller has asked me to inquire about the Department's requirement that all sewer lines be 8" in diameter (Administrative Code, Title 7, Sub-chapter 2, Section 318 (c)). A number of individuals have contacted legislators and quoted engineers as stating that in some situations a 6" pipe was preferable for "volumetric" reasons. As I understand it, the smaller pipe in relation to the water and sewage involved will insure better flushing of the pipe. I am told there is not much cost saving in using a 6" instead of an 8" pipe, but the smaller one can be easier to maintain.

We would appreciate a short note on why 8" pipe is required without exception, and on how this requirement compares with that in some other western states and in projects built under Federal aid.

If this matter can be handled on the phone, please feel free to call me at 5-5290.

Sincerely,

James B. Rhode

James B. Rhode
Administrative Assistant
House Local Government Committee

JBR:jbr

Alaska State Legislature

House

JUNEAU ALASKA

Local Government Committee

April 8, 1971

Mr. Robert Sharp, City Manager
City of Anchorage
City Hall
Anchorage, Alaska

Dear Mr. Sharp:

You will be pleased to know that all the points you raised about SB 113 in your wire of March 29 to Chairman Miller were discussed by the Senate and House Local Government Committees in a joint meeting. Most of your recommendations were either adopted (including a provision for city tax zones with "different services or a different level of services" than in the rest of the city) or had been acted on by the committees earlier. With respect to requiring dual majorities for the adoption of areawide powers, Senator Rader announced that he would take a "Committee amendment, by request" to the floor of the Senate.

SSSB 113 is now in the final stages of typing and the hope is to introduce the bill in both Houses tomorrow or Monday.

The chairmen of the Senate and House Local Government Committees have asked me to express their appreciation for your wire and the many other ways in which you have aided in revising the Code.

Sincerely,

James B. Rhode

James B. Rhode
Administrative Assistant to the
House Local Government Committee

March 29, 1971

Miss Gloria Watson
Secretary,
City of Petersburg
P. O. Box 329,
Petersburg, Alaska 99833

Dear Miss Watson:

The committee substitute for the proposed Municipal Code legislation has not yet been firmed up, however, I am enclosing a copy of the proposed Code and the changes we are considering. A final draft will probably be available in about a week. We will certainly see you receive an early copy.

Sincerely,

Mike Miller, Representative
Election District Four, (Juneau)

Enclosures:

1 copy SB 113
1 copy Summary - Proposed Amendments
1 copy Proposed Amendments

CITY OF PETERSBURG

P. O. Box 329 • Petersburg, Alaska 99833 • Phone 772-4425

Office of The
City Manager

March 17, 1971

Honorable Mike Miller
Alaska State Representative
State Capitol Building
Juneau, Alaska 99801

Dear Mr. Miller:

Please send the City of Petersburg a copy of all changes in the new Municipal Code affecting local governments.

Your assistance is greatly appreciated.

Sincerely,

Gloria Watson

Gloria Watson
Secretary

CITY OF PETERSBURG IN THE STATE OF ALASKA
CORPORATE SEAL
APRIL

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7477
JUNEAU, ALASKA 99801

V

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AWA022 PDF

ANCHORAGE ALASKA 29 1025P AST

HONORABLE MIKE MILLER CHAIRMAN

JUN [illegible] 2606

IN ADDITION TO ALASKA MUNICIPAL LEAGUE RECOMMENDED AMENDMENTS AND DUAL MAJORITY PROPOSAL PREVIOUSLY SUBMITTED TO YOU,. SUGGEST FOLLOWING AMENDMENTS TO SB115 BY CONSIDERING BY COMMITTEES: PAGE 11, LINE 1[illegible], DELETE WORD "HELD" AND INSERT WORD /EXERCISED." PAGE 1[illegible] LINE 27 ADD AFTER WORD "BOROUGH" THE WORDS " OR CITY." PAGE 1[illegible] LINE 1[illegible] AND 2[illegible] AFTER WORD "BOROUGH" ADD WORDS "OR CITY." PAGE 47 DELETE ALL OF NEW SECTION (D) IN LINES 2[illegible]. PAGE [illegible] LINE 1, ROYALTY CLAUSE [illegible] FOR MISCELLANEOUS [illegible] AT LEAST [illegible] DAYS. PAGE [illegible] ADD NEW SECTION TO READ: "SEC. [illegible] LIFE OF FISCAL PROPERTY TAX [illegible] CITIES MAY [illegible] LIFE FISCAL PROPERTY TAX [illegible] TO REFLECT LIFE [illegible] AND/OR LIFE [illegible] OF [illegible] PROVISIONS." PAGE 56 LINE 15, AFTER WORD "CITIES" INSERT WORDS "OR BOROUGHS."

ROBERT [illegible] CHAMP CITY MANAGER

6-5465

[illegible] 11 [illegible] 27 [illegible] 47 [illegible] 11, [illegible] 56 [illegible] 45 [illegible]

(38).

RC[illegible]SKA CO[illegible]
PH[illegible] 7477
JUNEAU, ALASKA [illegible]

1971 MAR 29 PM 4 21

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7377
JUNEAU, ALASKA 99801

1971 MAR 29 PM 4 21

6-24/65

155 SOUTH SEWARD ST.
JUNEAU, ALASKA 99801

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA

586-3300

March 9, 1971

Mike—
please review for our 8 AM meeting
Ed—

The Honorable Edward A. Merdes
Alaska State Senate
Pouch "V" State Capitol Building
Juneau, Alaska 99801

Dear Senator Merdes:

Enclosed is my memorandum stating some of the major changes between the provisions of SB 113 and existing municipal law.

Very truly yours,

Billy G. Berrier/LS

Billy G. Berrier
City-Borough Attorney

BGB/llb

Enclosure

155 SOUTH SEWARD ST.
JUNEAU, ALASKA 99801

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA

586-3300

March 8, 1971

MEMORANDUM

SOME MAJOR CHANGES BETWEEN THE PROVISIONS OF SB 113 AND EXISTING MUNICIPAL LAW.

Senate Bill 113, the current version of the revised Municipal Code, is an entire recodification of the laws relating to cities and boroughs now found in Titles 7 and 29. Such a recodification of course has innumerable changes from existing law both in form and in substance. SB 113 is based upon the draft revision of the Municipal Code prepared by the Alaska Municipal League. The instructions of the executive board of the league to the league legislative committee which did the actual work preparation was that this should be primarily a technical revision and should not attempt to solve the substantive problems existing in two areas, that of relations between cities and boroughs, and relations between school and general government. Accordingly the league draft in these areas is identical with existing law.

While it would be virtually impossible to detail the changes that have taken place between this code and existing municipal law certain changes are rather apparent. In the presentation made to the joint meeting of the Senate Local Government Committee and the House Local Government Committee by the Legislative Committee of the Alaska Municipal League certain of the changes were pointed out and discussed. In summary these are:

Possibily the most significant change made is the change from four classes of cities to two classes of cities. Under the new Municipal Code existing first class, second class, and third class cities would each become first class cities and the existing fourth class city would become a second class city. The primary difference in the revision between the first and second class cities is that the first class city has the school function and has the power to assess, levy and collect a general property tax while the fourth class city has neither of these powers. A population limit of 400 persons has been set as the number necessary to become a first class city under this code as in present law. It should be emphasized however, that while the existing first, second, and third classes are consolidated into the proposed first class existing municipalities are not automatically classified as first class municipalities. The reclassification to first class cities occurs only after favorable vote of the residents of the city affected. (Sections 29.08.010 through 29.08.050 and Sections 29.18.010 and 29.18.020)

Home rule limitations are gathered together in one place and listed. This section makes explicit the legislative intention to make only the sections specifically listed as applicable to home rule municipalities so applicable. Additionally the sections themselves contain a specific statement that they are applicable to home rule municipalities. (Section 29.13.100)

Present law provides for transitional assistance upon the creation of a new borough. In this revision such transitional assistance is also made available to cities. (Sections 29.18.180 through 29.18.200)

The procedures for ordinance enactment are smoothed out and the same procedures are made applicable both to boroughs and cities. This does not entail any change in the rights of the public to be heard or in the publication requirements. Essentially the only substantive change in this section is that the requirement has been eliminated that if a substantive change is made after hearing the ordinance must go to another public hearing. The reasoning behind this is that one of the primary purposes of the public hearing is to propose from the public changes which would better the operation of the ordinance. (Section 29.23.060)

The executive power has remained essentially the same except that the veto has been broadened and clarified. In the past there has been a question of whether a veto power could be used for motions and other actions of the assembly. Here it is clearly spelled out that they may be. Additionally a new authority for the line item veto in municipal budgets has been added. This line item veto does not apply to the school budget since the only power the assembly has is to approve or disapprove the total budget. The Chariman or Mayor may only veto that which the assembly has power to enact. (Section 29.23.170)

The city council is changed from what is normally referred to as the council-mayor form of government to the mayor-council form of government. (Section 29.23.200 through 29.23.220)

The article on school boards has been substantially shortened eliminating matters found in Title 14. There are no substantive changes between this section and current law. (Section 29.23.310)

The section on recall has been changed to eliminate the successor running at the same election as the recall election. Under this should the recall be successful a subsequent election is required to elect a successor. (Section 29.28.130 through 29.28.250)

Under current law the borough is charged with assessment and collection of real property taxes. The assessment and collection provision of the code broadens this to include the collection of the use and sales tax. (Section 29.33.030)

There has been considerable smoothing out in the planning, platting and zoning section. There are two significant alterations. One of these is that the planning commission itself may decide on variances subject only to appeal to the board of adjustment instead of the current procedure where all variances no matter how routine must go to the board of adjustment. The second change is that an official map act section has been added. The official map act in effect allows assembly adoption of an official map after hearing which upon adoption prohibits construction in areas designated for streets, parks, water courses and so on for the limited period of one year.

Under the current provisions of acquisition of additional areawide powers it is unclear whether second class cities may acquire additional areawide powers by transfer from the city. This section explicitly allows this. Additionally, this section no longer requires the Local Affaris Agency to pass upon the acquisition of additional areawide powers. In both this and present law additional areawide powers require a vote of the people in the areas involved which is considered to be sufficient. (Section 29.22.250 through 29.22.290)

The acquisition of additional powers and duties in the area outside cities again no longer requires review by the Local Affairs Agency since as in the acquisition areawide powers a favorable vote of the people involved is required. (Section 29.38.010 through 29.38 .050)

An entirely new approach has been taken to delineation of municipal facilities and services. Under existing law the various municipal facilities and services are spelled out in substantial detail in paragraphs applicable to each. Such detail seems to serve no useful purpose. The form involved here is to merely list the powers and to provide for liberal construction of the powers, as is required by the constitution. (Section 29.48.030 and 29.48.100)

The procedure for enactment of ordinances has been simplified and streamlined. As pointed out above this does not change any substantive rights. It does however, by changing the publication requirement for 5 days allow special meetings to be held on the same days that regular meetings would be held on and additionally eliminates the requirement for a new hearing should there be an amendment as to substance for the reasons pointed out above. (Section 29.48.140)

It further sets a fixed fiscal year binding upon general law cities the fiscal year being the July 1 to June 30 fiscal year. (Section 29.43.190)

Under current law emergency disaster powers are applicable only to first class municipalities. Under this code all municipalities regardless of class may exercise emergency disaster powers, the thinking being that should a disaster strike the classification of the city is not a particularly relevant matter. (Section 29.48.270)

This code also follows the constitution in providing that a liberal construction shall be given to powers granted to municipal government. This follows the constitutional provision that "a liberal construction shall be given to the powers of local government units" contained in Section 1 of Article 10. (Sections 29.48.310 through 29.48.330)

The most significant alteration in municipal assessment and taxation is that the existing section providing for taxation of boats and vessels on an optional tonnage basis is omitted. This would mean that boats and vessels would be taxed at full and true value as provided in the section for general property taxes. (Sections 29.53.010 through 29.53.180)

There are several changes concerning the enforcement of tax liens. One change is that the foreclosure list no longer must be presented to the court on the same day of publication. This requirement has created substantial difficulty where the newspaper of publication is not located within the same city as the borough seat or within the city which is foreclosing the taxes. Under current law tax foreclosed property is deeded to the borough. Under this code tax foreclosed property lying within a city is deeded to the city while tax foreclosed property lying within the borough but outside city is deeded to the borough. This code further provides that should property deeded to the city not be needed for public use by the city but needed by public use by the borough the borough may obtain such property and the same of course holds true for property deeded to the borough. This code also provides that should property be taken for public use by any governmental unit upon such taking the amount of taxes owing to the other governmental units will be paid by the governmental unit taking title. (Section 29.53.360 and Section 29.53.385)

Under current law general law municipalities are allowed to levy a sales tax but are not allowed to levy a use tax, under this code both a sales and use tax may be levied. The code requires an election on sales tax but since use tax is a correlative of the sales tax and can only be adopted subsequent to or at a referendum where the sales tax is adopted no separate elections are required for adoption of the use tax. (Section 29.53.410 and Section 29.53.420)

There is now no authority for issuance of tax anticipation notes by general law municipalities. Such notes as a matter of practice, are issued dispite the lack of clear authority. This code clears up the authority by specifically allowing tax anticipation notes. (Sections 29.58.010 through 29.58.040)

Under existing law an election is required to authorize issuance of revenue bonds in general law municipalities. This requirement is deleted in the new code since no general tax obligation is assumed and revenue bonds are generally a management tool for the utility involved. (Section 29.58.205)

Under existing law there are two distinct sections on special assessments each with minor variations and procedures. The major variation was cleaned up last session but still the procedures vary slightly depending upon whether the special assessment is initiated by petition of the people or by ordinance of the governing body. While these distinctions are not substantial it becomes troublesome to determine precisely what procedure should be followed. In both instances the procedures are extremely cumbersome. Under this code the sections on special assessments have been entirely rewritten to provide the same notice and hearing requirements as in existing codes. That is the procedural fairness requirements are retained but much of the unnecessary cumbersomeness is eliminated. Significantly the new code also provides that special assessments may be levied against property owned by the state. The rationale here is that special assessments are based upon special benefits conferred to the assessed property and that should property owned by the state be specially benefited by public improvements which increase the value of state property the state no less than any other property owner should pay for such special benefits. (Section 29.63.010 through 29.63.080)

The liability of a municipality has been limited under this code to the same limitations that currently exist on actionable claims against the state. (Section 29.73.010)

Obviously, any attempted catalogue of the changes in a bill such as this is incomplete and leaves room for discussion as to whether the changes included were particularly significant or whether other areas which may be significant were not included. The really significant change this act makes over existing law is not a change in substance at all; it is a technical change or better yet a series of technical changes which reconcile inconsistent provisions in existing law, modernize the archaic language found throughout Title 29, and provides a more workable and immensely more understandable basic framework for local government. Substantive changes are necessary in many areas. It is our belief that the revised municipal code will not only provide a better framework for existing law but will provide a better framework to which a desirable and necessary substantive changes may be added after individual consideration of each of the changes on its own merits.

Billy E. Evans

Alaska State Legislature

House

JUNEAU ALASKA

TO: Senator Edward Merdes
Representative Mike Miller

DATE: March 22, 1971

FROM: James B. Rhode
AA House Local Government Committee

Enclosed is a list of all the amendments to SB No. 113 that you wished to submit to the Joint Senate and House Local Government Committee. We did not have specific language for some of the amendments when this list was prepared. However, Dennis Cook worded a number of them before he left and Greg Machyowsky is finishing the rest.

A narrative summary of these amendments is being written today. We suggest that this summary be read to, and discussed by, the Joint Committee in preference to going over every change line by line. After the Committee has passed on the changes, a committee substitute can be typed immediately. This procedure would save the time of the Committee and the typists.

Dennis Cook drafted a summary of SB No. 113 and proposed amendments; he covered not only the substantive changes from present law but also noted the sensitive areas where little or no change was made. This summary is being reviewed for final typing today or tomorrow.

JR:kp

Enclosure

STATE OF ALASKA

WILLIAM A. EGAN, Governor

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER / POUCH F — ALASKA OFFICE BUILDING
JUNEAU 99801

March 5, 1971

M E M O R A N D U M

TO: The Honorable John Rader, Chairman
Senate Local Affairs Committee

The Honorable Mike Miller, Chairman
House Local Affairs Committee

FROM: Robert P. Isaac
Assistant to the Commissioner
Department of Education

SUBJECT: Review of Senate Bill 113, Municipal Code

I am herewith transmitting a review of the education provisions in Seante Bill 113. In our opinion the proposed code, if modified as suggested, would meet most of the objections which have been raised.

A small committee of school administrators and school board members would like an opportunity to meet with the respective legislative local affairs committees when hearings are again scheduled to discuss Senate Bill 113 as redrafted.

R. P. I.

RPI:cjb

Attachment

STATE OF ALASKA

WILLIAM A. EGAN, Governor

DEPARTMENT OF EDUCATION

OFFICE OF THE COMMISSIONER

POUCH F — ALASKA OFFICE BUILDING
JUNEAU 99801

March 5, 1971

MEMORANDUM

TO: The Honorable John Rader, Chairman
Senate Local Affairs Committee

The Honorable Mike Miller, Chairman
House Local Affairs Committee

FROM: Cliff R. Hartman
Commissioner of Education

By: Robert P. Isaac, Assistant to the Commissioner

SUBJECT: Senate Bill 133, Revised Municipal Code in Respect to its Educational Provisions

We have reviewed the revised municipal code in respect to its education provisions, and we are especially concerned over the apparent omission of a specific education provision for school districts co-terminus with home rule municipalities.

A number of district superintendents, school board members, and other persons involved in education have also expressed a similar concern.

Section 29.33.050 pertaining to education is almost identical to a similar provision in the present borough law Title 7, (7.15.030). This section in the proposed revision applies only to the operation of schools in general law cities and boroughs.

Section 29.13.100 specifies the limitations on home rule powers and indicates the sections of the general code which may not be modified by a charter. Significantly, Section 29.13.100 does not include Section 29.33.050, Education, thereby giving a home rule municipality considerable latitude in legislating educational matters. It is our contention that education is a State function and delegated to the municipalities for administration and operation. We do not believe this delegation of the administrative-operational responsibility of schools also implies a delegation of the Legislature's legislative prerogatives.

As you may know, there is a local court case which revolves around this very matter; and while a decision has not yet been reached by the court, case law strongly supports State law as being superior to charter provisions if there is a conflict between the two.

Proponents of the concept that a charter may supercede State law argue that home rule municipalities may legislate on matters of local concern, including education, even though it might mean that charter provisions take an opposite view in respect to the law. They further argue that the Legislature, by placing the municipal education provision in the municipal code, have made education a matter of local concern.

We do not agree with this supposition. We believe that the specific provision in the existing borough code, Section 7.15.030 and its proposed successor, Section 29.13.100 in the revised code, are adopted by reference in Title 14 by Section 14.14.065, thereby defining this section as a general education law.

We do not argue that a municipality does not have a local concern or interest in education; however, we do believe that all municipal districts should be governed by the same basic laws and that a home rule municipality charter should not be in conflict with law.

The Department of Education is charged with the general management and supervision of the public school system and must do so in accordance with State law.

If a municipality also has legislative authority in respect to education, it would mean requiring the Department to adjudicate district education matters not only under State law, but under the provisions of home rule charters. As has happened already, we would foresee school boards requesting clarification and interpretation of law when conflicts arise. In this connection, it is likely a request of this nature would be referred to the Department of Law for an opinion. Whatever direction the opinion might give, the Department of Education is required to follow that direction (unless subsequently changed by court or legislative action). In order to write an opinion, the Department of Law would also have to read the charter and law together to arrive at a conclusion. In our opinion, such a procedure would be chaotic and unworkable and would only lead, ultimately, to greater devisiveness between local municipal governing bodies and school boards.

The Legislature, in accordance with the Constitution, has delineated quite clearly its intent in providing for public education. The following sequence of constitutional and State law provisions indicates how this was accomplished and the application of these provisions to the foregoing discussion:

Constitution: Article VII, Health, Education, and Welfare

Section 1. Public Education. The Legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Title 14:

Section 14.03.010. Establishment of a School System. There is established in the State a system of public schools to be administered and maintained as provided in this title. (Sec. 1, Ch. 98, SLA 1966)

Section 14.14.065. Relationship Between City School District and City. The relationships between the school board of a city school district and the city council and executive are governed in the same manner as provided in AS 07.15.330 for the school board of a borough school district and the borough assembly and executive. (Sec. 1, Ch. 98, SLA 1966)

By reference, Section 14.14.065 adopts 07.15.330 (29.33.050) and establishes it as general law to be observed by city and borough school districts, whether home rule or not.

Although there might be a number of alternatives, it would appear the most feasible recommendation we could make is to include Section 29.33.050 in the home rule limitations, Section 29.13.100. Such a revision would at least maintain the status quo.

If it is believed Section 29.33.050 is not adequate for both general law and home rule municipalities, we would then recommend the Legislature make such revisions as might be necessary. Our only case in point is that the education provisions should be in law and not in the charter, unless the law is repeated in the charter for convenience.

We would be glad to meet with the committees on this matter at their convenience.

RPI:cjb

Attachment

File: 023.1
023.2
022

Powers Over Education Conferred by Home-Rule Charters

It is the policy of a number of states, through either constitutional provision or statutory enactment, to grant to municipalities what are known as "home-rule charters." The purpose is to make such municipalities self-governing and free from legislative interference with respect to matters of local and internal concern. That is to say, cities having home-rule charters are free to determine their own local affairs and government, subject only to the constitution and to enactments of the legislature of a statewide concern. Frequently, a city in its regulation of its "local affairs" will attempt to exercise control of some educational activity or policy.

The principle is well established that "whenever the provisions of a home-rule charter are in conflict with the constitution or the legislative policy of a state as declared in its statutes, such provision must give way to the latter."[48] And, since education is not a local or municipal affair but an affair of statewide interest governed by constitutional and statutory provisions, a city will not be permitted to extend its control over education by virtue of its home-rule charter.[49] . . . .

---

[48] *Board of Education of City of Minneapolis v. Houghton,* 181 Minn. 576, 233 N.W. 834. In the case of a special charter for a particular city, it has been held that the charter provisions are applicable, even though they are in conflict with the general statutes on the subject (*State* ex rel. *Wallen v. Hatch,* 82 Conn. 122, 72 Atl. 575).

[49] *State v. Mayor et al. of City of Milwaukee,* 189 Wis. 84, 206 N.W. 210; *Esberg v. Sadaracco,* 202 Calif. 110, 259 Pac. 730; *Lansing v. Board of Education of City and County of San Francisco,* 7 Calif. App. (2d) 211, 45 Pac. (2d) 1021; *McKee v. Edgar,* 137 Calif. App. 462, 30 Pac. (2d) 999; *Garth v. Dominguez,* 1 Calif. (2d) 239, 34 Pac. (2d) 135; *Board of Education of City of Ardmore v. State* ex rel. *Best,* 26 Okla. 366, 109 Pac. 563; *State v. Cummings,* 47 Okla 44, 147 Pac. 161.

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March 1, 1971

File
Mun Code

Mr. Don M. Berry
Executive Director
Alaska Municipal League
210 Admiral Way
Juneau, Alaska 99801

Dear Don:

The Anchorage and Fairbanks City Councils met in Anchorage on February 26, 1971. They discussed Senate Bill 113 and adopted a motion requesting the Alaska Municipal League to seek an amendment to this bill to provide for a dual majority in all elections in second class boroughs involving areawide powers or reclassifications.

During the discussion on this motion, it was stated that the Legislative Committee of the League voted, in Fairbanks last fall, to include a dual majority clause in the League-drafted bill. Perhaps this clause was erroneously omitted from the League-drafted bill.

It is requested that the Alaska Municipal League prepare and submit a proposed amendment to Article 5, Additional Areawide Powers, SB 113, which would require dual majorities on questions of additional areawide powers or reclassification in second class boroughs.

Copies of this letter are being distributed as indicated below.

Sincerely yours,

Robert E. Sharp
City Manager

RES:AFR

cc: Chairman, Senate Local Government Committee, Juneau
Chairman, House Local Government Committee, Juneau
Chairman, AML, Legislative Committee, Palmer
President, AML, Ketchikan
Local Affairs Agency, Office of the Governor, Juneau

AIRMAIL IS EASIER

Alaska MUNICIPAL League

TELEPHONE [illegible]

XXXXXXXXXXXXXXXXXX
JUNEAU, ALASKA [illegible]
210 Admiral Way

February 25, 1971

file

The Honorable Martin B. Moore
Alaska State House of Representatives

Dear Representative Moore:

You have requested that I outline to you the effect which the adoption of SB 113 would have on the present fourth class cities (villages). Simply stated, it would have little effect besides a change of name to second class.

The bill provides that 4th class cities regardless of population would be reclassified as second class cities. Present second and third class cities would be eliminated. Under the new law education would continue a responsibility of the state just as it is now. Property tax would also not be available to the villages.

The bill would increase the scope of other services which the village could provide and would permit the exercise of the power of eminent domain to secure property for public use. It is my understanding that this power is being sought by the villages through a bill introduced by Senator Hensley. The city council is not obliged to perform all of the services listed but may do so as the needs and abilities of the city dictate.

I realize that this letter is brief and perhaps does not adequately meet your needs. For further clarification and assistance I urge you to call upon Mr. Mallott and Mr. Strandberg of the Local Affairs Agency for further detail.

Sincerely,

James D. Nordale, Member
AML Legislative Committeee

cc: Local Affairs Agency
Senator John Rader
Representative Mike Miller

Representative M. Miller

SPECIAL NOTICE

TO: Chairman and members, House Committee on Local Government; and Sen. Clifford Groh

FROM: Sen. Edward Merdes, Chairman, Senate Sub-Committee on Local Government

SUBJECT: SB 113 - Revision of Municipal Code

Public hearings on subject bill have been scheduled for Monday, February 22, 1971, at 7:30 P.M., Tuesday and Wednesday, February 23 and 24, from 2:00 P.M. until 6:00 P.M. All hearings will be held in the Governor's Conference Room.

Attached hereto is a copy of SB 113. I urgently request that you read the bill and make marginal notes to any provision on which you have questions or comments.

Mr. Gregg Machyowsky, an attorney in the Legislative Affairs Agency, specializing in local government and currently a member of the Assembly of the City and Borough of Juneau, has been assigned to both committees as staff advisor and consultant.

Mrs. Wilda Hudson, President of the Greater Anchorage Area Borough Assembly, will be present at the hearings.

February 2, 1971

Wilda Hudson
1542 E. 27th Avenue
Anchorage, Alaska 99501

Dear Wilda:

Thank you for your letter of January 23, 1971 and the proposed amendments to Title 7. I will be getting together with Mike Miller, Chairman of the House Local Government Committee during the next week to review these.

I have also taken the liberty to refer them to Senator John Rader who is Chairman of the Senate Local Government Committee.

Kindest personal regards.

Sincerely,

Gene Guess
Speaker of the House

cc: Mike Mi ler
Senator John Rader

2/12/71 Anchorage Daily Times

Wilda Hudson Blasts Story On Borough Legislation Plan

Borough Assembly president and city councilwoman Wilda Hudson this morning blasted a story in Tuesday's Anchorage Daily Times concerning proposed legislation which the borough is presenting to the Anchorage legislative delegation.

"The facts don't bear it out at all," Mrs. Hudson said.

The proposed legislation concerning areawide powers to be transferred from city to borough is nothing new, she said.

She said she has been studying the transfer and exercising of areawide powers since 1968, and last year drafted amendments to existing law concerning this which subsequently was presented to the 1970 legislature.

The legislation was presented to the Borough Assembly last year, and also again this year, but so far no action has been taken. It is to be on the agenda again for the meeting Monday night.

Many of the changes are contained in the proposed Municipal Code which was introduced in 1969, she said.

Concerning a second class borough bypassing the first class borough step to home rule, Mrs. Hudson said she feels the second class borough is now stronger than the first class borough, she sees no reason to "go through the cumbersome process to become a first class borough before going to home rule." The Greater Anchorage Area Borough is a second class one.

"My experience has proven this to be a cumbersome method of presenting petitions to the Local Affairs Agency, then hearings by the Boundary Commission, when really we should know in our own area when we want to put something on the ballot."

"This is not a feature dreamed up by the borough administration," she stated, and this is also contained in the proposed Municipal Code.

The ideas are not Borough Chairman John Asplund's, she said, since she drafted the proposals in January 1970. The administration, however, concurs enough with them to put them in the packet sent to legislators, she said.

Mrs. Hudson drafted the proposals to clean up what she called "gray areas" in existing state law.

The law stated that once a first class borough is exercising areawide powers, the city council cannot take it back unless a majority of the council agrees, and she called this procedure "questionable for second class boroughs."

Her amendment, she feels, would clear this up, and would not allow first and second class borough areawide powers to revert back to the original entity.

The state of Alaska is bigger than the city and borough of Anchorage, Mrs. Hudson said. Problems which the local borough is encountering should be taken to the state legislature, so that laws can be passed would benefit other government bodies going through the same process.

"As a responsible and responsive elected representative of the people, it is incumbent upon me to bring them to the attention of the legislature.

WILDA HUDSON
Considerably Upset

1542 East 27th Avenue
Anchorage, Alaska

January 23, 1971

Rep. Mike Miller, Chairman
Local Government Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Rep. Miller:

Enclosed herewith are proposed amendments to the Borough Act, Title 7, that have been drafted by me. A copy of same have been forwarded to Rep. Guess and Rep. Moran.

It would be appreciated if the House Local Government Committee would have an appropriate bill drafted to incorporate these amendments. I have put forth some of my thoughts as to the necessity of these being passed this session to Rep. Guess and Rep. Moran. Perhaps you would like to discuss this matter with them and the reasoning behind why I am submitting same.

Although I am a member of the Anchorage City Council and am President of the Greater Anchorage Area Borough Assembly, these are being submitted by me and not for the City Council or Borough Assembly.

Thank you for your attention in this matter.

Very truly yours,

Willa Hudson

(MRS.) WALTER HUDSON

WH:s

encl.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Wilda Hudson
1/24/70

CONFUSION SURROUNDING ASSUMPTION AND EXERCISING OF POWERS AREAWIDE BY SECOND CLASS BOROUGH UNDER TITLE 7 AS NOW WRITTEN

There is no question but what the people in all good intent voted the Greater Anchorage Area Borough the authority to exercise the sewer power areawide. If tested, it could quite likely prevail that the Borough could assume the exercising of the sewer power areawide without the consent of theCity of Anchorage to transfer same by agreement. However, it has been my position that the whole question of assumption, exercising, and transferring of a power areawide to a second class borough from a home rule city, as now provided by Title 7, is fraught with lack of specific direction, ambiguities, and inequities for home rule city voters and their investment in existing assets. Further, I have felt that it is important that the law be clarified before other powers are voted areawide in order that the community and governments will not have to again experience the problems and emotions that have surrounded the transfer of the sewer power.

This analysis is being done in order to show the flaws and weaknesses of the law as presently written and to show good cause why the proposed amendments are necessary. It is not being done to prove that the Greater Anchorage Area Borough does not, by vote of the people, have the authority to exercise the sewer power areawide. As concerns the sewer power, I have come to the conclusion that the Borough must assume the exercising of the power under Title 7 unclear as it is, unless an agreement is reached in the meantime with the City. After all, we are going into the fourth year with this matter unresolved by attempted transfer agreements by the two governments and the more familiar one becomes with the overall sewer program and problems it becomes increasingly apparent that the entire program must be under the direction of one government, and soon, if the taxpayers of the entire community are to be served effectively and efficiently.

— See page 3 —

PERTINENT SECTIONS OF TITLE 7:

Sec. 07.15.060. Transferred powers. First and second class boroughs shall exercise all powers transferred to them by cities under this chapter.

Sec. 07.15.310. Scope of areawide powers. First and second class boroughs shall exercise the powers specified in sections 310-350 of this chapter on an areawide basis, both within and outside cities of any class within its boundaries. No city of any class, whether home rule or not, within an organized borough, may exercise any areawide power provided in this section or specified in the petition approved by the voters for incorporation once that power is being exercised by an organized borough.

Sec. 07.15.350. Additional areawide powers. First class boroughs acquire additional areawide powers by transfer from a city. Second class boroughs acquire additional areawide powers in the same manner provided by sections 710-800 of this chapter for their acquisition of additional powers to be exercised in the area outside cities only, except that the vote on the question is areawide.

Sec. 07.15.710. Powers of first class borough. ..... Before exercising any of these powers in the area outside cities, the borough shall first seek to have transferred from cities, or propose the joint exercise with cities, those powers which it intends to exercise in the area outside any city.

Sec. 07.15.720. Powers of a second class borough. In addition to other powers granted by this title, the second class borough may exercise only those powers in the area outside cities which are among powers of a city of the first class and either (1) specified in the petition and approved by the voters for incorporation or (2) added as provided by this title. These powers shall be exercised in the manner provided by general law for first class cities except as provided otherwise by this title. Before exercising any of these powers in the area outside cities the borough shall first seek to have transferred from cities,or propose the joint exercise with cities, those powers which it intends to exercise in the area outside any city.

Sec. 07.15.730. through Sec. 07.15.800 sets forth the methods as to how a second class borough brings the question of added powers to a vote.

Sec. 07.15.800(6). Certification. If the majority vote is cast on the question are for addition of power..... The added power or powers go into effect on the day following the date of the certification of their approval by the voters.

Sec. 07.15.910. Transfer by city. A city may transfer to the first or second class borough in which it is located any of its powers or functions subject to the approval of the borough assembly. A city may not revoke the transfer of any power or function to the borough unless the revocation is approved by a majority of its council.

Sec. 07.10.130. Integration of existing special districts and service areas. Special service districts and service areas in the unorganized borough existing at the time of the incorporation of an organized borough and located within the boundaries of the organized borough shall be integrated into the organized borough within two years after the date of the borough's incorporation. An organized borough shall succeed to all of the rights, powers, and duties of any service area and of any school districts and public utility districts included within its boundaries, including, but not limited to, claims, franchises, and other contractual obligations, and liability for bonded and all other indebtedness, and shall succeed to all of the right, title, and interest in the real and personal property held by the service areas or districts. The borough assembly may levy and collect special charges, taxes, or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the service area or special district, for continuing services in the area, or for the future indebtedness in the area. When a service area or special district had a previously incurred bonded indebtedness, no less than all property that was within the service area or special district at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bonds for as long as they remain outstanding.

Sec. 07.10.140. Transition. (a) the powers exercised by cities, service areas, and special districts which are succeeded to by an organized borough shall continue to be exercised by them until such time as the borough assumes the powers, which time may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, regulations, procedures, and orders in effect prior to the assumption of these powers by the organized borough remain in effect until superseded by the action of the organized borough.

(b) The borough shall make written notice of its assumption of the powers, duties, and other items enumerated in section 130 of this chapter to the city, service area, or special district concerned prior to the assumption. Borough officials shall consult with the officials of the city, service area, or special district concerned and arrange for an orderly transfer.

(c) After the incorporation of an organized borough, no service area or special district within it may assume new bonded indebtedness, make any contract, or transfer any assets without the consent of the borough assembly.

FOLLOWING COMMENTS AND POINTS WOULD APPEAR PERTINENT TO THE STIUATION:

1. Various sections cited above speak of powers being transferred from or by a city to a first and second class borough. In view of the ambiguities of these sections, could not the question be raised as to whether or not it is meant to be mandatory that the city no longer has the authority to exercise a power but, rather, that by vote of the people the second class borough is given the authority to exercise the power areawide if both the city and borough agree to transfer of same?

2. The intent of the second class borough was that the people would have the say by vote whether or not the borough is to exercise additional powers whether those powers be areawide or outside cities only. The city is part of the borough and the city voter has just as much right to a voice in their second class borough government as the voter outside the city when it comes to adding areawide powers. The law is very clear that before the borough may exercise a power outside cities the people residing outside cities must vote on and approve the addition of the power. On the other hand, various sections of the law state that the city "may transfer to the second class borough" and that the second class borough "shall first seek to have transferred from cities.... those powers which it intends to exercise in the area outside the city." So here you have a situation where the home rule city voter does not have a vote on the matter of a second class borough adding the exercising of a power areawide while the voter outside the city does. This method amounts to a disenfranchisement of the city voter as regards services his second class borough shall render him, unless Sec. 07.15.350 means what it clearly says and that the vote does indeed have to be areawide. If it does mean that the vote must be areawide, why then does the law state, "Before exercising any of these powers in the area outside cities, the borough shall first seek to have transferred from cities.....", if it does not mean that indeed the city must agree to transfer the power after the people have voted the authority for the borough to exercise the power?

NOTE

3. Mr. Richard Gantz, Bond Council for City of Anchorage, in a letter to Mr. Karl Walter, City Attorney, dated March 5, 1968, when rendering an opinion on whether or not the City could legally sell outstanding G.O. bonds authorized in 1963, made these points:

"The City of Anchorage is, therefore, in the position of being a charter city of the first class but situated in a second class borough. If the statute means what it seems clearly to say and if the statute is constitutional, the City of Anchorage will have no further power to exercise the sewer function once the Borough has begun to exercise the sewer power. For the purpose of this opinion, we will assume the constitutionality of Sec. 07.15.310, although a fairly strong constitutional argument could be made if the section means that all of the sewer facilities financed by the taxpayers of the City of Anchorage and built by the City become the property of the Greater Anchorage Area Borough by virtue of an areawide vote granting the Borough the sewer power. Such a result, if not unconstitutional, would certainly be a peculiar one. A first class borough can only obtain areawide powers with the consent of the first class city within its boundaries, while a second class borough can obtain an areawide power without the consent of the first class city. If constitutional, the treatment in the two situations is certainly inconsistent. We, however, do not attempt to pass on the constitutionality of the statute at this time and assume its constitutionality."

"Inasmuch as we have distinguished the existence of an areawide sewer power from the exercise of the areawide sewer power by the Borough, it is appropriate to comment on Sec. 07.15.800(d), which states that the added power or powers go into effect on the day following the date of the certification of their approval by the voters. It is self evident that the immediate exercise of an areawide power by the Borough would be impossible and therefore we think the distinction between the authority to exercise the power and the actual exercise of the power is meaningful. There is at least some analogy to the transitional section which [illegible] 07.10.140. That section sepcifically permits cities, service areas,

and special districts to continue to exercise the powers which have been assumed by the Borough until such time as the Borough makes written notice of its assumption of the power."

"In conclusion, it is our opinion that the City of Anchorage may legally issue and sell general obligation sewer bonds as long as it continues to exercise the sewer function and the Borough has not exercised its areawide sewer power in such a way as to assume jurisdiction of the city sewer facilities. .....
We have not passed upon the constitutionality of any part of the Borough Act as provided in the Alaska Statutes, but have assumed this constitutionality for the purposes of this opinion. Naturally, if the provision allowing the second class borough to assume the areawide sewer power without the consent of the governing body of the city should be held unconstitutional, the City could continue to operate its own sewer system and incur indebtedness therefor until such time as it voluntarily transferred the sewer function to the Borough."

4. It might well be argued that Sec. 07.15.310 is speaking only to those areawide powers made mandatory by the borough act, or those specified in the petition approved by the voters at the time of incorporation, as no longer being allowed to be exercised by the city once that power is being exercised by the borough and that it is not speaking to additional areawide powers that may be placed on the ballot later.

5. Sections 07.10.130 and 140, which deals strictly with the integration of existing special districts and service areas and transitional provisions of the mandatory powers at the time of incorporation of the borough, are very explicit as to how the transition shall take place and that the borough shall and does have the statutory athority to succeed to all the "rights, powers, and duties..... including, but not limited to claims, franchises, and other contractural obligations, and liability for bonded and all other indebtedness ....."

The law is silent, however, on these matters when an areawide power is voted to the second class borough. Therefore, if it is meant, when additional areawide powers are authorized by vote of the people, that this is a mandate that the second class borough shall have the same authority and scope of areawide power as set forth in sec. 07.15.310 for mandatory powers at time of incorporation, and that cities no longer may exercise or have any say in such added areawide powers, then why did not the law provide for the necessary statutory authority for assumption of such areawide powers by the borough as they did for the integration of special districts? Was it intended that provisions of home rule charter cities would be ignored when an areawide power is granted a second class borough by vote of the people?

This again would seem to point up that a strong argument can be made for the fact that the law might mean that a vote of the people only gives the borough the authority to exercise the power areawide but that both the borough and city must agree upon the transfer of that power from the city. It follows, though, that it certainly is incumbent upon both the borough and city to recognize the wishes of the people by working out a transfer agreement when they have voted an areawide power to a second class borough.

Wilda Hudson
2/16/70

Sec. 07.15.010(7) is amended to read:

Sec. 07.15.010. Powers of first and second class boroughs.

(7) to levy all taxes and special assessments, enforce tax liens, and assess and collect penalties in the manner provided for first class cities. It may levy

(A) areawide taxes for areawide functions, except that when service areas have been established as provided in Sec. 07.15.050(b)(3) taxes may be levied within service areas, if necessary, even though the function is an areawide power;

(B) taxes limited to the area outside cities for functions limited to the area outside cities, except that when service areas have been established as provided in Sec. 07.15.050(b)(3) taxes may be levied within service areas, if necessary, even though the function is an areawide power; and

(C) taxes within service areas for special services limited to the service area;

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EXPLANATION:

(7)(A) - this is to assure that taxes do not have to be uniform throughout the borough for an areawide or non-areawide power as is now argued.

(7)(C) - This places the assembly's authority to levy taxes for services areas under the general powers in order that there will be no doubt that only the assembly has the power to levy taxes. Refer to Sec. 07.15.050(b) - another proposed amendment would repeal this section since it is a partial repeat of 07.15.010(7) as now written. Also, refer to 07.15.050(e) - another proposed amendment would repeal this section and restate it without the last sentence. Refer to note on 07.15.050 amendment.

1/5/71 - As regards taxes not having to be uniform basis throughout the borough for an areawide or non-areawide power, the City of Anchorage brought suit against the Greater Anchorage Area Borough as to the legality of this point. The court ruled in favor of the Borough and differential taxation if leagal even though the Borough has authority to exercise a power areawide. It would seem appropriate that the law be amended to clearly define this.

Wilda Hudson
11/18/70

Sec. 07.15.030(3) is amended to read:

Sec. 07.15.030. Indebtedness.

(3) on a service area basis for functions performed in a service area only; payment of debt principal and interest as well as other costs shall be limited to the service area, except that, subject to the election requirements of AS 07.30.010(b), the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest. When the full faith and credit of the entire borough is pledged, vote on the question shall require a favorable majority of the votes cast both inside the service area as well as a favorable majority of the entire borough, including cities of any class.

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EXPLANATION:

Considering the number of voters residing a service area vs remainder of a borough, it really is unfair for the service area residents not to have a "veto" power when it is their taxes that will have to pay off the bonded indebtedness.

Wilda Hudson
2/15/70

Sec. 07.15.050 is amended to read:

Sec. 07.15.050. Service areas.

(a) Service areas (TO PROVIDE SPECIAL SERVICES) within a first or second class borough may be established, operated, altered, or abolished by ordinance. Service area boundaries may be overlapping when necessary to provide services as set forth in this section.

(b) (THE ASSEMBLY MAY LEVY OR AUTHORIZE THE LEVYING OF TAXES, CHARGES, OR ASSESSMENTS IN SERVICE AREAS TO FINANCE THE SPECIAL SERVICES. NO SPECIAL ASSESSMENT MAY BE LEVIED EXCEPT AS PROVIDED BY LAW FOR FIRST CLASS CITIES.)

Service areas may be established for the following reasons:

(1) To provide special services to a specific area or to provide for implementation of a specific power based on a given level of service.

(2) To provide services to accomodate differing problems of differing areas as circumstances may dictate.

(3) To provide special service district for differential tax purposes when the borough exercises a power areawide or in the area outside cities only. When the borough exercises the power areawide, service areas as defined in this sub-section may include all or a portion of a city of any class, whether home rule or not.

(c) The Assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas. Such boards may not be delegated any of the legislative powers of the assembly.

(d) A new service area (MAY) shall not be established if, consistent with purposes of this section, the new service can be provided by an existing service area, or by annexation to a city, or incorporation as a city.

(e) (THE ASSEMBLY MAY DELEGATE ANY POWERS PRESCRIBED BY SEC. 710 OF THIS CHAPTER TO A SERVICE AREA. IN A SECOND CLASS BOROUGH, EACH DELEGATED POWER MUST BE APPROVED BY A MAJORITY OF THE QUALIFIED VOTERS VOTING ON THE QUESTION WHO RESIDE WITHIN THE SERVICE AREA. THE RATE OF TAXATION AND THE ISSUANCE OF BONDS SHALL REMAIN SUBJECT TO THE APPROVAL OF THE ASSEMBLY.)

Within any service area, in addition to other powers granted by this title, (1) in a first class borough the assembly may exercise any power granted a first class city by general law, and (2) in a second class borough such exercise of power must first be approved by a majority of the qualified voters voting on the question who reside within the service area.

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EXPLANATION:

Well, I've finally done it - attempted to put in words the "tool" we've been saying, with much verbage, that the service area can and should be. Besides, this is what we are doing in actual practice now.

(a) This amendment is self-explanatory.

(b) This amendment repeals the sub-section (b) as written since this is now more properly provided for in 07.15.010(7)(A)(C). New sub-section (b) is an attempt to spell out the various "routes" service areas can take to carry out the "intent" of (a). Also, it gives authority for service area boundaries to overlap city boundaries.

(c) Refer to (e). This section allows assembly to delegate powers - I assume to the boards provided for in (c). Personally, I'm opposed to this since I feel all legislative power should remain in the hands of one body - look at the problems with school board now. Anyway, this amendment would make it clear.

(e) This amendment repeals the sub-section (e) as written. New wording is self-explanatory. This wording was lifted from 07.15.710 to assure more uniformity.

1/5/71 - Two court cases concerning the Greater Anchorage Area Borough have been ruled in favor of the GAAB as concerns service areas and those two cases deal with what the GAAB is doing in actual practice now and, therefore, it would appear appropriate that the methods and circumstances under which service areas may be formed should be more clearly defined.

Wilda Hudson
1/24/70

Sec. 07.15.060 is amended to read:

Sec. 07.15.060. Transferred powers.

First (AND SECOND) class boroughs shall exercise all powers transferred to them by cities under this chapter.

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EXPLANATION:

This removes the grey area of whether a city may transfer a power to a second class borough when another section clearly states the borough may not assume additional areawide powers unless the vote is areawide. Also, to allow the transfer of a power from a first class home rule city to a second class borough , in effect, amounts to a disenfranchisement of the city voters as regards services his second class borough shall render him while giving the right to vote to the voters outside the city.

In addition, this recognizes the vote of the people as being the higher authority and once they have voted the power to the second class borough to be exercised areawide it must then be assumed by the borough. The provision for the "transfer" of the power from a city to a second class borough is provided for under the amendments that are proposed for the transitional measures.

Wilda Hudson
2/15/70

Sec. 07.15.350 is amended to read:

Sec. 07.15.350. Additional areawide powers.

(a) First class boroughs acquire additional areawide powers,

(1) by transfer from a city as provided in Sec. 07.15.060 and Sec. 07.15.910 of this chapter; or

(2) by an initiative or referendum brought by the voters of the city as provided by law or charter af er the city council has refused to transfer the power in question. Vote under this procedure shall be limited to the qualified voters within the city. In the case of home rule cities any special provision of the charter is superceded. The question must carry by a majority vote.

(b) Second class boroughs acquire additional areawide powers in the same manner as provided (BY SEC 710-800)in Sec. 07.15.730 - 750 of this chapter for their acquisition of additional powers to be exercised in the area outside cities only, except that the vote on the question (IS) shall be areawide and the adoption of an added areawide power requires a favorable majority of the votes cast both in the cities and in the area outside cities.

(c) No city of any class, whether home rule or not, within an organized borough may exercise any areawide power once that power is being exercised by an organized borough when

(1) the power has been added as an areawide power by the voters of a first or second class borough; or

(2) the power has been transferred from a city to a first class borough in accordance with sub-section (a)(1) of this section, except that a city may revoke such a transfer as provided in Sec. 07.15.910 of this chapter at which time the first class borough may no longer exercise the power areawide.

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SEE EXPLANATION ON ATTACHED PAGE

EXPLANATION:

This recognizes the vote of the people as being the higher authority and that once they have authorized the borough to exercise a power areawide it cannot be revoked.

Also, this provides for a "veto" power for the two areas - inside vs outside the city. This is the feature in the unification law that has been pleasing to both sides. Oddly enough I find that Sec. 07.10.120(2) makes this provision for any additional power contained in the original petition at the time of incorporation. Wonder why the legislature did not follow this same concept through in this section as now written?

11/18/70 - Amended further. W.N.

Wilda Hudson
11/18/70

Sec. 07.15.350 is amended to read:

Sec. 07.15.350. Additional areawide powers.

(a) First class boroughs acquire additional areawide powers,

(1) by transfer from a city as provided in Sec. 07.15.060 and Sec. 07.15.910 of this chapter; or

(2) by an initiative or referendum brought by the voters of the city as provided by law or charter after the city council has refused to transfer the power in question. Vote under this procedure shall be limited to the qualified voters within the city. The question must carry by a majority vote and in the case of home rule cities any special provision of the charter to the contrary is superceded.

(b) Second class boroughs acquire additional areawide powers in the same manner as provided (BY SEC. 710-800) in Sec. 07.15.730-750 of this chapter for their acquisition of additional powers to be exercised in the area outside cities only, except that the vote on the question (IS) shall be areawide and the adoption of an added areawide power requires a favorable majority of the votes cast both in the cities and in the area outside cities.

(c) No city of any class, whether home rule or not, within an organized borough may exercise any areawide power once that power is being exercised by an organized borough.

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EXPLANATION:

After giving amendments to this section additional thought, it is my opinion that it is better to drop sub-section (c)(1)&(2) and not allow any power that has been transferred areawide to be revoked. Under this proposed amendment this section would read as does Sec. 07.15.310 regarding a city not being allowed to exercise a power once it is exercised areawide. See amendment to Sec. 07.15.910 that would amend the feature allowing a city to revoke a power out of that section. The reasoning behind this is that if a city transfers a power with assets and liabilities involved then the borough accumulates additional assets and liabilities, how would a reasonable and appropriate determination regarding separation of same be made? Who would continue to be responsible for the debts acquired areawide? If the original assets and liabilities of the city had been spread as a responsibility of the taxpayers of the entire borough, or a portion thereof, how would an appropriate accounting be made if the city revoked the power?

PROPOSED NEW AMENDMENT

Wilda Hudson
2/15/70

Sec. 07.15.510 new section is added as follows:

Sec. 07.15.510. Transition of additional powers.

(a) When the term "borough" is used in this section, it shall mean either first or second class borough that has been authorized the assumption of additional areawide powers as provided in Sec. 07.15.350, sub-section (a)(2) and sub-section (b).

(b) The power exercised by the cities which are succeeded to by the borough shall continue to be exercised by the cities until such time as the borough exercises the power, which time may not exceed two years after the date of the certification of their approval by the voters as provided in Sec. 07.15.570(c). Ordinances, rules, resolutions, regulations, procedures, and orders in effect prior to assumption of the added areawide power by the borough remain in effect until superseded by action of the borough.

(c) The borough shall make written notice of its assumption of the added areawide power to the cities 60 days prior to the exercise of same. Borough officials shall consult with the officials of the cities and arrange for an orderly transfer.

Lack of an agreement between the borough and city as to an orderly transfer shall not preclude the borough from assumption and exercise of the added areawide power provided due notice of conditions and terms as set forth in sub-section (c) above has been given the city concerned.

(d) It shall be incumbent upon the borough and the city concerned to set forth in an agreement in what manner and to what extent the borough assumes the items enumerated in Sec. 07.15.520, any credits that will be allowed the city for existing assets, and any and all other methods and conditions of transition for the assumption of the added areawide power succeeded to by the borough from the city.

(e) After certification of voter approval for the borough to acquire the additional power no city of any class, whether home rule or not, may assume new bonded indebtedness, make any contract, or transfer any assets in connection with the power in question without the consent of the borough assembly.

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EXPLANATION:

Presently there is no provision for transition of additional areawide powers that might be voted by the people. This is pretty much follows that section of the borough law relating to special district and service areas when a borough is first incorporated. Refer to Sec. 07.10.130-140.

This added new section along with new section 07.15.520 sets forth guidelines for transfer and assumption of powers areawide by the borough from a city.

Wilda Hudson
2/15/70

Sec. 07.15.510 new section is added as follows:

Sec. 07.15.520. Assumption of additional areawide powers.

(a) When the term "borough" is used in this section it shall mean ei first or second class borough that has been authorized the assumption of additi areawide powers as provided in Sec. 07.15.350, sub-section (a)(2) and sub-secti

(b) Any additional areawide power acquired by the borough shall be assumed and exercised by the borough within two years after the date of the certification of their approval by the voters as provided in Sec. 07.15.750(c).

(c) The borough shall succeed to all the powers, rights, and duties of the cities as relates to the assumption and exercising of the added areawide power. In the event a conflict exists between the powers of a first class city of the added areawide power and the powers of the city to which the borough succeeded, the borough may exercise the greater powers.

(d) The borough may assume, but is not limited to, all claims, franch and other contractual obligations and liability for bonded and all other indebte and may succeed to all of the rights, title and interest in the real and persons property held by the cities upon assumption of the added areawide power by the borough from the cities. Assumption of any of the items enumerated in this sect shall be set forth in the notice of assumption as provided in Sec. 07.15.510(d).

(e) The borough assembly may levy and collect special charges, taxes, or assessments including interest for the purpose of amortizing bonded indebtedr previously incurred by the cities for the added areawide power to which the borough has succeeded for the continuing services within the cities, or for the future indebtedness incurred by the borough in the cities. When a city has a previously incurred bonded indebtedness, no less than all property that is withi the boundaries of the city conerned at the time the added areawide power is assumed by the borough shall remain subject to taxation to pay the principal of and interest on the bonds for as long as they remain outstanding. Nothing in th

sub-section shall preclude the borough assembly from spreading the previously incurred bonded indebtedness of the city concerned over an area larger than that of the boundaries of the city.

(f) Upon assumption of an added areawide power by borough from the cities, nothing shall preclude the cities from retaining title to the existing physical assets and the liability for bonded and all other indebtedness, if the borough so desires, except where cities are given the right to revoke a transfer of a power. It is mandatory that full and complete power to exercise the added areawide power shall be solely that of the borough from the time of assumption of the power. With consent of the borough assembly, if the city retains the assets and/or the liabilities, the city concerned may be allowed to continue to collect any outstanding special assessments and to levy a tax related to the indebtedness prior to the assumption of such power by the borough.

(g) If the borough shall succeed to all bonded indebtedness, including bond anticipation notes and refunding bonds of the city from which the added areawide power is assumed by the borough, a bondholder of any municipal bonds relating to the assumed power may commence an action in Superior Court for such equitable relief to secure the rights of the bondholders and other bondholders similarly situated as provided in the bond ordinances and agreements. The bondholders shall waive any objections or defenses to the succession of the borough to the bonded indebtedness and agreements unless such action is filed within six months after the borough has assumed the added areawide power.

(h) In the event any action is instituted to require the borough to compensate a city for any real or personal property acquired by virture of this title, the borough shall be liable for payment of any damages resulting from the acquisition of such real or personal property. No action shall be instituted to require the borough to compensate the city in question for such assets unless such action is commenced within one year from the date of the written notice as required by Sec. 07.15.510(c).

EXPLANATION:

This section, along with new Sec. 07.15.510, should provide sufficient guidelines for transfer and assumption of powers areawide by the borough from a city.

It is hoped that this will now allow boroughs to assume the assets and liabilities of cities in the case of assumption of areawide powers which they cannot do now.

NOTE SUGGESTED AMENDMENT

11/18/70 - If Sec. 07.15.350 and Sec. 07.15.910 should be amended to not allow a city to revoke a power that had been transferred areawide to a first class borough, then it occurs to me that Sec. 07.15.520(f) should be amended as follows:

Sec. 07.15.520.

(f) Upon assumption of an added areawide power by borough from the cities, nothing shall preclude the cities from retaining title to the existing physical assets and the liability for bonded and all other indebtedness, if the borough so (DESIRES) agrees, (EXCEPT WHERE CITIES ARE GIVEN THE RIGHT TO REVOKE A TRANSFER OF A POWER).

Wilda Hudson
1/24/70

Sec. 07.15.720 is amended to read:

Sec. 07.15.720. Powers of second class borough.

In addition to other powers granted by this title, the second class borough may exercise only those powers in the area outside cities which are among the powers of a city of the first class and either (1) specified in the petiton and approved by the voters for incorporation or (2) added as provided (BY) in Sec. 07.15.730-750 of this title. These powers shall be exercised in the manner provided by general law for first class cities except as provided otherwise by this title. Before exercising any of these powers in the area outside cities, the borough shall first seek to have (TRANSFERRED FROM CITIES) the power added as an areawide power as provided in Sec. 07.15.350, or propose the joint exercise with cities, those powers which it intends to exercise in the area outside any city.

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EXPLANATION:

This removes the grey area of whether a city may transfer a power to a second class borough when another section clearly states the borough may not exercise a power areawide unless the vote is areawide.

This seeks the addition of the power areawide by vote before borough exercises the power outside the city, rather than the term "transfer". Should the power be added areawide, the provision for transfering the power is provided for in other amendments that are proposed.

Wilda Hudson
1/24/70

Sections 07.15.730 through 07.15.800 are repealed in their entirety and the following substituted:

Sec. 07.15.730. Additional powers for second class borough.

(a) The second class borough may initiate the acquisition of additional powers which it may exercise in the area outside cities only by

(1) the assembly placing the question on the ballot;

(2) the voters may file a petition with the assembly. Such petition shall require the signatures of a number of qualified voters equal to 15 percent of the number of votes cast in the area outside the cities at the preceding regular borough election. ADD (3) - See page 2

Sec. 07.15.470. Investigation.

(a) Upon receipt of a petition from the voters, the assembly shall review the petition within 15 days after its receipt to determine whether it meets the requirements. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

(b) The assembly shall hold at least one public hearing on the question and shall then evaluate the ability of the borough to exercise the power or powers in question and shall make its findings public.

Sec. 07.15.750. Election.

(a) The assembly shall, within 30 days after its findings have been made public, order an election to be held. The date of the election shall be not less than 30 days and not later than the next regular borough election.

(b) If more than one power is proposed, each shall appear separately on the ballot.

(c) The chairman shall certify the election results and a copy of such certification shall be forwarded to the Local Affairs Agency. If the majority of the votes cast on the question is favorable, the added power or powers go into effect on the day following the date of the certification of their approval by the voters. The borough shall assume the exercising of the added power or powers within two years from the date of certification as provided in this title.

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Explanation:

Obviously this removes the cumbersome process of petitioning the Local Affairs Agency and the Boundary Commission hearings.

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NOTE

Addition following Sec. 07.15.730(a)(2)

Sec. 07.15.730 (a)

(3) If the vote is to be areawide such petition shall also require the signature of a number of qualified voters equal to 15% of the number of votes cast inside the city at the preceding regular borough election.

Wilda Hudson
1/24/70

Sec. 07.15.910 is amended to read:

Sec. 07.15.910. Transfer by city.

A city may transfer to the first (OR SECOND) class borough in which it is located any of its powers or functions subject to the approval of the borough assembly. A city may not revoke the transfer of any power or function to the borough unless the revocation is approved by a majority of its council.

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EXPLANATION:

This, along with Sec. 07.15.060, removes the grey area of whether a city may transfer a power to a second class borough when another section clearly states the borough may not assume additional areawide powers unless the vote is areawide.

This recognizes the vote of the people as being the higher authority and once they have voted the power to the borough the exercise areawide it must then be assumed by the borough. The provision for the "transfer" of the poer from a city to a second class borough is provided for under the amendments that are proposed for the transitional measures.

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11/18/70 NOTE

After giving additional thought to the complications that could occur if a city is allowed to revoke the transfer of a power to a borough (see explanation to proposed new amendment to Sec. 07.15.350), the following amendment is suggested for Sec. 07.15.910

Sec. 07.15.910 is amended to read:

Sec. 07.15.910. Transfer by city.

A city may transfer to the first (OR SECOND) class borough in which it is located any of its powers or functions subject to the approval of the borough assembly. A city may not revoke the transfer of any power or function to the borough (UNLESS THE REVOCATION IS APPROVED BY A MAJORITY OF ITS COUNCIL) once such transfer has been made and the borough is exercising the power or function in question.

AS.~~29~~ 07.20.100. Ordinance of procedure.

(c) As used in this section the term "published" means that

(3) copies of the ordinance or sections concerned, together with any required notice, have been posted conspicuously for public inspection at the borough seat (AND AT OTHER CITIES IN THE BOROUGH.) , in all first class cities in the borough and at such other places as the assembly may direct.

(4) copies of the ordinance or sections concerned, together with any required notice, have been mailed to the clerk of each city of any class in the borough.

PURPOSE: Posting notices is an old-fashioned method of public notification which, in most communities, has been made obsolete by mass media communications. It can be difficult and expensive to accomplish, particularly where third or fourth class cities have been incorporated in relatively inaccessible locations within a borough. It is also of very little value if those third and fourth class cities are occupied only seasonally or by people who commute into the major town to work every day and subscribe to the local newspaper. Unless the city has a post office or some other public place where all residents must pass frequently, the posted notice quite likely goes unnoticed. (No quip intended) A combination of posted notices in first class cities, mailed notices to all others - whose clerks may post them if advisable - and the newspaper publication should be adequate notice.

The law as it now stands has been interpretted by legal authority to require the clerk to do or see to actual physical posting in such third class cities as Glen Alps, Basher and a seasonally occupied city on an island in Big Lake.

1/19/71
Wilda Hudson

Sec. 07.30.010(b) is amended to read:

Sec. 07.30.010. Qualification of voters.

(b) (ONLY QUALIFIED VOTERS WHOSE NAMES APPEAR ON THE LAST TAX ASSESSMENT ROLL OR RECORD OF SUCH BOROUGH FOR PURPOSES OF BOROUGH TAXATION ON REAL PROPERTY) Any qualified voter may vote on a question of incurring bonded indebtedness by a borough. If the debt to be incurred is to be an areawide debt, the vote shall be areawide. If the debt to be incurred is to be limited to the area outside cities only, the vote shall be limited to the qualified voters (WHOSE NAMES APPEAR ON THE LAST TAX ASSESSMENT ROLL OR RECORD OF SUCH BOROUGH FOR PURPOSES OF BOROUGH TAXATION ON REAL PROPERTY LOCATED) in the area outside cities. If the debt to be incurred is to be limited to a service area only, the vote shall be limited to the qualified voters residing within the service area (WHOSE NAMES APPEAR ON THE LAST TAX ASSESSMENT ROLL OR RECORD OF SUCH BOROUGH FOR PURPOSES OF BOROUGH TAXATION ON REAL PROPERTY LOCATED IN THE SERVICE AREA). However, if the full faith and credit of the entire borough is to be pledged for payment of the service area debt, the vote shall be areawide.

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EXPLANATION:

This amendment is proposed on the basis of the Supreme Court ruling regarding this area. I realize that there still questions still pending in some quarters relating to this matter. I have only included it in case the law needs to be changed to conform to the Supreme Court ruling.

AS 07.30.100. Borough sections

(a) ..... Section boundaries shall be established in such a way as to provide, insofar as possible, clarity of boundaries, compactness of area, equal (VOTER) representation among different sections, and homogeneity of interest within the section. No section may have a (NUMBER OF VOTERS WHICH IS LESS THAN ONE HALF THAT OF ANY OTHER SECTION, AS DETERMINED FROM THE RECORDS OF THE LAST GENERAL ELECTION.) population which is 10% more or 10% less than that of any other section, as determined from the most recent U. S. Census figures.

PURPOSE: "One man - one vote". This was the rule at the time of our last reapportionment and we did it accordingly - by population. Here again, we have something in our state law that is unconstitutional; so why not fix it?

The figure of 10% was taken "out of a hat" by this writer. Actually courts in other areas have ordered reapportinnment because of a variance of as little as 3%. I don't think our statute need be that strict, however, as that even an apportionment is very difficult to accomplish whithout wholesale revision of precinct boundaries - frequently in the case of a rapid-growth area.

Wilda Hudson
2/15/70

Sec. 07.35.020 is amended to read:

Sec. 07.35.020. Reclassification.

(a) a first class or second class borough may adopt or repeal a home rule charter in the manner prescribed by AS 29-40-010-090, except that members of the charter commission shall be the same in number and the commission shall be apportioned the same as the borough assembly.

(b) A second class borough may reclassify as a first class or a third class borough in the same manner provided by this title for the addition of powers of a second class borough. Instead of specifying powers to be added, the petition shall request that the borough be reclassified as a first class or a third class borough. Voting on the question shall be areawide and the adoption of reclassification shall require a favorable majority of the votes cast both in the cities and in the area outside cities. (RECLASSIFICATION AS A FIRST CLASS BOROUGH IS LIMITED TO THE QUALIFIED VOTERS RESIDING OUTSIDE CITIES WITHIN THE BOROUGHS). The Assembly of the Second Class borough voting on reclassification shall remain the Assembly of the reclassified borough. Provisions for the legislative and administrative structure of the third class borough shall be set forth in Sec. 07.17.030(a).

(c) A third class borough may reclassify as a second class or a first class borough in the same manner provided by this title for the addition of powers by a second class borough. Instead of specifying powers to be added, the petition shall request that the borough be reclassified as a first class or a second class borough. (A SECOND CLASS BOROUGH MAY RECLASSIFY AS A THIRD CLASS OR A THIRD CLASS BOROUGH)

Sec. 07.35.020 (continued)

Voting on the question shall be areawide and the adoption of reclassification shall require a favorable majority of the votes cast both in the cities and in the area outside cities. (THE THIRD CLASS BOROUGH ASSEMBLY SHALL BE ELECTED AT THE TIME OF VOTING ON RECLASSIFICATION OF THE BOROUGH.) The assembly of the third class borough voting on reclassification shall remain the assembly of the reclassified borough. The school board of the reclassified borough shall be elected at the time of voting on reclassification of the third class borough. The ~~petition~~ proposition for reclassification of a third class borough shall include the question of whether the executive of the reclassified borough shall be (1) an elected chairman or (2) a hired manager. The borough chairman shall be elected at the time of voting on reclassification of the third class borough.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

S U M M A R Y

COMPARISON OF CSSB 113 AND EXISTING MUNICIPAL LAW

INTRODUCTION

Senate Bill 113, the current version of the revised municipal code, is an entire recodification of the laws relating to cities and boroughs now found in Titles 7 and 29. Like other reorganized and updated statutory titles, it incorporates changes from existing law both in form and in substance.

The revision was directed by the 1963 Legislature, which noted that the bulk of law relating to cities (Title 29) was a disjointed product of the territorial period. Addition of the Borough Act as a separate title in 1961 (Title 7) further confused the municipal law area.

In 1963 and 1964, the Local Affairs Agency, Department of Law and the Legislative Council prepared the first draft of legislation combining and attempting to reconcile the provisions of Titles 7 and 29. The revision was introduced as SB 101 in 1965 and was the subject of widespread hearings around the state, committee deliberations, and further revision.

Revised versions of SB 101 were introduced into the legislature in 1966, 1967 and 1969.

SB 113, the basis of the current proposal, represents a thorough review by the Alaska Municipal League and governmental agencies at the municipal and state levels. The League felt that revision should be primarily technical and should not attempt to solve the substantive problems existing in two areas, that of relations between cities and boroughs and that of relations between schools and general government.

Accordingly, the bill in these areas is substantially the same as existing law, with some exceptions as noted further (see especially pages ~~5 — 11).~~ 6, 7, 9 and 12-14).

It is virtually impossible to detail all of the changes that have taken place between the code and existing municipal law, but this summary will explain the major impact of the revision. It takes into account changes made after joint deliberations of the Senate and House Local Government Committees which resulted in CSSB 113. These changes between CSSB 113 and SB 113 are also separately treated in an attachment following this summary.

Chapter 3. The Unorganized Borough

The law relating to the unorganized borough is unchanged. The present provisions of Title 7 granting authority to the division of lands to adopt zoning regulations for federal lands in the unorganized borough at the request of the Secretary of the Interior and only for purposes of facilitating federal land sales in the unorganized borough is placed in Title 38 (Sec. 6 of the proposed Act).

Chapter 8. Classification of Municipalities (i.e. Cities and Organized Boroughs)

One of the most significant changes is the change from four classes of cities to two classes of cities. The primary difference in the revision between the first and second class cities is that the first class city has the school function and has the power to assess, levy and collect a general property tax while the fourth class city has neither of these powers. Under present law, first, second and third class cities all have these powers, while fourth class cities do not. A population minimum of 400 persons has been set as the number

necessary to incorporate a first class city under the code, as in present law. The status of existing home rule cities, and existing first class cities with populations of 400 or more, remains unaffected by the proposed Act. Existing second and third class cities of 400 or more persons will automatically become first class cities, retaining their school and tax powers. The revision takes into account the fact that certain existing first, second and third class cities of under 400 persons may not have sufficient population or tax base to assume the burden of the school function. Therefore, these cities are given the option of becoming either first class or second class, depending upon their abilities and desires, as assessed by the local boundary commission and subject to legislative review. Existing fourth class cities will automatically become second class cities with the same powers and responsibilities which they now possess (Sections 29.08.010 through 29.08.050 and Sections 29.18.010 and 29.18.020). The code provides for reclassification of cities and boroughs to a higher class. Upon reclassification of a third class borough to a second or first class borough the borough may retain a combined assembly-school board or may separate the functions between an assembly and a board, depending upon the wishes of the voters (Sec. 29.08.040).

Chapter 13. Home Rule Municipalities

The new code standardizes the procedures for adopting a charter by either a first class city or borough (Secs. 29.13.010 - 29.13.080). Home rule limitations are gathered together in one place and listed. This section makes explicit the legislative intention to make only the sections of the code which are specifically listed as applicable to home rule municipalities so applicable. Additionally, the sections

themselves contain a specific reference making them applicable to home rule municipalities (Sec. 29.13.100).

Chapter 18. Incorporation

Incorporation procedures for all municipalities are gathered together and standardized (Secs. 29.18.050 - 29.18.110). The election of the first slate of officers is separated from the question of incorporation itself.

Present law provides for transitional assistance upon the incorporation of a new borough. In the revision, such transitional assistance is also made available to cities incorporating after the code takes effect. Organizational money grants based on an allocation of $10 per voter are allowed the newly incorporating boroughs and cities of all classes, other than unifying or consolidating municipalities. A minimum grant of $25,000 is authorized for communities assuming the school function for the first time, either by incorporating as boroughs or first class cities outside organized boroughs or by reclassifying from second class to first class cities outside boroughs (Sec. 29.18.180).

Under the revised code boroughs and cities of all classes may also select 10 per cent of the vacant, unappropriated, unreserved state land within their boundaries. (Secs. 29.18.190 - 29.18.200). Previously, only boroughs and, as of 1970, first and second class cities, were given this privilege. The code provisions declare that the policy of the state in making land selections under the Statehood Act is to make available the maximum land area for borough and city selections under the code provisions, consistent with the best interests of the state.

Chapter 23. Municipal Officers and Employees

The law relating to borough assemblies, city councils and all

municipal officers is gathered into this chapter.

Local officials' [illegible] date and terms of office are changed to conform to the date of state general elections, but terms of office may be varied by local ordinance so as to provide either staggered or simultaneously expiring terms up to four years (Secs. 29.23.040, 29.23.200(c) and 29.23.310). If a locality chooses to have other than two-year terms it may, of course, hold the elections in odd-numbered years, but the elections would occur on the Tuesday after the first Monday in November. Elections are nonpartisan for all municipalities (Sec. 29.28.010).

The executive power has remained essentially the same except that the veto power of borough chairmen and mayors of first class cities has been broadened and clarified. In the past, there has been a question of whether a veto could be used for motions and other actions of the assembly or council. It is clearly spelled out that they may be.

Additionally, a new authority for the line item veto in municipal budgets has been added. This line item veto is expressly stated not to apply to the school budget (since the only power the assembly or council has is to approve or disapprove the total school budget, and the chairman or mayor may only veto that which the assembly or council has power to enact) (Secs. 29.23.170 and 29.23.270). The mayor of a second class city is a member of the council and has no veto power (Sec. 29.23.270(b)).

The mayor of a first class city is elected separately from the council. The mayor of a second class city is a council member who is elected to the council along with the other council members, who then designate a mayor from among their membership (Sec. 29.23.250). The

mayor of a first class city votes only in case of a tie and has the veto power. The mayor of a second class city may vote on all matters as a council member, but he has no veto power (Secs. 29.23.260 and 29.-23.270). The borough chairman does not vote on matters before the assembly but has the veto power (Secs. 29.23.160 and 29.23.170).

A provision of present law applying only to first class cities and requiring written examination of police officer applicants on laws and ordinances, the examination to be graded by the council, is not retained in the code.

The revision makes clear that city councils may be elected from election districts within the city as well as citywide or partly at large and partly by districts, the choice being left to the local governments (Sec. 29.23.200(a)). Election sections for election of borough assemblymen in the borough area outside cities are permitted, as under present law, with sections to be of approximately equal population (Sec. 29.23.100).

Utility boards elected by the voters or appointed by the municipal executive and confirmed by the governing body are permitted for boroughs and cities (Sec. 29.23.340). (Elected boards only are authorized to general law municipalities under existing statutes.)

With respect to school board relations with local governments there are no substantive changes from present law except that election dates and terms of office have been established to coincide with state general elections with different terms not exceeding four years authorized by local ordinance, and local governing bodies are authorized to provide for centralized purchasing of those school supplies and equipment which are of a kind used by municipal departments (Sec. 29.-48.250, and Secs. 29.23.310 and 29.23.340).

In addition, the code makes clear that Sec. 29.33.050 setting out school board-governing body relationships is not intended to apply to home rule municipalities. There is uncertainty whether the same provisions as they appear in present law apply to home rule governments.

Either a borough or a city may adopt or repeal a manager form of government, as under existing law. However, a standard procedure is established for both types of municipality. Under this procedure, either the voters by petition, or the assembly or council by its own motion, may initiate an election on the manager plan (Secs. 29.23-410 - 29.23.480).

The code requires certain reports to be made to the Local Affairs Agency, including up-to-date maps, tax assessment figures, a financial report, and reports relating to long-term debt as already required under AS 44.19.205. The financial report takes the form of the annual audit for boroughs and first class cities, but second class cities may submit a statement of income and expenditures. Furnishing the reports is made a condition of receipt of authorized shared revenues under AS 43.18 (Sec. 29.23.560).

Chapter 28. Elections

The major change affecting elections is the scheduling of municipal elections to coincide with state general elections rather than being held approximately one month earlier, as under current law (Sec. 29.28.020). Terms of office of borough, city and school elected officials are also set at two years, but different terms not exceeding four years for borough and city governing bodies, and three years for school boards (the maximum term permitted under present law)

may be set in all cases by local ordinance.

Municipalities may, but are not required to, impose registration requirements over and above those of the state. However, a local voter registered with the state to vote in state elections is eligible to vote in local elections, whether or not he meets local registration requirements (Sec. 29.28.030). Also, the municipality may at its option require a majority vote for election of officials and utilize a runoff election or other means of obtaining a majority for the purpose (Sec. 29.28.040).

Assemblies and councils are required to provide by ordinance for election appeals. If the appeal is successful, the assembly or council bears the cost; if unsuccessful, the contestant must pay (Sec. 29.28.-050).

The powers of initiative and referendum are reserved to municipalities and the procedure for exercise of these powers by municipal residents is outlined (Secs. 29.28.060 - 29.28.110).

The section on recall has been changed to eliminate the successor running at the same election as the recall election. Should the recall be successful, a subsequent election is required to elect a successor (Secs. 29.28.130 - 29.28.250).

Chapter 33. Areawide Borough Powers and Duties

Boroughs retain their basic areawide responsibilities prescribed by current law: (1) assessment and collection of taxes, (2) education, and (3) planning, platting and zoning. Under current law, however, the borough is charged only with assessment and collection of real and personal property taxes. The assessment and collection provision of the new code broadens this to include the collection of use

and sales taxes authorized by the voters (Sec. 29.33.030).

There has been considerable smoothing out in the planning, platting and zoning article, with two significant alterations. One is that the planning commission itself may decide on variances subject only to appeal to the board of adjustment. Under the current procedure all variances, no matter how routine, must go to the board of adjustment. The second change is the placing of power to adopt and enforce building, housing, and related codes clearly within the jurisdiction of cities within boroughs rather than the boroughs as part of the areawide planning, platting and zoning responsibility. Boroughs may exercise the powers in the area outside cities or areawide by acquiring the power in the same manner as they obtain other powers in those areas. However, boroughs now exercising the powers within cities may continue to do so upon agreement to that effect between a city and a borough; if there is no agreement, the city is required to exercise the powers within the city and the borough now exercising the powers is required to continue doing so outside the city. Areawide borough exercise of the powers may subsequently be acquired through transfer by the cities or by vote of the people (Sec. 29.48.025). (Present borough law has been interpreted by the Attorney General's office to vest boroughs with areawide building code powers as part of the required areawide planning and zoning function.)

Under existing laws relating to acquisition of additional areawide powers, it is unclear whether second class boroughs may, like first class boroughs, acquire additional areawide powers by transfer from cities. The revision explicitly authorizes this method. Also, the Local Affairs Agency is no longer required to pass upon the acquisition

of additional areawide powers. In both the revision and present law, additional areawide powers require approval by a majority of the borough voters (Secs. 29.33.250 - 29.33.290).

Chapter 38. Borough Powers and Duties in the Area Outside Cities

This chapter is designed to encourage areawide or joint city-borough exercise of powers by requiring the borough to seek these alternatives before exercising powers in the area outside cities only. If transfer or joint exercise is not acceptable, a first class borough may exercise any general law municipal power outside cities (Sec. 29.38.-010).

A second or third class borough requires an election in the area outside cities in order to add additional powers in that area (Sec. 29.-38.020), except with respect to certain special matters specified in Sec. 29.48.020, including regulation of fireworks, animals, vehicles, snow machines, garbage and solid waste, and water pollution. The latter two powers are newly conferred in the code for second class borough exercise in the area outside cities without a vote of the area; the others are already conferred for such exercise under existing law. Acquisition of additional powers and duties in the area outside cities again no longer requires review by the Local Affairs Agency.

Chapter 41. Powers of Third Class Boroughs

Third class borough powers are unchanged.

Chapter 43. Powers of Cities Outside Boroughs

Authority is continued for cities outside boroughs to assess, levy and collect property and sales taxes. Use tax authority is also conferred. Taxes are to be assessed, levied and collected in the same manner as set forth for boroughs in the code.

FIRST CLASS

Cities outside boroughs continue to comprise city school districts, with relationships between school boards and city councils to be governed in the same manner as those between borough school boards and assemblies, as under present law.

Home rule and first class cities outside boroughs must, and second class cities may, provide for planning, platting and zoning in the manner provided in the code for boroughs under the code (present law does not expressly require home rule or first class city exercise of planning, platting or zoning authority).

The chapter makes borough laws incorporated by reference under the chapter applicable to home rule cities only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Chapter 48. Powers Applicable to All Municipalities

An entirely new approach has been taken to delineation of municipal powers, facilities and services. Under existing law these are in many cases spelled out in substantial detail. This detail often serves no useful purpose. The new code merely lists the powers and provides for liberal construction of the powers, as required by the constitution (Secs. 29.48.010, 29.48.030, and 29.48.310). The listings the code provides are not intended to be all-inclusive but rather illustrative of the object or purpose intended to be accomplished (Secs. 29.48.320 and 29.48.330).

The procedure for enactment of ordinances has been simplified and streamlined without changing substantive rights. The code, however, changes the time between publication and hearing from one week to five days. The change permits special meetings for final consideration of

a proposed ordinance to be held on the same day as regular meetings (Sec. 29.48.140). The code also eliminates the requirement for a new hearing should there be an amendment as to substance, since the purpose of the hearing is to allow the public to propose changes to improve the ordinance.

Each municipality is required to codify its permanent ordinances (Sec. 29.48.180). Under existing law, boroughs are required to keep codes, but cities are not clearly included in the requirement.

The new code fixes July 1 to June 30 as the fiscal year for home rule and general law municipalities (Sec. 29.48.190).

Municipalities are given the option of establishing central purchasing (Sec. 29.48.250).

Under current law, emergency disaster powers are applicable only to first class municipalities. The new code allows all municipalities, regardless of class, to exercise emergency disaster powers (Sec. 29.-48.270). The thinking is that should a disaster strike the classification of the city is not particularly relevant.

Chapter 53. Municipal Assessment and Taxation

This chapter grants municipalities the power to levy property, sales and use taxes. Boroughs and home rule and first class cities may utilize all these taxes. Second class cities may levy sales and use taxes but not property taxes (Sec. 29.53.400). Within a borough the borough collects all of the taxes, provided the borough itself levies a sales or use tax (under existing law boroughs are required to assess and collect only property taxes levied by cities). Within a borough a city collects sales or use taxes if the borough does not levy and collect such taxes itself (Sec. 29.53.450). Within a borough which

levies and collects sales or use taxes on an areawide basis, cities which levy such taxes must levy upon the same sources as are taxed by the borough and in the same manner as the borough (Sec. 29.53.440). (This uniformity requirement is an addition to present law.) Outside boroughs the city collects its own taxes.

The sales and use tax provisions of the code are made binding only on general law cities and boroughs, but provisions governing assessment, levy and collection of property taxes (Secs. 29.53.010 - 29.53.350, and 29.53.400) are made to apply uniformly to all municipalities, home rule as well as general law (Sec. 29.13.100(19)). Under present law only selected provisions of the taxing statutes, relating to required exemptions from property tax and collections of penalties and interest on property and sales taxes, are made expressly applicable to home rule governments, but there remains doubt whether other taxing provisions of present law (as well as many other provisions of existing local government law generally) apply, particularly in light of a recent state supreme court decision on applicability of general municipal laws of the state to home rule as well as general law governments (Chugach Electric Assn. v. City of Anchorage, Sup. Ct. No. 647, November 2, 1970).

In addition to certain exemptions from property tax required or authorized under present law, the code authorizes additional optional exemptions by ordinance ratified by the municipal voters. Any exemptions or exclusions granted by home rule cities and in effect on the effective date of the proposed code would not be affected by enactment of the code.

Procedures for assessment of property are consolidated and simplified. No tax limitation is imposed insofar as payment of principal and

interest on bonded indebtedness (Sec. 29.53.050). Property taxes for other purposes may not exceed three per cent of the assessed property valuation per year, including the combined levy of such taxes within a city by a borough and the city within the borough (Sec. 29.53.050).

There are several changes concerning the enforcement of tax liens. One is that the foreclosure list no longer must be presented to the court on the day of publication. This requirement has created substantial difficulty where the newspaper of publication is not located within the same city as the borough seat or within the city which is foreclosing the taxes. Under the current law, tax foreclosed property is deeded to the borough.

Under the new code, tax-foreclosed property lying within a city is deeded to the city while tax-foreclosed property lying within the borough but outside the city is deeded to the borough. The code further provides that should property deeded to the city not be needed for public use by the city but needed for public use by the borough, the borough may obtain such property. The same holds true for property deeded to the borough. When property is taken for public use by any governmental unit, the amount of taxes owing to the other governmental units will be paid by the governmental unit taking title (Secs. 29.53.-360 and 29.53.385).

Under present law, general law municipalities are allowed to levy a sales tax but are not allowed to levy a use tax. Under the code both a sales tax and use tax may be levied. The code requires an election on sales tax. Since use tax is a correlative of the sales tax and can only be adopted subsequent to or at a referendum where the sales tax is adopted, no separate election is required for adoption of the use tax (Secs. 29.53.410 and 29.53.420).

The code expressly authorizes differential property tax zones within cities to provide services not provided throughout a city or provided at a different level than in the remainder of the city (Sec. 29.53.405).

Chapter 58. Municipal Debt

There is now no express statutory authority for issuance of tax anticipation notes by general law municipalities. Such notes as a matter of practice are issued despite specific statutory authority (presumably on the basis of authority conferred to the state and political subdivisions under Art. IV, sec. 10 of the state constitution relating to the borrowing of money in anticipation of revenue collections). The code specifically authorizes tax anticipation notes in anticipation of tax or other revenues (Secs. 29.58.010 - 29.58.040).

As under present law, municipalities are permitted to issue general obligation bonds as approved by the voters after proper notice; the notice includes a statement of total current bonded indebtedness, the cost of current debt service, and the total assessed valuation (Sec. 29.58.160). Second class cities do not have the power to assess and levy property taxes except when municipal bonds or other debt financed by another form of revenue are in danger of default (Sec. 29.58.350), essentially the same provision as under present law for fourth class cities.

Under existing law, an election is required to authorize issuance of revenue bonds in general law municipalities. This requirement is deleted in the new code since no general tax obligation is assumed and revenue bonds are generally a management tool for the utility involved (Sec. 29.58.205). In boroughs if the full faith and credit of the entire borough is pledged for payment of the debt of the borough

area outside cities or a service area, majority voter approval must be obtained both areawide as well as in the area outside or the service area (Sec. 29.58.340(d)); under present law, a boroughwide pledge is expressly authorized for bonds of a service area only.

Chapter 63. Special Assessment and Service Areas

Under existing law, there are two distinct sections on special assessments, each with minor variations and procedures. The major variation was cleaned up last session, but the procedures still vary slightly, depending upon whether the special assessment is initiated by petition of the people or by ordinance of the governing body. While these distinctions are not substantial, it becomes troublesome to determine precisely what procedure should be followed. In both instances, the procedures are extremely cumbersome.

This code standardizes the sections on special assessments to provide the same notice and hearing requirements as in existing codes. The procedural fairness requirements are retained, but much of the unnecessary cumbersomeness is eliminated.

Significantly, the new code also provides that special assessments may be levied against property owned by other governmental units (Sec. 29.63.010). The rationale is that special assessments are based upon special benefits conferred to the assessed property and that, should property owned by the state be specially benefited by public improvements which increase the value of state property, the state no less than any other property owner should pay for such special benefits.

Chapter 68. Alteration of Boundaries

Procedures for review of all municipal boundaries are consolidated. The Local Boundary Commission is required to establish procedures for

annexation and exclusion by local action (Sec. 29.68.010).

Merger and consolidation of municipalities is allowed by either petition to the Local Boundary Commission or by local option election (Sec. 29.68.030).

Unification of local governments is authorized as under present law (Secs. 29.68.240 - 29.68.440), with authority of the unified government to allocate preunification debt spelled out more specifically than under present law (Secs. 29.68.350(a)(1) and 29.68.410).

Dissolution of municipalities may be proposed by either petition to the Local Boundary Commission or by local option election (Sec. 29.-68.500(a)). In addition, the Local Affairs Agency is required to investigate municipalities which it considers inactive and to report on their status. The Local Boundary Commission may recommend that inactive municipalities be dissolved (Sec. 29.68.500).

Chapter 73. Miscellaneous Provisions

Municipalities are authorized the powers of eminent domain and declaration of taking in the performance of an authorized municipal power or function (Sec. 29.73.020).

THE CODE IN GENERAL

The proposed revised municipal code is primarily a series of technical changes which reconcile inconsistent provisions in existing law, modernize the arcanic language found throughout Title 29 and provide a more workable and immensely more understandable basic framework for local government. Substantive changes are necessary in many areas. The proposed code provides a better framework for existing law. It also provides a better framework from which to develop proposals for substantive changes which may be added after individual consideration of each change on its own merits.

S U M M A R Y

COMPARISON OF CSSB 113 AND SB 113

This is a summary of substantive amendments to Senate Bill No. 113 resulting from deliberations of the Senate and House Local Government Committees meeting jointly. (The preceding summary of CSSB 113 and existing law takes into account the changes noted in this comparison).

A second class borough is permitted to reclassify as a third class borough, not only as a first class borough. This change restores existing law. Moreover, a third class borough voting on whether or not to reclassify is given the option to vote at the same time on retaining a combined assembly and school board. (Sec. 29.08.040)

A community having 25, rather than 50 permanent residents, may incorporate as a second class city (formerly called a fourth class city). This change restores existing law. (Sec. 29.18.020)

After the effective date of this Act, boroughs and cities which incorporate, except as unified or consolidated municipalities, and second class cities which reclassify to first class cities will receive transitional grants of $10 per voter. The minimum grant will be $25,000 for communities assuming the school function for the first time, either by incorporating as boroughs or first class cities or by reclassifying from second class city to first class city. (Sec. 29.18.-180)

In selecting lands under the Alaska Statehood Act, it is the policy of the state to make available to boroughs and cities the maximum land area from which to make selections under this section, consistent with the best interests of the state. (Sec. 29.18.190)

The elections of borough assemblies, city councils, and school boards will be held every two years on the same date as the state election, unless a locality provides by ordinance for different terms, which may not exceed four years in the case of assemblies and councils and three years in the case of school boards. If a locality chooses to have different terms it will, of course, have elections in odd-numbered years, but they will take place on the Tuesday after the first Monday in November. (Sec. 29.23.040, Sec. 29.23.200, and Sec. 29.23.310)

School budget items are excluded from the items in appropriation ordinances which a borough chairman (or a mayor in a city in the unorganized borough) may strike or reduce by veto. Also, two-thirds of the assembly (or council), rather than three-fourths, can override a veto. (Sec. 29.23.170)

City councils may be elected on a basis other than at large, if a local ordinance providing another basis of election is adopted. (Sec. 29.23.200)

Second class cities (formerly called fourth class cities) may submit to the Local Affairs Agency an annual statement of income and expenditures in place of an audit. The state payment of shared revenues is contingent on the submission of the financial and other reports specifically required of municipalities. (Sec. 29.23.560)

A qualified voter contesting an election will bear the costs of a recount unless the result of the election is reversed by the recount. (Sec. 29.23.050)

The authority for general law municipalities to adopt official maps was deleted from the bill by vote of the joint committee. (Sec. 29.33.095 of SB 113)

The provisions of the code on the assessment, levy, and collection of property taxes apply fully, rather than only in part, to home rule as well as general law municipalities. (Sec. 29.43.020, Sec. 29.53.010-29.53.350 and Sec. 29.53.400)

The provisions of Ch. 12, SLA 1971, providing that home rule and general law municipalities may change their names by an ordinance ratified by the voters, are included in the bill. (Sec. 29.48.010)

Second class boroughs may by ordinance provide for garbage and solid waste collection and disposal in the area outside cities. (Sec. 29.48.020)

The existing law on the power of cities to provide garbage collection and disposal services, including effects on private services in annexed areas, is added. (Sec. 29.48.033)

Cities may adopt and enforce building, housing, and related codes for the area inside cities. Boroughs may exercise this power in the area outside cities or areawide by acquiring the power in the same manner as they obtain other powers in such areas. A borough now exercising this power areawide or within a city will continue to do so if the city agrees; otherwise, the city is required to exercise the power in the area inside the city and the borough is required to exercise it outside the city. Boroughs may later acquire the power by transfer from cities or by areawide vote. (Sec. 29.48.035)

The fiscal year will begin on July 1 in home rule as well as general law municipalities. (Sec. 29.48.190 (a))

The property tax exemptions or exclusions required of all municipalities under present law are retained. (Sec. 29.53.020) General law cities may by ordinance exempt or exclude boats, household furniture and effects, and civic centers, as under existing law. They may exempt or exclude additional property from tax by an ordinance ratified by the voters. Any exemptions or exclusions granted by home rule municipalities before the effective date of this act are not affected. (Sec. 29.53.025)

Added is the existing law which permits boroughs to adjust their property tax structure to that of cities within the borough and permits cities to exempt or exclude from borough taxes property exempted or excluded from city taxes, upon payment to the borough of the money it loses by the cities' action. (Sec. 29.53.025 (c))

Existing law on valuation of farm land for property tax purposes is added. (Sec. 29.53.035)

The combined borough and city property tax levy inside a city may not exceed 3% of assessed valuation. (Sec. 29.53.050)

When a borough votes to pledge its full faith and credit to guarantee bonds for the area outside cities or for service areas, the question must carry in these areas as well as areawide. (Sec. 29.53.340 (d))

Boroughs and cities may assess the real property of governments and private citizens for all or part of the costs of capital improve-

ments which benefit their property. The state will pay the assessment. Payment of the assessment by other governments is made a condition of receiving the benefit of the capital improvement. In the case of private citizens, payment is made a lien against their property. (Sec. 29.63.010) Existing law limiting the amount of a lump-sum or installment payment of a special assessment and authorizing special assessment bonds is added. (Sec. 29.63.060 and Sec. 29.63.085)

A borough is expressly permitted in service areas to provide different services, or a different level of services, than are provided areawide or in the borough area outside cities. The provisions clarify existing law. (Sec. 29.63.090) A city is permitted to have tax zones with different services, or a different level of services, than in the rest of the city. (Sec. 29.53.405)

The Local Boundary Commission is directed to establish procedures for boundary changes by local action in boroughs as well as in cities. (Sec. 29.68.010 (b))

With regard to the unification of a borough and its cities, the authority of the governing body to allocate pre-unification debt is delineated more fully than in existing law. (Sec. 29.68.350 (a) (1) and Sec. 29.68.410)

The section of SB 113 on the civil tort liability of local governments is deleted (Sec. 29.73.010) and the existing law at AS 09.65.070 is retained.

# # #

CSSB 113 & CSHB 208 -- THE PROPOSED REVISED MUNICIPAL CODE*

Attachments Prepared by Direction of the Senate and House Local Government Committees Acting Jointly

a) Comparison of CSSB 113 (CSHB 208) and Existing Municipal Law

b) Comparison of CSSB 113 (CSHB 208) and SB 113 (HB 208)

Foreword and Synopsis of Attachments

The need for revision of the maze of local government laws of the state, most of them in the case of cities dating back to territorial days, has long been recognized by the legislature. By concurrent resolution adopted in 1963 the Third Legislature characterized the bulk of state law relating to cities as "disjointed" and not serving the best interest of the state. After a two-year revision effort conducted by the Local Affairs Agency, the Department of Law, and the Legislative Affairs Agency, a proposed revised code was introduced into the First Session of the Fourth Legislature and since then has been continually before the legislature in various modified forms of the original bill.

This year, following two years of preparation and six years of review and revision by legislative committees as well as by the Alaska Municipal League, the public through hearings, municipal and

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* The provisions of CSSB 113 and CSHB 208, like those of SB 113 and HB 208, are identical; for convenience, the reference to the proposed municipal code is made as CSSB 113, which is the printed and distributed bill.

school officials, staffs of the legislative and executive branches of the government, and others, the presentation of CSSB 113 marks the first time the proposed code has reached the floor of either house. It does so after consideration by joint deliberation of the Senate and House Local Government Committees. Its passage in the current session offers the opportunity for the same legislature which enacts it to observe its practical operation and make any changes it may deem warranted during the second session.

This code is based on a proposed draft submitted by the Alaska Municipal League and prepared by a League committee comprised of municipal attorneys and administrators; the League draft in turn is based on earlier versions of the proposed code but reflects extensive updating and adjustment of provisions to emphasize a technical revision rather than large-scale substantive changes in existing areas of law, particularly in terms of relationships of boroughs and cities and local governing bodies and school boards.

Like any overall revision of titles of the Alaska Statutes, of course, the code incorporates changes from existing law both in form and in substance, albeit the substantive changes are relatively few considering the scope of the revision and the technical changes made. Among the most significant substantive changes appear to be the following. The code

1) provides for two classes of general law cities rather than four;

2) makes clear which provisions of the code apply to home rule local governments and which do not apply; a notable

example of the merit of this approach is the basic provision outlining school board and local assembly or council relationships; the proposed code retains the substance of the provisions (sec. 29.33.050) virtually as they appear under present law (AS 07.15.330) but does not apply them to home rule governments; the provisions under present law have been the source of much controversy and pending litigation as to their applicability to home rule governments;

3) authorizes cities and boroughs to permit, on vote of the people, exemptions from property taxes in addition to those exemptions now required by law or already permitted on an optional basis by law (general law cities and, arguably, home rule cities, do not have such authority under present law);

4) expressly authorizes use taxes as correlatives to sales taxes, which still continue to require voter approval; authorizes borough collection and refund of city sales taxes as well as city property taxes, the latter now being required to be collected by boroughs under present law;

5) establishes uniform fiscal years and practices for assessing, levying and collecting property taxes for all municipalities;

6) revises existing cumbersome special assessment laws and permits levy of special assessments against governmental units;

7) authorizes differential property tax zones within cities to allow for different services or different levels of services than are provided generally within a city;

8) provides for general law cities within general law boroughs to levy sales or use taxes upon the same tax sources as are levied upon by the borough;

9) expands eligibility for organization grants to second class cities newly incorporating or reclassifying to first class status and assuming school functions (outside boroughs);

10) provides that the terms of office of city, borough and school board officials are two years but that any local government may by ordinance choose otherwise and provide different terms not exceeding four years (three years for school boards, as under present law); terms of incumbents are not affected, however;

11) sets the date of the regular municipal election at the same time as the date of the state general election (i.e. on the Tuesday after the first Monday of November);

12) makes every local voter registered to vote in state elections eligible to vote in any municipal election, without being required also to meet separate municipal registration requirements; if not registered to vote with the state, he may vote in local elections upon meeting the local registration requirements if any;

13) adds garbage and solid waste and water pollution control powers to the existing categories of powers which second class boroughs may exercise in the borough area outside cities without special voter approval;

14) gives cities authority to adopt and enforce building, housing and related codes within the cities rather than conferring such authority upon a borough as part of its required areawide planning, platting and zoning powers, as has been the interpretation under present law;

15) requires no election in general law cities and boroughs to sell municipal revenue bonds unless the local government chooses by ordinance to require an election.

The fundamental change represented by the proposed code is technical in that it is a reorganized, clarified, and updated body of municipal law and a vastly improved framework within which to meet the legislative needs of municipalities as they may develop. Not the least of the proposed code's advantages is that it takes a body of law referred to probably as much or more than any other title in the Alaska Statutes and renders it far more intelligible for municipal officials as well as for the citizens whom it so directly affects.

The following summaries set forth in more detail comparisons of CSSB 113 and CSHB 208 and existing law and comparisons of CSSB 113 and CSHB 208 with the bills as first introduced.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

August 2, 1971

M E M O R A N D U M

TO : Senator John Rader, Senate Local Government Committee
Rep. Mike Miller, House Local Government Committee

FROM : Greg Machyowsky, Legislative Counsel

SUBJECT: Incorporation of 1971 Session Laws into proposed municipal code; other minor code amendments

A number of session laws enacted late in the first session of the Seventh Legislature amend existing Titles 7 and 29 and are not subsumed in the latest version of the proposed municipal code which was pending in Senate Rules at the close of the last session. Amendments to incorporate the substance of these session laws are attached; should they not be incorporated into the proposed code and the code is enacted, they will have been repealed from existing laws, since the proposed code repeals existing Titles 7 and 29.

I am attaching also an amendment which should be included with the technical amendments already made to the code. The amendment is minor and only preserves the consistency of distinctions maintained elsewhere in specific code sections as to which provisions bind home rule and general law municipalities under sec. 29.13.100 (pp. 7-8) of the proposed code.

Greg

GM:hg
Enclosures

April 27, 1972

MEMORANDUM

TO: Senator Merdes

FROM: Greg Machyowsky, Legislative Counsel

SUBJECT: Enclosed amendment to SCS CSHB 208 restoring regular municipal election date to first Tuesday of October; other comments on the proposed code

The enclosed amendment sets the regular municipal election date as the first Tuesday of October in even-numbered years rather than the Tuesday after the first Monday in November of even-numbered years. It should be noted that the amendment does not change the present biennial interval of elections, every two years in the year of state elections. Unless a different interval is provided by ordinance. Thus, if adopted, the amendment would make local elections the first Tuesday of October in every year followed by state elections the next year, unless a city chooses by ordinance to provide for local elections on the first Tuesday of October every year, as under present law.

If local elections every two years in the off-year of state elections are intended, then the amendments made on pages 3[illegible] and [illegible] the amendments should read:

Page 3[illegible], line 23: Strike "Tuesday after the first Monday in November every even-numbered year" and substitute "first Tuesday of October every odd-numbered year".

Page 123, lines 24 - 25: Strike "Tuesday following the first Monday in November of even-numbered years" and substitute "first Tuesday of October of odd-numbered years".

The amendment as now drafted provides the application of the election date (i.e. first Tuesday of October) to home rule cities. The home rule cities of Kodiak and Valdez apparently have local election dates other than the first Tuesday of October, specifically November and the second Tuesday of October respectively. Thus, the amendment leaves them free to retain their present election dates.

The amendment does, however, require the standard October election date for a large number of smaller general law cities now having regular election dates other than that Tuesday. In most cases these dates are set in November (Barrow, Gambell, Circlewood, Goodnews Bay, Hydaburg, Kiana, Kodiak City, Long Island, Kwalina, Metlakatla, Noorvik, North Pole, Point Hope, Port Alexander, Port Lions, St. Mary's, Saxman), and a few others have dates at various other months, including January, March, April, May, June and December. All boroughs and most home rule cities (except for Kodiak and Valdez) now have the first Tuesday of October as the regular election date. If, to accommodate the smaller general law cities having different election dates, even the election date of the first Tuesday in October is not to be made mandatory, the phrase "first Tuesday of October" in the amendment should be enlarged to read "first Tuesday of October, unless otherwise provided by ordinance" and the amendment on page 124, line 14 should be omitted. (I'll have this substitute amendment prepared promptly upon hearing from you, if the intent is to permit both general law and home rule governments to vary the October election date by ordinance; that apparently is the option under present law, as noted above.)

By permitting home rule governments to set a date for elections other than the first Tuesday of October (as the amendment does) or by adding language to permit general law communities to vary the date also, a possible problem can arise in that larger cities within boroughs may have separate election dates from the borough. The same possibility exists under present law, however. Borough election dates are set on the same day as the date of municipal elections in the largest first class or home rule city within the borough, or the first Tuesday of October if there is no such city within the borough; however, the borough is given express statutory authority to vary the election date by ordinance at its option (AS 07.30.020). Similarly, first and second class cities may vary their general election date, which is otherwise set at the first Tuesday of October (AS 29.10.045, AS 29.10.030 (cum supp.), AS 29.17.126). In third and fourth class cities the choice of election date is apparently left completely to local option. Under the present laws, then, it is permissible for a city to set one election date and the borough another, and both may be at a time other than the date of the state general election. As indicated, though, most of the larger cities, and all boroughs, rely on the first Tuesday of October as the regular election date.

Turning to other matters respecting the proposed code, I hope you will not mind my making a brief observation or two which might be of at least some limited usefulness in meeting possible objections to enactment prior to this time. The objections to the committee section authorizing differential rates of property taxation on land, fixtures, and personal property might be diminished somewhat by limiting application to situations in which land is ripe for building development; this would be in accord with the apparent purpose of the provision to encourage the most productive land use,

and perhaps reduce apprehension that a category might be arbitrarily singled out for a heavy tax burden. Another alternative might be to limit the number of mills by which the rates might vary.

Narrowing down the number of taxing provisions binding on home rule governments, notably sec. 29.53.010 (which calls for taxation only as provided in the code chapter), might help meet an objection to code adoption without the differential tax rate section included within it. Home rule governments, being bound only by those provisions of the proposed new title which are made expressly binding, would then be free to require differential levy by home rule ordinance, assuming home rule constitutionally extends to taxing powers under the provisions of the state constitution (i.e. art. X, sec. 2, providing that the state "may delegate" taxing powers to boroughs and cities only).

Finally, for those being unsure of the code's effect, perhaps placing an extended effective date on its becoming law would be useful, to permit very ample time for detailed local study and possible amendment; for example, an effective date of July 1, 1972. Or am I getting desperate?

GH/sm

A M E N D M E N T

IN THE SENATE

TO: SENATE CS FOR HOUSE BILL NO. 208

Page 7, line 28: After ".020" insert "(b)"

Page 17, line 28: Strike "at the time of the general election" and substitute "on the first Tuesday of October"

Page 18, line 1: Strike ", unless provided otherwise by ordinance"

Page 22, line 29: Strike "Tuesday after the first Monday" and substitute "first Tuesday of October"

Page 23, line 1: Strike "in November"

Page 25, lines 28 - 29: Strike "every year on the Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 27, lines 12 - 13: Strike "Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 29, line 8: Strike "municipal"

Page 29, line 9: Strike "Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 29, lines 22 - 23: Strike "municipal election on the Tuesday following the first Monday in November" and substitute "election held on the first Tuesday of October"

Page 35, line 22: Strike "in home rule and general law municipalities"

Page 35, line 23: Strike "Tuesday after the first Monday in November" and substitute "first Tuesday of October"

Page 123, line 24: Strike "Tuesday following the first Monday in November" and substitute "First Tuesday of October"

Page 124, line 14: Reword the amendment comprising part of SCS CSHB 208 and beginning at page 124, line 14 as follows: Page 124, line 14: After "title." add the following new matter: "The provisions of

this title establishing the regular municipal election date as the first Tuesday of October of even-numbered years, or at an interval of years provided by ordinance, shall be implemented by general law cities and boroughs not already having that election date by November 5, 1974 but not before November 6, 1973."

To illustrate: In the Kenai Peninsula Borough about $160,000,000 of the total assessed value of $280,000,000 is in petroleum industry developments. A 30 mill tax on the industrial property would produce $4,800,000; the present 5 mill tax rate on all classes produces $1,400,000. The classes of property included in the $160,000,000 can be described as: property utilized in the exploration, development, production, storage, processing and transportation of non-renewable resources and including enterprises engaged exclusively in servicing these activities (such as well drilling).

A major state interest in the prospective effect of 29.53.025 (a) as to petroleum industry property taxation is illustrated as follows: a new liquefaction plant which may cost $75,000,000 is in prospect. A 30 mill tax would produce $2,250,000 a year or at the rate of 3 3/4 ¢ (three and three-quarter) per MCF at a consumption of 60 billion cu ft of gas a year (approx. amount for present plant). This would be more than twice the current rate of state royalty and production tax revenue. A thirty mill tax rate - or the prospect of it - would certainly affect the state's economic relations with the prospective development.

As a general policy the local government property tax should be applied in a normal manner for normal functions and purposes. It should not be open to manipulation to provide a special tax haven for most of the people at the expense of the remainder in areas specially favored with developments of unprecedented high value.

Neither should the tax authority be open to taxing a selected class or classes at the maximum of 30 mills to produce an unprecedented high level of revenue with other classes being taxed not at all.

If there is to be the prospect of taxation of oil industry property differently from other property normally subject to ad valorem tax, and there is to be the prospect of a rate at any level up to the 30 mill maximum without regard to requirements for normal local government purposes, it is the legislature that should make such surcharge levy on behalf of all the people to be allocated according to need and other equitable measurements.

CONCERNING THE MUNICIPAL CODE PROVISION 29.53.025: "(a) MUNICIPALITIES MAY EXCLUDE OR EXEMPT PROPERTY FROM TAXATION BY ORDINANCE RATIFIED BY THE VOTERS AT A REGULAR OR SPECIAL ELECTION."

We have a unique property tax situation that involves boroughs and cities, the unorganized borough and - most of all - the state. This is the extreme abnormality of huge capital intensive petroleum industry developments - unevenly distributed - that may in five years have a taxable value in excess of all the rest of the taxable real and personal property in the state.

Most of such developments create only negligible requirements for public services, except during the temporary exploration and development boom period. In remote and isolated areas such as the North Slope and Drift River no public community needs are created in the vicinity.

In some areas industry developments normally subject to ad valorem tax will represent 75 to 90% of all the taxable property. On the Kenai Peninsula another gas liquefaction plant is anticipated. It may cost about [illegible] and employ not more than 15 workers. No satellite suppliers are involved and negligible support services are needed.

In the areas of industry developments the assessed value of taxable property per capita may reach 15 to 15 times the average for present local tax jurisdictions.

The circumstances cited, when coupled with the authority of 29.53.025(a), would be an invitation to rig a property tax program to tax industrial property only. Under normal circumstances it is not possible to exclude a class or classes of property from taxation without there still being a major percentage of the people shouldering the burden of lost revenue by paying more on the remaining property classes. In such a situation excesses are self limiting.

But our circumstances are not normal. In an area in which a very large percentage of the taxable property is in industrial developments, other classes of property could be exempted, the tax rate could go up to 30 mills without hurting anyone else and yet secure more revenue than previously from all classes of property under a moderate rate.

PAGE 9, LINE 9: AFTER "SERVICES", REMOVE SEMI COLON, SUBSTITUTE COMMA AND ADD THE FOLLOWING: BUT SHALL EXCLUDE ALL AREAS SUCH AS MILITARY RESERVATIONS, GLACIERS, ICE-CAPS, AND UNINHABITED AND UNUSED LANDS UNLESS SUCH AREAS ARE NECESSARY OR DESIRABLE FOR INTEGRATED LOCAL GOVERNMENT.

This is not New language; it is language which inadvertantly was dropped in the codification so should be restored.

PAGE 9, LINE 29: STRIKE "(6)" AND CONTINUE WITH MATERIAL BEGINNING WITH "FOR" FOLLOWING THE SEMI-COLON AFTER "EXERCISED" IN LINE 28. ?

5 and 6 should be combined to facilitate restoration of language omitted in codification, but which is needed.

PAGE 10, LINE 2: AFTER "ONLY" REMOVE THE SEMI-COLON, SUBSTITUTE A PERIOD AND ADD THE FOLLOWING: THOSE POWERS WHICH CAN BE EXERCISED MORE EFFICIENTLY AND ECONOMically ON AN AREAWIDE BASIS BY THE ORGANIZED LOCAL GOVT SHALL BE ASSIGNED TO THE REGIONAL BODIES. IN DETERMINING EFFICIENCY AND ECONOMY, THE PERSONNEL AND ADMINISTRATIVE BENEFIT AND COST OF OPERATION, RESPONSIVENESS TO REGIONAL NEEDS, ABILITY TO OPERATE OVER EXTENDED DISTANCES, THE FEASIBILITY OF INTEGRATING ONE LOCAL GOVT FUNCTION TO BE CONSIDERED.

but will in the law work.

PAGE 15, LINE 18: AFTER "PROVISIONS" DELETE ALL MATTER IN LINES 19-20. *See attatched explanatory material.*

PAGE 16, LINE 21: REDESIGNATE "(b)" AS "(a)."

PAGE 17, LINE 1: AFTER "(b)" DELETE ALL MATTER. *since it is no longer pertinent.*

PAGE 17, LINE 1- : REDESIGNATE "(c)" AS (b): ~~[illegible]~~

NOTE: IN REDESIGNATED SUBSECTION "(a)", OR IN ANY SUBSECTION ~~[illegible]~~, ~~[illegible]~~ SUBSECTION ~~[illegible]~~ REGIONAL statewide FUNCTIONS may be included ~~[illegible]~~ OF THE VALUE OF AN OWNER-OCCUPIED DWELLING." *or "unimproved land" etc*

Mike, please note....

Separate amendment prepared for Senate on this point:

Page 124, line 19. This section should be whited out if this is sent over to the Senate.

Rec'd this information from Greg M. 4/17/71

Kathe

1. Registration D
2. SOC ADM limit — or combined town/sch. bd.
3. election dates
4. tax [illegible] for elder citizens
5. [illegible]
6. City employee pension [illegible]
7. Council/Attorney employment of [illegible] officers

Cost analysis of Senator Hensley's amendment to municipal code. Would pay to all cities incorporated after January 1, 1968, ten dollars for each person who voted on the incorporation question.

The following 45 cities were incorporated from January 1, 1968 through January 1, 1972:

City	Incorpo. Date	No. of Voters at Election	Amount
Akiak	July 9, 1970	24	240
Akolmiut	August 26, 1969	97	970
Alakanuk	November 5, 1969	40	400
Aleut Community of St. Paul Island	June 29, 1971	70	700
Ambler	March 26, 1971	36	360
Anvik	October 6, 1969	32	320
Brevig Mission	October 6, 1969	24	240
Clarks Point	March 26, 1970	23	230
Deering	October 28, 1970	18	180
Diomede	October 28, 1970	22	220
Eek	July 9, 1970	28	280
Elim	October 19, 1970	54	540
Fortuna Ledge	July 19, 1970	18	180
Galena	October 26, 1971	45	450
Golovin	March 26, 1971	27	270
Goodnews Bay	July 9, 1970	26	260
Grayling	June 9, 1969	30	300
*Holy Cross			
Huslia	June 9, 1969	25	250
Kaltovik	March 26, 1971	37	370

*Holy Cross information not available at present.

Kaltag	June 9, 1969	29	290
Kivalina	June 23, 1969	50	500
Kotlik	October 28, 1970	52	520
Koyuk	October 19, 1970	40	400
Lower Kalskag	August 27, 1969	29	290
Manokotak	October 19, 1970	69	690
Mekoryuk	September 24, 1969	69	690
Napakiak	October 19, 1970	51	510
Napaskiak	October 27, 1971	51	510
Newhalen	October 26, 1971	29	290
Nikolai	July 9, 1970	15	150
Nondalton	May 18, 1971	36	360
Pilot Station	October 6, 1969	47	470
Russian Mission	October 28, 1970	29	290
Saint Michael	July 15, 1969	26	260
Savoonga	October 6, 1969	53	530
Shageluk	July 9, 1970	28	280
Shaktoolik	October 7, 1969	31	310
Shishmaref	July 15, 1969	52	520
Stebbins	July 15, 1969	52	520
Tenakee Springs	October 26, 1971	40	400
Togiak	June 23, 1969	60	600
Tuluksak	October 23, 1970	46	460
White Mountain	July 15, 1969	18	180
Whittier	July 15, 1969	56	560
	TOTAL		$17,340

MEMO

TO: Joint Senate and House Local Government Committees DATE: March 24, 1971

FROM: The Chairmen

SUBJECT: Summary of Proposed Amendments to Senate Bill No. 113

This is a summary of the substantive amendments to Senate Bill No. 113 proposed by the Chairmen of the Senate and House Local Government Committees.

A second class borough is permitted to reclassify as a third class borough, not only as a first class borough. This change restores existing law. Moreover, a third class borough voting on whether or not to reclassify is given the option to vote at the same time on retaining a combined assembly and school board. (Sec. 29.08.040)

All municipalities which incorporate or reclassify after the effective date of this act, except municipalities which unify, will receive transitional grants of $10 per registered voter. There will be a minimum grant of $25,000 for municipalities having or assuming the school power. (Sec. 29.18.180)

The elections of borough assemblies, city councils, and school boards will be held every two years on the same date as the State election, unless a locality provides by ordinance for different terms, which may not exceed four years in length. If a locality chooses to have different terms it will, of course, have elections in odd-numbered years, but they will take place on the second Tuesday after the first Monday in November. (Sec. 29.23.040, Sec. 29.23.200, Sec. 29.23.-310)

School budget items are excluded from the items in appropriation ordinances which a borough chairman may strike or reduce by veto. Also, two-thirds of the assembly, rather than three-fourths, can override a veto. (Sec. 29.23.170)

City council members may be elected by districts as well as at large. (Sec. 29.23.200)

Second class cities (our present fourth class cities) may submit an annual statement of income and expenditures to the Local Affairs Agency in place of an audit. The State payment of shared revenues is contingent on the submittal of these audits or statements. (Sec. 29.23.560)

Any person registered to vote, not only a person who votes, may contest an election. If he ~~xxxxxxx~~ succeeds, the borough will pay for the recount; if he loses, he must bear the costs. (Sec. 29.28.050)

When a borough proposes (on its official map) to reserve lands for public use it must notify the persons on and adjacent to such lands. (Sec. 29.33.095)

The provisions of CS for HB 86, providing that home-rule and general law municipalities may change their names by an ordinance ratified by the voters, are included in the bill. (Sec. 29.48.010)

Second class boroughs may by ordinance exercise garbage and solid waste disposal in the area outside cities. (Sec. 29.48.020)

Cities will adopt and enforce building, housing, and related codes for the area inside cities and boroughs will exercise this function in the areas outside cities, unless a borough and a city agree to have the former exercise this function areawide. (Sec. 29.48.035)

General law cities may, as under existin law, exempt or exclude civic centers and boats from property tax, by ordinance. They may grant additional exemptions and exclusions by an ordinance ratified by the voters. (Sec. 29.53.025)

The combined borough and city property tax levy inside a city may not exceed 3% of assessed valuation. (Sec. 29.53.050)

Boroughs and cities are given the option of replacing property taxes and/or sales and use taxes with an income tax not to exceed 10% of the State income tax. The State will collect the local income tax and remit it less the costs of collection. (Sec. 29.53.470)

When a borough votes to pledge its full faith and credit to guarantee bonds for the area outside cities or for service areas, the question must carry in these areas as well as areawide. (Sec. 29.58.340 (d))

Boroughs and cities may assess the real property of governments (Federal, State and local) and private citizens for all or part of the costs of capital improvements which benefit such property. Payment of the assessment by governmental units is made a condition of receiving the benefit. In the case of private property, payment is a lien against the property. (Sec. 29.63.010)

A borough is expressly permitted to have special services or a higher level of services in different service areas so long as tax rates vary accordingly. This clarifies existing law in the light of a recent court ruling. (Sec. 29.63.090)

The existing law on the civil tort liability of local governments is restored. (Sec. 29.73.010)

MEMO

TO: Joint Senate and House Local Government Committees

FROM: The Chairmen

SUBJECT: Proposed Recommendations for Committee Substitute for Senate Bill No. 113

DATE:

Page 2, line 16:	Redraft (b) so as to provide that a second class borough can reclassify to third class borough (as in existing AS 07.35.020), and that when a third class borough reclassifies to first or second class it may vote to continue a combined assembly and school board. If they vote, however, to have a separate school board, a provision should be added to have the assembly call a later election for this, as under 29.18.[illegible] in the proposed Code.
Page 3, line 6:	Strike "on" and substitute "before
" " 10:	Strike "if no" and substitute "unless"
Page 5, line 24:	After "initiative" insert "referendum"
" " 25:	Strike "29.28.100" and substitute "29.28.060-110"
Page 6, line 17:	After "(14)" insert "29.53.010"
Page 6, line 19:	Add "(15) 29.68.010 (Annexation and Exclusion), 29.68.030-110 (Merger and Consolidation), 29.68.500-580 (Dissolution), 29.73.010 (Actionable Claims Against a Municipality), 29.73.020 (Eminent Domain), 29.73.030 (Adverse Possession), 29.73.040 (Taxation of Municipalities).
Page 8, line 21:	Add the substance of No.'s 1-5 of pages 2-3 of the Anchorage Borough administration packet, excluding the last sentence of point No. 3. Also, draft an express provision for "special services or a higher level of services, and correspondingly different rates of taxation in service areas."
Page 9, line 24:	After "petitions" insert "for election of initial officers"
Page 11, line 6:	Strike "First Tuesday of the following October" and substitute "next regular city election"
Page 11, line 12:	Strike "Special service districts and"
" " 16:	" "district and"
" " 18:	" "district or"
" " 19:	" "former district"
" " [illegible]:	" "district or"
" " [illegible]:	" "district or"
" " [illegible]:	" "district or"
" " [illegible]:	Insert between "cities" and "service" the word "and"; strike "and special districts"
Page 12, line 9:	Strike "or special district"; insert "and" between "city" and "servic
" 11-12:	Strike "or special district"; insert "and" between "city" and "servic
" [illegible]:	Strike "or special district"

Page 15, line 8:	Redraft to provide for borough election every two years at the same time as the state election, unless otherwise provided by ordinance. (Sec. 29.23.040 REGULAR TERM OF OFFICE)
Page 15, line 28:	Delete "two months" and substitute "month," and add "unless otherwise provided by ordinance."
Page 19, line 23:	Before "equal" insert "approximately" and after "equal" delete "voter representation" and substitute "population"
NOTE:	Borough school "zones" authorized on page 26, line 3.
Page 22, line 6:	After "ordinances" insert "except for school budget items"
" 8:	Delete "three-fourths" and substitute "two-thirds"
Page 22	Redraft so as to provide that borough, city, and school board elections in all municipalities, including home-rule, shall be at the same time as the state election; they shall be held every two years "unless otherwise provided by ordinance".
Page 26, lines 4-5:	Add a provision specifying the school board election date
Page 28, line 4:	Before the first sentence, insert the following new matter: "Adoption of a manager plan may be initiated either by petition or upon motion of the assembly or council.'
" " 12:	After "of" strike "the" and substitute "a"; after "petition" add "or upon its motion"
Page 30, line 18:	After "audit" add "or in the case of second class cities an audit or statement of annual income and expenditures"
" " 12-13:	Add a provision that compliance with the provisions of Sec. 29.23.560
13-14:	of this chapter is a prerequisite to receipt of state shared-revenues under AS 43.18, and the state shall withhold annual allocations under that chapter in the event of noncompliance until such time as the report requirements are complied with.
NOTE:	AS 14.12.040 is to be amended so as to conform with the optional two year sequence for municipal elections.
Page 32, line 18:	Elections may be contested by a registered voter
Page 32, line 19:	Redraft (d) so as to provide that the borough and city will pay the cost of an election recount if the contestant succeeds.
" 22:	Before "voter" insert "registered"
NOTE:	Redraft the definition of "voter" on page 115, line 17 as "registered voter": a voter registered with the state or, if not registered with state, meets whatever requirements are prescribed by the municipality as well as meeting all other requirements of the state constitution.
Page 34, line 4:	Strike "next preceding" and substitute "last"
Page 36, line 23:	After "repealed" add a new sentence: "A municipal charter may be amended as provided in the charter or by initiative and referendum as provided in 29.28.060-110
Page 42, lines 2-4:	After "assembly" strike all matter through "membership" and substitute the following: "except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council."
Page 43, line 8:	Strike "execution" and substitute "implementation"
" " 12-13:	After "commission" insert "The planning commission shall undertake an overall review of the plan at least once every two years and shall present recommendations based on the review to the assembly."
Page 43, line 26:	Insert "zoning" before "regulations"

Page 46, line 18: After "submits a" strike all matter to "reservation" and substitute "subdivision plan for approval by the platting board."

" " 21: After "use" insert "or otherwise develop the land included in the reservation"

" " 22: Strike "begins" and substitute "files"

" " 25: After "structure" insert "or otherwise develops the land"

" " 27: Under 29.33.095 insert a requirement that notice be given to persons adjacent to or on reserved areas of the proposed adoption of an official map.

Page 48, line 20: After "boundaries" insert "but may delegate by resolution or ordinance part or all of its functions to the borough."

" " 17: After "by" insert "resolution or"

Page 52, line 9: Before "owners" insert "municipality or"

Page 55, lines 4-5: Provide for the orderly transfer of assets, liabilities, powers, duties, rights of a city or a service area upon the assumption of additional areawide powers, ~~for written notice of assumption~~, and for orderly transfer upon consultation of borough and city officials. Pattern this after the existing transitional provisions in AS 07.10.130-140.

Page 58, lines 19-20 Insert "(5) Provide for garbage and solid waste disposal."

Page 60, lines 11-[illegible] Strike all matter after "(14)" and substitute "Building, housing, and related codes, except that building code powers being exercised on an areawide basis prior to the effective date of this act may continue to be exercised on that basis, upon agreement of the city and the borough."

" " 20: Redraft to clarify that a first class borough may exercise the powers conferred by (a) of this section only after....a second class borough may exercise...

Page 72 Draft a new section(s) to provide that general law municipalities may exempt or exclude boats and civic centers from property tax; they may grant other exemptions and exclusions "by an ordinance to be ratified by the voters"

Page 73, line 12: After "valuation." add "including the combined levy of borough and city taxes within a city."

Page 84, lines 15-16: After "foreclosure" add "The deeds shall be recorded in the recording district in which the property is located."

Page 84, line 25: After "taxes" insert "and costs of foreclosures"

Page 86, line 10: Before "cities" insert "Home-rule and first class"

Page 86, lines 3-4 Add language to this effect: "Instead of property taxes or sales taxes, a borough or city may levy and collect an income tax equal to 10% of the state income tax payment. This is to be collected by the state and refunded to the local government, less costs of collection not in excess of 2% of the amount collected. The computations of the State Department of Revenue shall be final." Remove the existing prohibition of an income tax by home-rule and general law cities found in AS [illegible].

Page 91, lines 15-16 Add the existing provisions of AS 29.25.355

Page 94, line 15	Add language or redraft so as to provide that bonded debt for the areas outside cities only or for service areas must be approved by the voters in those areas; when the full faith and credit of the entire borough is to be pledged to the bonded debt of those areas, it must be approved by the voters of the borough on the same day as those areas vote on incurring a bonded debt.
NOTE:	Incorporate CS for HB 86, which provides that municipalities, including home-rule, may change their names by an ordinance ratified by the voters.
Page 94, line 19:	Strike "state, borough, and city" and substitute "the property of a governmental unit."
" " 21:	After "capital improvements" add "In the event a governmental unit benefitted by the assessment refuses to pay the assessment, it shall be denied the benefit of the improvement."
Page 98, line 27:	After "if" insert "consistent with the purposes of Art. X of the state constitution"
Page 99, lines 1:	After "may" insert "exercise or"
" " 3:	After "each" insert "exercised or"
Page 113, line 15:	Strike "Sec. 29.73.010" and substitute the existing language of AS 09.65.070. "An action may be maintained against a unit of local government or public corporation of like character in its corporate character and within the scope of its authority, or for an injury to the rights of the plantiff arising from some act or ommission of the unit of local government."
Page 115, line 5	Where the phrase "newspaper of (or having) general circulation within the municipality" appears in the proposed Code, insert after "circulation" the word "distributed", e.g. page 108, lines 20-21.
" " 8:	Strike "seven" and substitute "five"

19 APR 71

Rep. Miller:

By mistake, the separate bill you wanted was drafted as an amendment to CSSB 113. Anyway, notice that it permits a local income tax on "municipal residents." I thought you also wanted to allow taxing the income of non-residents working in a municipality. (The phrase "income" as used in this amendment would include rental, dividend, capital gains, and proprietary (self-employed) incomes as well as business profits.)

Jim

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99801

April 19, 1971

MEMORANDUM

TO: Senator Merdes

FROM: Greg Machyowsky, Legislative Counsel

SUBJECT: Brief explanation of attached amendment to CSHB 208 am (New Sec. 29.53.470 of bill)

This amendment authorizes cities and boroughs to levy municipal income taxes on residents' incomes, as an alternative to either property or sales taxes (the amendment would permit a local government levying only one of the two presently permitted taxes to levy the income tax). The local levy and collection is tied to the state income tax.

GM:ls

AMENDMENT

IN THE SENATE BY THE LOCAL GOVERNMENT COMMITTEE

TO: CS FOR HOUSE BILL NO. 208 (as amended)

Page 1, line 11, after " - 40.15.180" insert ", 43.20.290"

Page 8, line 16: After the last matter on the line insert: ", 29.53.470 (income tax)"

Page 94, between lines 11 and 12, add the following new matter:

Sec. 29.53.470. MUNICIPAL INCOME TAX. As an alternative to either the property tax or sales and use tax, a home rule or general law municipality may by ordinance levy an income tax upon the income of municipal residents not exceeding 10 per cent of the Alaska income tax obligations of the taxpayer. The municipal income tax is collected by the Department of Revenue and remitted to the municipality less the costs of collection, which may not exceed two per cent of the amount collected. Determinations of the Department of Revenue with respect to sufficiency of the taxpayer's return, amount of tax collected and costs of collection shall be final and not subject to appeal.

A M E N D M E N T

IN THE HOUSE BY THE LOCAL GOVERNMENT COMMITTEE

TO: CS FOR HOUSE BILL NO. 208 (CSSB 113)

Page 43, lines 24 - 29, page 44, lines 1 - 29 and page 45, lines 1 - 16, strike all matter and substitute the following:

Sec. 29.33.050. EDUCATION. Each borough constitutes a borough school district and establishes, maintains and operates a system of public schools on an areawide basis as provided in AS 14.14.060.

Page 58, line 13: Strike "shall"

Page 72, lines 17 - 19: Strike all matter beginning with "However"

Page 125, line 28: Add the following new matter:

* Sec. 6. AS 14.14 is amended by adding a new section to read:

Sec. 14.14.060. RELATIONSHIP BETWEEN BOROUGH SCHOOL DISTRICT AND BOROUGH. (a) The borough assembly may by ordinance require that all school money be deposited in a centralized treasury with all other borough money. The borough chairman shall have the custody of, invest and manage all money in the centralized treasury. However, the borough assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibility of a centralized treasury.

(b) When the borough school board by resolution consents, the borough assembly may by ordinance provide a centralized accounting system for school and all other borough operations. The system shall be operated in accordance with accepted principles of governmental accounting. However, the assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibilities of the accounting system.

(c) The borough school board shall submit the school budget for the following school year to the borough assembly by April 1 for approval of the total amount. Within 30 days after receipt of the budget the assembly shall determine the total amount of money

to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within 30 days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is automatically approved. By May 31, the assembly shall appropriate the amount to be made from local sources from money available for the purpose.

(d) The borough assembly shall determine the location of school buildings with due consideration to the recommendations of the borough school board.

(e) The borough school board is responsible for the design criteria of school buildings. Subject to the approval of the assembly, the school board shall select the appropriate professional personnel to develop the designs. The school board shall submit preliminary and subsequent designs for a school building to the assembly for approval or disapproval; if the design is disapproved, a revised design shall be prepared and presented to the assembly.

(f) The borough school board shall provide custodial services and routine maintenance for school buildings and shall appoint, compensate, and otherwise control personnel for these purposes. The borough assembly through the borough executive, shall provide for all major rehabilitation, all construction and major repair of school buildings. The recommendations of the school board shall be considered in carrying out the provisions of this section.

(g) State law relating to teacher salaries and tenure, to financial support, to supervision by the Department of Education and other general laws relating to schools, governs the exercise of the functions by the borough. The school board shall appoint, compensate, and otherwise control all school employees and administration officers in accordance with this title.

(h) School boards within the borough may determine their own policy separate from the borough for the purchase of supplies and equipment.

* Sec. 7. AS 14.14.065 is amended to read:

Sec. 14.14.065. RELATIONSHIP BETWEEN CITY SCHOOL DISTRICT AND CITY. The relationships between the school board of a city school district and the city council and executive are governed in the same manner as provided in sec. 60 of this chapter [AS 07.-15.330] for the school board of a borough school district and the borough assembly and executive.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

March 29, 1971

MEMORANDUM

TO: Joint Senate and House Local Government Committee

FROM: The Chairmen

SUBJECT: Attached proposed amendments to comprise Committee Substitute for Senate Bill No. 113 (with revisions following committee deliberations of March 25, 1971)

March 29, 1971

MEMO

TO: Joint Senate and House Local Government Committee

FROM: The Chairmen

SUBJECT: Summary of Proposed Amendments to Senate Bill No. 113

This is a summary of substantive amendments to Senate Bill No. 113 proposed by the Chairmen of the Senate and House Local Government Committees. All specific proposed amendments are set forth in the memorandum of amendments accompanying this summary.

A second class borough is permitted to reclassify as a third class borough, not only as a first class borough. This change restores existing law. Moreover, a third class borough voting on whether or not to reclassify is given the option to vote at the same time on retaining a combined assembly and school board. (Sec. 29.08.040)

After the effective date of this Act, borougns and cities which incorporate, except as unified or consolidated municipalities, and second class cities which reclassify to first class cities will receive transitional grants of $10 per voter. The minimum grant will be $25,000 for communities assuming the school function for the first time, either by incorporating as boroughs or first class cities or by reclassifying from second class city to first class city. (Sec. 29.18.180)

In selecting lands under the Alaska Statehood Act, it is the policy of the State to make available to boroughs and cities the maximum land area from which to make selections under this section, consistent with the best interests of the State. (Sec. 29.18.190)

The elections of borough assemblies, city councils, and school boards will be held every two years on the same date as the State election, unless a locality provides by ordinance for different terms,

which may not exceed four years in length. If a locality chooses to have different terms it will, of course, have election in odd-numbered years, but they will take place on the Tuesday after the first Monday in November. (Sec. 29.23.040, Sec. 29.23.200, and Sec. 29.23.310)

School budget items are excluded from the items in appropriation ordinances which a borough chairman (or a mayor in a city in the unorganized borough) may strike or reduce by veto. Also, two-thirds of the assembly (or council), rather than three-fourths, can override a veto. (Sec. 29.23.170)

City councils may be elected on a basis other than at-large, if a local ordinance providing another basis of election is adopted. (Sec. 29.23.200)

Second class cities (present fourth class cities) may submit an annual statement of income and expenditures to the Local Affairs Agency in place of an audit. The State payment of shared revenues is contingent on the submission of these audits or statements. (Sec. 29.23.560)

A qualified voter contesting an election will bear the costs of a recount unless the result of the election is reversed by the recount. (Sec. 29.28.050)

State law relating to teacher salaries and tenure, financial support, Department of Education supervision of schools, other general laws relating to schools, and the appointment, compensation, and control of school employees and administrative officers specified in AS 14 are binding on home-rule as well as general law municipalities. (Sec. 29.33.050 (h), and Sec. 29.43.030)

Summary of Proposed Amendments to SB No. 113, cont'd.

The authority for general law municipalities to adopt official maps was deleted from the bill by vote of the Joint Committee on March 24, 1971 (Sec. 29.33.095)

The provisions of the Code on the assessment, levy, and collection of property taxes apply fully, rather than only in part, to home-rule as well as general law municipalities (Sec. 29.43.020, Sec. 29.53.010-29.53.350 and Sec. 29.53.400)

The provisions of CH. 12, SLA 1971, providing that home-rule and general law municipalities may change their names by an ordinance ratified by the voters, are included in the bill. (Sec. 29.48.010)

Second class boroughs may by ordinance provide for garbage collection and solid waste disposal in the area outside cities. (Sec. 29.48.020)

The existing law on the power of cities to provide garbage collection and disposal services, including effects on private services in annexed areas, is ~~to be~~ added. (Sec. 29.48.033)

Cities may adopt and enforce building, housing, and related codes for the area inside cities. Boroughs may exercise this power in the area outside cities or areawide by acquiring the power in the same manner as they obtain other powers in such areas. A borough now exercising this power areawide or within a city will continue to do so if the city agrees; otherwise, the city is required to exercise the power in the area inside the city and the borough is required to exercise it outside the city. Boroughs may later acquire the power by transfer from cities or by areawide vote. (Sec. 29.48.035)

The property tax exemptions or exclusions required of all municipalities under present law are retained. (Sec. 29.53.020) General law cities may by ordinance exempt or exclude civic centers and boats from property tax, as under existing law. They may grant additional exemptions or exclusions by an ordinance ratified by the voters. Any exemptions or exclusions granted by home-rule municipalities before the effective date of this Act are not affected. (Sec. 29.53.025)

Added is the existing law which permits boroughs to adjust their property tax structure to that of cities within the borough and permits cities to exempt or exclude from borough taxes property exempted or excluded from city taxes, upon payment to the borough of the money it loses by the cities' action. (Sec. 29.53.025 (c))

Existing law on valuation of farm land for property tax purposes is added. (Sec. 29.53.035)

The combined borough and city property tax levy inside a city may not exceed 3% of assessed valuation. (Sec. 29.53.050)

Boroughs and cities are given the option of adopting an income tax as an alternative to either property taxes or sales and use taxes. The State will collect the income tax and remit it less the costs of collection. (Sec. 29.53.470)

When a borough votes to pledge its full faith and credit to guarantee bonds for the area outside cities or for service areas, the question must carry in these areas as well as areawide. (Sec. 29.58.-340 (d))

Boroughs and cities may assess the real property of governments and private citizens for all or part of the costs of capital improvements

which benefit their property. The State will pay the assessment. Payment of the assessment by other governments is made a condition of receiving the benefit of the capital improvement. In the case of private citizens, payment is made a lien against their property. (Sec. 29.63.010) Existing law limiting the amount of a lump-sum or installment payment of a special assessment and authorizing special assessment bonds is added. (Sec. 29.63.060 and Sec. 29.63.085)

A borough is expressly permitted in service areas to provide different services, or a higher level of services than are provided, areawide or in the borough area outside cities. The provisions clarify existing law. (Sec. 29.63.090)

The section of SB 113 on civil tort liability of local governments is deleted (Sec. 29.73.010) and existing law, at AS 09.65.070, is retained.

A few technical changes will be pointed out in Committee.

Page 1, line 9: Delete "AS 09.65.070"

Page 1, line 11: Strike all matter and substitute the following: "070, 40.15.100 - 40.15.180, and AS 43.20.290."

Page 2, lines 11 - 15: Strike all matter and substitute the following:

Sec. 29.08.040. RECLASSIFICATION. (a) A second class city may be reclassified as a first class city by holding an election on the question as provided in this subsection, if the Local Affairs Agency determines from the best figures avail ble that the population of the city has reached 400 permanent residents.

(b) An election on the question of reclassification may be initiated in two ways:

(1) a number of voters equal to 15 per cent of the number of votes cast in the city at the preceding regular election may file a petition with the council; or

(2) the council may propose reclassification

(c) The council shall hold at least one public hearing within the city on the question. The council shall then evaluate the ability of the city to assume first class status and make its findings public.

(d) The council shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

(e) If more than one question is to be voted on at the election, each appears separately on the ballot.

(f) The council shall certify the election results to the Local Affairs Agency. If the majority of votes cast on the question is favorable, the city shall be considered reclassified to first class status 30 days after certification of the election results.

Page 2, line 16: Delete "(b)" and substitute "(g)"

Page 2, line 17: Delete all matter and substitute the following:

"or third class borough, and a second class borough may reclassify as a first class or second"

Page 2, between lines 20 - 21: Insert the following new matter:

(c) At the time of voting on reclassification of a second class borough to third class status, borough voters in conformity with AS 29.41 shall elect an assembly to serve as the combined assembly and school board of the third class borough if reclassification is approved.

(d) At the time of voting on reclassification of a third class borough to second class or first class status, borough voters shall vote also on the question whether the borough shall upon reclassification retain a combined assembly and school board or a separate assembly and board as otherwise provided for first and second class boroughs. If the majority of votes cast on the question favors retention of the combined assembly and board, the assembly serving at the time of the reclassification election continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board.

Page 2, line 22: After "Act," add: "the current classification of existing home rule cities and of first class cities having 400 or more permanent residents is not affected by this Act;" and strike "second" and substitute "Second"

Page 3, line 6: Strike "on" and substitute "before"

Page 3, line 10: Strike "if no" and substitute "unless"

Page 4, line 18: After "circulation" add "if distributed"

Page 5, line 24: After "initiative" insert "referendum"

Page 5, line 25: Strike "29.28.100" and substitute "29.28.060 - 29.28.110"

Page 5, line 29: After "provisions" insert "of this title"

Page 5, line 29: Strike ", which are prohibited" and substitute "as prohibitions on"

Page 6, line 1: Strike "from"

Page 6, between lines 2 and 3: Add the following new matter:

"(1) AS 29.23.020 - 29.23.050 (city representation and vote on borough assembly)" Renumber next paragraph and add new paragraph (3):

"(3) AS 29.18.140 (borough transition)" Renumber following paragraphs accordingly.

Page 6, line 9: After "29.28.010" insert ", 29.28.020 - 29.28.030"

Page 6, between lines 11 and 12: Add the following new matter:

"(10) AS 29.33.050(h) (school laws)
(11) AS 29.33.295 (acquisition of additional areawide powers)
(12) AS 29.43.020 - 29.43.040 (powers of cities outside boroughs)

(13) AS 29.43.033 (garbage collection and disposal)"

Renumber following paragraphs accordingly

Page 6, lines 17 and 18: Strike all matter and substitute the following:

"(19) AS 29.53.010, 29.53.310 - 29.53.350, 29.53.400 (borough and city property tax)"

Page 6, between lines 18 and 19: Add the following new matter:

"(20) AS 29.58.180(b) (security for bonds)

(21) AS 29.68.010 (annexation and exclusion)

(22) AS 29.68.030 - 29.68.110 (merger and consolidation)

(23) AS 29.68.500 - 29.68.580 (dissolution)

(24) AS 29.73.020 (eminent domain)

(25) AS 29.73.030 (adverse possession)

(26) AS 29.73.040 (taxation of municipalities)

(27) AS 29.73.050 (municipal name changes)

Page 9, line 24: After "petitions" insert "for election of initial officers"

Page 9, line 25: Strike "for 30 days"

Page 9, line 26: After "municipality" insert "for 30 days before the date of the election order"

Page 10, line 20: Before "first" insert "home rule or"

Page 10, line 25: Before "first" insert "home rule and"

Page 11, line 3: Before "elected" insert "the initial"

Page 11, line 5: Before "first" insert "home rule or"

Page 11, line 6: Strike "first Tuesday of the following October" and substitute "next regular city election"

Page 11, line 12: Strike "Special service districts and"

Page 11, line 16: Strike "district and"

Page 11, line 18: Strike "district or"

Page 11, line 19: Strike "former district"

Page 11, line 21: Strike "district or"

Page 11, line 22: Strike "district or"

Page 11, line 23: Strike "district or"

Page 11, line 29: Strike "cities, service areas, and special districts" and add "home rule or general law cities and service areas"

Page 12, line 9: Strike "or special district"; insert "and" between "city" and "service"

Page 12, line 11 - 12: Strike "or special district"; insert "and" between "city" and "service"

Page 12, line 14: Strike "or special district"

Page 12, lines 24 - 29: Strike all matter and substitute:

"each borough and city incorporated or, in the case of a second class city, incorporated or reclassified after the effective date of this Act, other than a unified municipality incorporated under the provisions of ch. 134 SLA 1967, as amended, or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to $10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough, and each first

class city incorporated or established by reclassification, is entitled to at least $25,000.

(b) Within 30 days after the date of incorporation of a borough or city following the effective date of this Act the Local Affairs Agency shall determine the number of"

Page 13, line 1: Strike "last general" and substitute "incorporation"

Page 13, line 8: After "boundaries." add the following new matter: "In the selection of land under the Alaska Statehood Act, it is the policy of the state to make available to cities and boroughs the maximum land area from which to make selections under this section consistently with the best interests of the state."

Page 14, line 15: Before "first" insert "home rule or"

Page 14, line 16: Before "first" insert "home rule or"

Page 14, line 27: Before "first" insert "home rule and"

Page 14, line 29: Before "first" insert "home rule and"

Page 15, line 4: Before "first" insert "home rule and"

Page 15, line 7: Before "first" insert "home rule and"

Page 15, line 9: Strike all matter after "every" and substitute the following: "two years at the time of the general election"

Page 15, line 10: Before "first" insert "home rule and"

Page 15, line 10: Omit "staggered"

Page 15, line 11: After "terms" insert ", unless provided otherwise by ordinance, and until their successors are elected and have qualified"

Page 15, line 16: Omit "must be staggered and none may" and insert "may not"

Page 15, line 17: After "years." add the following new matter: "The current term of incumbent assemblymen may not be altered."

Page 15, line 21: Before "first" insert "home rule and"

Page 15, line 22: Before "first" insert "home rule or"

Page 15, line 25: Before "first" insert "home rule and"

Page 15, line 28: Delete "two months" and substitute "month," and add "unless otherwise provided by ordinance."

Page 17, line 3: Before "first" insert "home rule or"

Page 17, line 8: Before "first" insert "home rule and"

Page 17, line 12: Before "first" insert "home rule and"

Page 17, line 13: Before "first" insert "home rule and"

Page 17, line 16: Before "voters" insert "borough"

Page 17, line 16: Before "first" insert "home rule or"

Page 17, line 20: Before "first" insert "home rule or"

Page 18, line 7: Before "the" insert "a majority of the remaining membership of the"

Page 18, line 9: Before "first" insert "home rule or"

Page 18, line 10: Before "assemblymen" insert "a majority of the remaining"

Page 18, line 11: Before "first" insert "home rule and"

Page 18, line 11: After "outside" insert "home rule and"

Page 18, line 22: Before "voters" insert "borough"; before "first" insert "home rule or"

Page 19, line 9: Before "first" insert "home rule and"

Page 19, line 14: Before "first" insert "home rule and,"

Page 19, line 15: Before "first" insert "home rule and"

Page 19, line 16: Before "first" insert "home rule and"

Page 19, line 19: Before "first" insert "home rule and"

Page 19, line 21: Before "first" insert "home rule and"

Page 19, line 23: Strike "equal voter" and substitute "approximately equal population"

Page 20, line 3: After "years" insert "and until a successor is elected and has qualified"

Page 22, line 6: After "ordinances" insert "except for school budget items"

Page 22, line 8: Delete "three-fourths" and substitute "two-thirds"

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1 Page 22, line 16: After "election" insert "and until a successor is elected
2 and has qualified"
3 Page 22, line 23: After "large." add the following new matter: "The council
4 of a first or second class city may by ordinance provide for election
5 of members other than on an at large basis for all members."
6 Page 22, line 29: Strike "staggered"
7 Page 22, line 29: After "terms" add "and until their successors are elected
8 and have qualified"
9 Page 23, line 18: Before "shall" insert "by vote of a majority of its re-
10 maining members"
11 Page 23, line 19: After "election" insert "and until a successor is elected
12 and has qualified"
13 Page 24, line 2: After "years" insert "and until a successor is elected and
14 has qualified"
15 Page 24, line 18: After "ordinances" insert "except, in a city outside an
16 organized borough, for school budget items"
17 Page 24, line 18: Delete "three-fourths" and substitute "two-thirds"
18 Page 24, line 27: After "election" insert "and until a successor is elected
19 and has qualified"
20 Page 26, line 2: Before "All" add the following new matter: "Members are
21 elected at the regular municipal election held on the Tuesday after
22 the first Monday in November for two-year terms and until their suc-
23 cessors take office. However, the board may by ordinance provide for
24 different terms not to exceed three years."
25 Page 26, lines 10 - 13: Strike all matter and substitute the following:
26 (b) Members of the board are appointed by the municipal executive
27 and confirmed by the assembly or council as are elected at the regular
28 municipal election on the Tuesday following the first Monday in Novem-
29 ber. The term of a utility board member is two years and until a

successor is elected and has qualified. However, the assembly or council may by ordinance provide for a different term not to exceed four years.

Page 26, line 17: After "term" insert "and until a successor is elected and has qualified"

Page 28, line 4: Before the first sentence, insert the following new matter: "Adoption of a manager plan may be initiated either by petition or upon motion of the assembly or council."

Page 28, line 12: After "petition" insert "or upon its motion"

Page 30, line 8: Before "Home" add "(a)"

Page 30, line 12: After "audit" add "or in the case of second class cities an audit or statement of annual income and expenditures"

Page 30, between lines 13 - 14: Insert "reports relating to long-term debt as provided in AS 44.19.205.

(b) Compliance with the provisions of this section is a prerequisite to receipt of state shared-revenues under AS 43.18. The state shall withhold annual allocations under that chapter in the event of noncompliance until such time as the report requirements are complied with."

Page 31, line 25: After "election" insert "in home rule and general law municipalities"

Page 31, line 26: After "November," add "every even-numbered year, or at an interval of years provided by ordinance."

Page 32, lines 1 - 3: Strike all matter and substitute the following: he is a United States citizen who has been a resident of Alaska for one year and of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections or meets registration requirements of the municipality if any and is not disqualified under art. V of the state constitution. This section

applies to home rule and general law municipalities.

Page 32, line 12: Strike "voter" and substitute "person qualified to vote in the municipality"

Page 32, line 20: After "contestant" insert "if the recount reverses any result of the election"

Page 32, line 22: Strike "a voter" and substitute "qualified to vote in the municipality"

Page 34, line 3: Strike "next preceding" and substitute "last"

Page 36, line 13: After "repealed" add a new sentence: "A municipal charter may be amended as provided in the charter or by initiative and referendum as provided in AS 29.28.060 - 29.28.110."

Page 41, lines 8 - 10: Strike all matter and substitute the following:

(h) State law relating to teacher salaries and tenure, to financial support and to supervision by the Department of Education governs the exercise of the functions by the borough. This subsection applies to home rule and general law boroughs.

Page 41, line 11: Strike "by the borough." and substitute "(i)"

Page 41, line 18: After "from" insert "a boundary of"

Page 42, between lines 2 - 4: After "assembly" strike all matter through "membership" and substitute the following: "except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council"

Page 43, line 8: Strike "execution" and substitute "implementation"

Page 43, between lines 12 - 13: After "commission" add the following new matter: "The planning commission shall undertake an overall review of the plan at least once every two years and shall present recommendations based on the review to the assembly."

Page 43, line 18: Insert "zoning" before "regulations"

Page 44, lines 10 - 29: Strike all matter

Page 45, lines 1 - 29: Strike all matter

Page 46, lines 1 - 29: Strike all matter

Page 47, lines 1 - 29: Strike all matter

Page 48, lines 1 - 15: Strike all matter

Page 48, line 17: After "by" insert "resolution or"

Page 48, line 20: After "boundaries" insert "but may delegate by resolution or ordinance part or all of its functions to the borough"

Page 52, line 9: Before "owners" insert "municipality or"

Page 55, line 4: After "results." add the following new matter:

Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxe or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebteaness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bonds for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This section applies to home rule and general law cities.

Page 56, line 29: After "chapter." add the following new matter:

Powers of this chapter which are incorporated by references to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Page 57, line 1: Strike "First" and substitute "Home rule and first"

Page 57, line 7: Strike "First" and substitute "Home rule and first"

Page 57, line 11: Strike "First" and substitute "Home rule and first"

Page 58, between lines 19 - 20: Add the following new matter:

(5) provide for garbage and solid waste collection and disposal;

(6) provide for water pollution control.

Page 59, line 11: After "garbage" insert "and solid waste collection and"

Page 59, line 11: After "facilities" insert "subject to sec. 33 of this chapter"

Page 59, line 17: After "assumed" insert "in the manner required"

Page 59, line 18: After " - 29.33.290" insert "for areawide exercise"

Page 59, line 18: After "or" insert "in the manner required under"

Page 59, line 18: After " - 29.38.050" insert "for exercise in the borough area outside cities"

1 Page 59, line 19: After "chapter" insert "for exercise in the borough
2 area outside cities"
3 Page 59, between lines 19 and 20, add the following new matter:
4 Sec. 29.48.033. GARBAGE COLLECTION AND DISPOSAL SERVICES. (a)
5 The municipality may by ordinance provide for the establishment,
6 maintenance and operation of a system of garbage collection and dis-
7 posal for the entire municipality or for districts or portions of it;
8 require all persons within the municipality or district to use the
9 system and to dispose of their garbage as provided in the ordinance;
10 award contracts for collection and disposal, or provide for the collec-
11 tion and disposal of garbage by municipal officials and employees;
12 pay for garbage collection and disposal from available funds; require
13 property owners or occupants of premises to use the garbage collection
14 and disposal system provided by the municipality and fix charges against
15 the property owners or occupants of premises for the collection and
16 disposal; provide that charges for collection and disposal shall be
17 paid by the property owner or occupants of the premises; and provide
18 penalties for violations of the ordinances.
19 (b) The council of a first or second class city may not prohibit
20 a person holding a valid permit from the Alaska Transportation Com-
21 mission from continuing to collect and dispose of garbage and provide
22 other related services in an area annexed by the city if the permit
23 authorizes the collection and disposal of garbage and the providing of
24 other services in the area annexed by the city and the permit was
25 originally issued before the area was annexed by the city. If a city
26 provides for a garbage collection and disposal system in an annexed
27 area already serviced by a person allowed to continue under this sub-
28 section, the city may not charge less than the rate set for garbage
29 collection and disposal by the Alaska Transportation Commission for

common carriers.

(c) If the council determines that it is not in the public interest for the city to provide garbage collection and disposal and related services under the restrictions of (b) of this section, it may exercise the power of eminent domain to acquire, at the fair market value, from the person providing the services, that portion of the operating authority representing the services within the city. The fair market value shall be based on the economic loss to the permit holder. If an eminent domain proceeding is instituted, the council may exercise the power through the filing of a declaration of taking with the complaint or at any time after the filing of the complaint, but before judgment.

(d) This section applies to home rule and general law municipalities.

Page 59, lines 11 - 12: Strike all matter and substitute the following: "building, housing and related codes, which may be provided by cities within cities or, in the manner required in (b) of this section, by first or second class boroughs in the borough area outside cities or areawide; however, boroughs which on the effective date of this Act are exercising building, housing or related code powers on an areawide basis or in the borough area outside cities shall, subject to acquisition of the powers on an areawide basis by transfer or election as provided in (b) of this section exercise the powers in the borough area outside cities and, upon agreement of the city and borough, within any city in which the powers are being exercised on the effective date of this Act; if a city does not agree to continued borough exercise of the powers within the city, the city shall exercise the powers within the city."

Page 60, between lines 14 and 15 add the following new matter:

"(16) garbage and solid waste collection and disposal;

(17) water pollution control;"

Page 60, line 15: Delete "(16)" and substitute "(18)"

Page 60, line 15: After "assumed" insert "in the manner required"

Page 60, line 15: After " - 29.33.290" insert "for areawide exercise"

Page 60, line 19: After "or" insert "in the manner required under"

Page 60, line 19: After "- 29.35.050" insert "for exercise in the borough area outside cities"

Page 60, line 20: After "chapter" insert "for exercise in the borough area outside cities"

Page 62, line 22: After "circulation" insert "distributed"

Page 62, line 23: After "circulation" insert "distributed"

Page 66, line 29: After "In" insert "(a) of"

Page 68, line 13: After "municipality" insert "or in the case of a second class city an audit or statement of annual income and expenditures"

Page 69, line 9: After "circulation" insert "distributed"

Page 69, line 20: After "newspaper" strike "published in" and substitute "of general circulation distributed within"

Page 69, line 28: Strike "published in" and substitute "distributed within"

Page 72, between lines 21 and 22, add the following new matter:

Sec. 29.53.025. OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) Municipalities may exclude or exempt property from taxation by ordinance ratified by the voters at a regular or special election.

(b) Municipalities may by ordinance

(1) provide for the assessment of boats and vessels for purposes of taxation on the basis of their registered or certificated net tonnage;

(2) exclude from taxation the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental

of such property does not exceed the actual cost to the owner of the use by the renter.

(c) The provisions of (a) of this section notwithstanding,

(1) a home rule or first or second class borough may, by ordinance adopted without weighted voting, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including, but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient monies to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized as required by law, and which are in effect on the effective date of this Act and not later withdrawn, are not affected by this Act.

Page 73, before line 1, insert the following new matter:

Sec. 29.53.035. FARM OR AGRICULTURAL LANDS. (a) Farm use lands shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain separate assessment records evaluating the farm use land for other than farm use purposes, where applicable. Should the farm use land be sold, leased, or otherwise disposed of, for other than farm use purposes, the owner shall be liable to pay the additional tax for the preceding two years, and the applicable portion of the current tax year, as though the land had

not been assessed for farm use purposes.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before February 1 of each year in which the assessment is desired. The application shall be made upon forms prepared and supplied by the assessor and shall include information which may reasonably be required to determine the entitlement of the applicant.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural or horticultural use or any combination thereof and includes the preparation of the products raised on the farm use land and disposal by marketing or otherwise. It includes the construction and use of dwellings and other buildings customarily provided in conjunction with the farm use. To be farm use land, the owner must be actively engaged in farming the land, and derive at least one-fourth of his yearly gross income from the farm use land. The provisions of this section shall not apply to land which the owner has granted, and has outstanding, a lease or option to buy the surface rights

Page 73, line 8: Strike "Home rule and general law"

Page 73, line 12: After "valuation" insert "including the combined levy of borough and city taxes within a city"

Page 73, line 14: Strike "home rule or general law"

Page 73, line 16: After "30" insert ", 35"

Page 76, line 29: After "filed" insert "or proved at the hearing"

Page 78, line 12: After "statements" strike "July 1" and after "15" insert July 1"

Page 78, line 12: After "statements" insert "setting forth the levy, dates when taxes are payable and delinquent, and penalties and interest"

Page 78, line 15: Strike "of a home rule or general law"

Page 80, line 15: Strike "in" and substitute "distributed within"

Page 80, line 16: After "circulation" add "distributed within the borough"

Page 80, line 17: After "places" insert "for at least 30 days"

Page 83, line 28: After "circulation" insert "distributed"

Page 83, line 29: After "circulation" insert "distributed"

Page 84, lines 9 - 10: Strike all matter.

Page 84, line 15: After "taxes" insert "and costs of foreclosure"

Page 84, between lines 15 and 16: Add the following new matter: "The deeds shall be recorded in the recording district in which the property is located."

Page 86, line 16: Before "Cities" insert "Home rule and first class"

Page 86, lines 17 - 19: Strike "must be levied upon all property within the city listed as taxable on the borough assessment roll and"

Page 86, line 19: Strike "sec. 50" and substitute "secs. 50 and 310 - 350"

Page 88, between lines 3 - 4: Add the following new matter:

Sec. 29.53.470. MUNICIPAL INCOME TAX. As an alternative to either the property tax or sales and use tax a municipality may levy a tax upon the income of municipal residents and computed as a designated per cent of their Alaska income tax obligations. The municipal income tax is collected by the Department of Revenue and remitted to the municipality less the costs of collection, which may not exceed two per cent of the amount collected. Determinations of the Department of Revenue with respect to sufficiency of the taxpayer's return, amount of tax collected and costs of collection shall be final and not subject to appeal.

Page 90, lines 26 - 27: Strike "In a newspaper of general circulation in the municipal area"

Page 90, line 25: Strike "publish" and substitute "have published"

Page 94, lines 10 - 16: Strike all matter and insert the following:

(b) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the

entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas.

Page 94, between lines 15 and 16: Add the following new matter:

Sec. 29.58.350. INTENT. Nothing in this title authorizes the council of a second class city to levy ad valorem taxes unless such a levy is necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments. In that case, assessment, levy and collection shall be made in the manner of a first class city within or outside a borough, as the case may be.

Page 94, line 19: Strike "state, borough, and city" and substitute "the property of a governmental unit."

Page 94, line 21: After "capital improvements" add the following new matter: "The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under sec. 15(8) of this chapter. If a governmental unit other than the state benefited by an assessment refuses to pay the assessment, it shall be denied the benefit of the improvement."

Page 95, line 4: After "the" insert "assembly or"

Page 95, line 29: After "assembly" insert "or council"

Page 96, line 9: After "circulation" add "if distributed"

Page 9 , line 15: After "installments" insert ", but a sum or installmer may not exceed 25 per cent of the assessed value of the property affected"

Page 98, line 12: After "the" insert "assembly or"

Page 98, between lines 17 and 18, add the following new matter:

Sec. 29.63.085. SPECIAL ASSESSMENT BONDS. The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. Interest on the guarantee funds shall be a cost of the improvement district.

Page 98, line 21: After "ordinance." insert the following new matter: "Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or

different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law; in a second class borough an exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question."

Page 98, line 27: After "if" insert "consistent with the purposes of Art. X of the state constitution"

Page 99, line 1: After "may" insert "exercise or"

Page 99, line 3: After "each" insert "exercised or"

Page 113, lines 15 - 29: Strike all matter

Page 114, lines 1 - 2: Strike all matter

Page 114, between lines 13 and 14, add the following new matter:

Sec. 29.73.050. CHANGE OF MUNICIPAL NAME. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Local Affairs Agency.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of

this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order.

Page 115, line 5: After "circulation" insert "distributed"

Page 115, line 6: After "circulation" insert "distributed"

Page 115, line 8: Strike "seven" and substitute "five"

Page 115, line 9: Delete "annual" and after "election" add the following new matter: "held on the Tuesday following the first Monday in November of even-numbered years, or at an interval of years provided by ordinance"

Page 115, line 19: After "who" insert "is registered to vote in state elections or"

Page 115, line 20: After "municipality" insert "if any"

Page 115, line 27: At the end of the section, add the following new matter: "The terms of elected local officials within home rule and general law cities and organized boroughs who are incumbents in office on the effective date of this Act are not affected by this Act. Their terms expire as provided before the enactment of this title. Their successors are elected on the date provided before the enactment of this title and serve for terms to conform with the provisions of this title."

Page 115, line 28: Add the following new matter:

* Sec. 4. AS 14.12.050 is amended to read:

Sec. 14.12.050. SCHOOL BOARD TERMS. (a) The term of office of a member of a borough or city school board is <u>two</u> [THREE] years<u>, unless</u>

different terms not to exceed three years are provided by ordinance, and until a successor takes office. However, if three-year terms are provided, the members of a newly created five-man school board hold office for initial terms as follows: two for a term of three years, two for a term of two years and one for a term of one year, the terms being assigned to the members by lot. If three-year terms are provided, the [THE] members of a newly created seven-man school board hold office for initial terms as follows: Three for a term of three years, two for a term of two years and two for a term of one year, the terms being assigned to the members by lot.

(b) When a transition is made from a five-man school board to a seven-man school board new members shall be elected as follows, if three-year terms are provided: at the first regular school election after the district becomes eligible for a seven-man school board there shall be elected, in addition to the successor or successors to be elected for a regular term, a new member for an initial term of two years and until a successor takes office, and a new member for an initial term of three years and until a successor takes office.

(c) Nothing in this section prevents a school board member from succeeding himself.

S U M M A R Y

COMPARISONS BETWEEN PROPOSED CSSB 113 AND EXISTING MUNICIPAL LAW.

INTRODUCTION

Senate Bill 113, the current version of the revised Municipal Code, is an entire recodification of the laws relating to cities and boroughs now found in Titles 7 and 29. Like other reorganized and updated statutory titles, it incorporates changes from existing law both in form and in substance.

The revision was directed by the 1963 Legislature, which noted that the bulk of law relating to cities (Title 29) was a disjointed product of the territorial period. Addition of the Borough Act as a separate title in 1961 (Title 7) had further confused the municipal law area.

In 1963 and 1964, the Local Affairs Agency, Department of Law and the Legislative Council prepared the first draft of legislation combining and attempting to reconcile the provisions of Titles 7 and 29. The revision was introduced as SB 101 in 1965 and was the subject of widespread hearings around the state, committee deliberations and further revision.

Revised versions of SB 101 were introduced into the legislature in 1966, 1967 and 1969.

SB 113, the current proposal, represents a thorough review by the Alaska Municipal League and governmental agencies at the municipal and state levels. The League felt that revision should be primarily technical and should not attempt to solve the substantive problems existing in two areas, that of relations between cities and boroughs and that of relations between school and general government. Accordingly, the bill in these areas is substantially the same as existing law. (Two limited changes in school board - governing body relationships are noted on page 5.)

It is virtually impossible to detail all of the changes that have taken place between the code and existing municipal law, but this summary will explain the major impact of the revision. The summary takes into account changes proposed for the committee substitute bill; these changes are also separately treated in a memorandum accompanying this summary.

Chapter 3. The Unorganized Borough.

The law regarding the unorganized borough is unchanged.

Chapter 8. Classification of Municipalities (i.e., cities and boroughs)

One of the most significant changes is the change from four classes of cities to two classes of cities. The primary difference in the revision between the first and second class cities is that the first class city has the school function and has the power to assess, levy and collect a general property tax while the fourth class city has neither of these powers. Under present law, first, second and third class cities all have these powers, while fourth class cities do not. A population minimum of 400 persons has been set as the number necessary to incorporate a first class city under this code, as in present law. Existing first, second and third class cities of over 400 persons will automatically become first class cities, retaining their school and tax powers. The revision takes into account the fact that certain existing first, second and third class cities of under 400 persons may not have sufficient population or tax base to assume the burden of the school function. Therefore, these cities are given the option of becoming either first class or second class, depending upon their abilities and desires, as assessed by the local boundary commission and subject to legislative review. Existing fourth class cities will automatically become second class cities with the same powers and responsibilities which they now possess. (Sections 29.08.010 through 29.08.050 and Sections 29.18.010 and 29.18.020) The code provides for reclassification of cities and boroughs to a higher class. Upon

reclassification of a third class borough to a second or first class borough the borough may retain a combined assembly-school board or may separate the functions between an assembly and a board, depending upon the wishes of the voters.

Chapter 13. Home Rule Municipalities

The new code standardizes the procedures for adopting a charter by either a first class city or borough. (Sections 29.13.010 through 29.13.080) Home rule limitations are gathered together in one place and listed. This section makes explicit the legislative intention to make only the sections of the code which are specifically listed as applicable to home rule municipalities so applicable. Additionally, the sections themselves contain a specific statement that they are applicable to home rule municipalities. (Section 29.13.100)

Chapter 18. Incorporation

Incorporation procedures for all municipalities are gathered together and standardized. (Sections 29.18.050 through 29.18.110) The election of the first slate of officers is separated from the question of incorporation itself on the reasoning that (1) many will not run for an office which they are not sure will exist; (2) it is unfair to ask people to expend funds to run for an office which may not be created; and (3) the merits of incorporation should not be affected by the personalities who might file for office.

Present law provides for transitional assistance upon the incorporation of a new borough. In this revision, such transitional assistance is also made available to cities incorporating after the code takes effect. Organizational money grants based on an allocation of $10 per voter are allowed the newly incorporating boroughs and cities of all classes. (Section 29.18.180) Boroughs and first class cities which undertake the school function upon incorporation or reclassification, are given a minimum of $25,000.00.

Under the revised code, both boroughs and cities of all classes may

Under the revised code, both boroughs and cities of all classes may also select 10 percent of the vacant, unappropriated, unreserved state land within their boundaries. (Sections 29.18.100 through 29.18.200) Previously, only boroughs and, as of 1970, first and second class cities, were given this privilege.

Chapter 23. Municipal Officers and Employees

The law relating to borough assemblies, city councils and all municipal officers is gathered into this chapter.

Municipal election dates and terms of office are changed to conform to the date of state general elections, but terms of office may be varied by local ordinance so as to provide staggered terms of four years. (Sections 29.23.040 and 29.23.200(c))

The executive power has remained essentially the same except that the veto power of borough chairmen and mayors of first class cities has been broadened and clarified. In the past, there has been a question of whether a veto could be used for motions and other actions of the assembly or council. It is clearly spelled out that they may be. Additionally, a new authority for the line item veto in municipal budgets has been added. This line item veto does not apply to the school budget since the only power the assembly or council has is to approve or disapprove the total budget. The chairman or mayor may only veto that which the assembly or council has power to enact. (Sections 29.23.170 and 29.23.270) The mayor of a second class city is a member of the council and has no veto power. (Section 29.23.270(b))

The mayor of a first class city is elected separately from the council. The mayor of a second class city is a council member who is elected to the council along with the other council members, who then designate a mayor from among their membership. (Section 29.23.250) The mayor of a first class city votes only in case of a tie and has the veto power.

The mayor of a second class city may vote on all matters as a council member, but he has no veto power. (Sections 29.23.260 and 29.23.270) The borough chairman does not vote on matters before the assembly but has the veto power. (Sections 29.23.160 and 29.23.170) The revision makes clear that city councils may be elected from election districts within the city as well as city-wide, the choice being left to the local governments.

The article on school boards has been substantially shortened, eliminating matters found in Title 14. Utility boards are allowed for boroughs and cities. There are no substantive changes between these sections and current law except that election dates and terms of office have been established to coincide with state general elections with different terms not exceeding four years authorized by local ordinance, and local governing bodies are authorized to provide for centralized purchasing of those school supplies and equipment which are of a kind used by municipal departments. (Section 29.48.-250, and Secs. 29.23.310 and 29.23.340)

Either a borough or a city may adopt or repeal a manager form of government, as under current law. However, a standard procedure has been set forth covering both types of municipality. Under this procedure, either the voters by petition, or the assembly or council by its own motion, may initiate an election on the manager plan. (Sections 29.23.410 through 29.23.480)

The code requires certain reports to be made to the Local Affairs Agency, including up-to-date maps, tax assessment figures, and a financial report. The financial report takes the form of the annual audit for boroughs and first class cities, but second class cities may submit a statement of income and expenditures (Section 29.23.560)

Chapter 28. Elections

The major change affecting elections is the scheduling of municipal elections to coincide with state general elections rather than being held approximately one month earlier, as under current law. (Section 29.28.020) Terms of office of borough, city and school elected officials are also set at two years, but different terms not exceeding four years may be set in all cases by local ordinance.

Municipalities may, but are not required to, impose registration requirements over and above those of the state. (Section 29.28.030) Also,

the municipality may, at its option, require a majority vote for election of officials and utilize a runoff election or other means of obtaining a majority for the purpose. (Section 29.28.040)

Assemblies and councils are required to provide by ordinance for election appeals. If the appeal is successful, the assembly or council bears the cost; if unsuccessful, the contestant must pay. (Section 29.28.050)

The powers of initiative and referendum are reserved to municipalities and the procedure for exercise of these powers by municipal residents is outlined. (Sections 29.28.060 through 29.28.110)

The section on recall has been changed to eliminate the successor running at the same election as the recall election. Should the recall be successful, a subsequent election is required to elect a successor (Section 29.28.130 through 29.28.250)

Chapter 33. Areawide Borough Powers and Duties

Boroughs retain their basic areawide responsibilities prescribed by current law: (1) Assessment and collection of taxes; (2) Education; and (3) Planning, platting and zoning. However, under current law, the borough is charged only with assessment and collection of real and personal property taxes. The assessment and collection provision of the new code broadens this to include the collection of use and sales taxes authorized by the voters. (Section 29.33.030)

There has been considerable smoothing out in the planning, platting and zoning article, with two significant alterations. One is that the planning commission itself may decide on variances subject only to appeal to the board of adjustment. Under the current procedure all variances, no matter how routine, must go to the board of adjustment. The second change is the addition of an official map act section. (Section 29.33.095) The official map act, in effect, allows assembly adoption of an official map after hearing.

After adoption and notice to affected property owners the map prohibits construction in areas designated for streets, parks, water courses and so on for the limited period of one year. (Sections 29.33.095 (g) and (h))

The code provides that cities will adopt and enforce building codes for the area inside cities and that boroughs will perform this function in the areas outside cities, unless a city and borough agree to have the borough perform this function. Present borough law has been interpreted by the Attorney General's Office to vest boroughs with areawide building code powers as part of the areawide planning and zoning function.

Under the current provisions regarding acquisition of additional areawide powers, it is unclear whether second class boroughs may acquire additional areawide powers by transfer from the city. The revision explicitly allows this. Also, the Local Affairs Agency is no longer required to pass upon the acquisition of additional areawide powers. In both this and present law, additional areawide powers require a vote of the people in the areas involved, which is considered to be sufficient. (Section 29.33.250 through 29.33.290)

Chapter 38. Borough Powers and Duties in the Area Outside Cities

This chapter is designed to encourage areawide or joint city-borough exercise of powers by requiring the borough to seek these alternatives before exercising powers in the area outside cities only. If transfer or joint exercise is not acceptable, a first class borough may exercise any general municipal power outside cities. (Section 29.38.010) A second or third class borough requires an election in the area outside cities in order to add additional powers in that area (Section 29.38.020) except with respect to certain special matters specified in Sec. 29.48.020, including regulation of fireworks, animals, vehicles, snow machines, garbage and solid waste. The acquisition of additional powers and duties in the area outside cities again no longer requires review by the Local Affairs Agency.

Chapter 41. Powers of Third Class Boroughs

Third class boroughs powers are unchanged.

Chapter 48. Powers Applicable to All Municipalities

An entirely new approach has been taken to delineation of municipal powers, facilities and services. Under existing law these are spelled out in substantial detail. This detail often serves no useful purpose. The new code merely lists the powers and provides for liberal construction of the powers, as required by the constitution. (Section 29.48.010, 29.48.030, and 29.48.310) The listings the code provides are not intended to be all-inclusive but, rather illustrative of the object or purpose intended to be accomplished. (Section 29.48.320 and 29.48.330)

The procedure for enactment of ordinances has been simplified and streamlined. This does not change any substantive rights. It does, however, change the time between publication and hearing from one week to five days. This allows special meetings for final consideration of an ordinance to be held on the same days as regular meetings. (Section 29.48.140) The code also eliminates the requirement for a new hearing should there be an amendment as to substance, since the purpose of this hearing is to allow the public to propose changes to improve the ordinance.

Each municipality is required to codify its permanent ordinances. (Section 29.48.180) Under current law, boroughs are required to keep codes, but cities are not clearly included in the requirement.

The new code fixes July 1 to June 30 as the fiscal year for general law municipalities. (Section 29.48.190)

Municipalities are given the option of establishing central purchasing. (Section 29.48.250)

Under current law, emergency disaster powers are applicable only to first class municipalities. The new code allows all municipalities, regardless of class, to exercise emergency disaster powers. The thinking is that should a disaster strike, the classification of the city is not particularly relevant. (Section 29.48.270)

Chapter 53. Municipal Assessment and Taxation

This chapter grants municipalities the power to levy property, sales and use taxes. Boroughs and home rule and first class cities can use all of these taxes. Second class cities can levy sales and use taxes, but not property taxes. (Section 29.53.400) Within a borough, the borough collects all of these taxes, provided the borough itself levies a sales and/or use tax. Outside boroughs, the city collects its own taxes. Within a borough, a city collects sales and/or use taxes if the borough does not levy and collect such taxes itself.

Procedures for assessment of property are consolidated and simplified. No tax limitation is imposed insofar as payment of principal and interest on bonded indebtedness. (Section 29.53.050) Property taxes for other purposes may not exceed three percent of the assessed property valuation per year, including the combined levy of such taxes within a city by a borough and the city within the borough. (Section 29.53.050)

There are several changes concerning the enforcement of tax liens. One change is that the foreclosure list no longer must be presented to the court on the day of publication. This requirement has created substantial difficulty where the newspaper of publication is not located within the same city as the borough seat or within the city which is foreclosing the taxes. Under the current law, tax foreclosed property is deeded to the borough. Under the new code, tax foreclosed property lying within a city is deeded to the city while tax foreclosed property lying within the borough but outside the

city is deeded to the borough. This code further provides that should property deeded to the city not be needed for public use by the city but needed for public use by the borough, the borough may obtain such property. The same holds true for property deeded to the borough. This code provides that when property is taken for public use by any governmental unit, the amount of taxes owing to the other governmental units will be paid by the governmental unit taking title. (Section 29.53.360 and Section 29.53.385)

Persons having mortgages, liens or other interest in foreclosed properties are allowed to redeem the property or their interest in the property. (Sections 29.53.280 and 29.53.310 (b))

Under current law, general law municipalities are allowed to levy a sales tax but are not allowed to levy a use tax. Under this code both a sales tax and use tax may be levied. The code requires an election on sales tax. Since use tax is a correlative of the sales tax and can only be adopted subsequent to or at a referendum where the sales tax is adopted, no separate election is required for adoption of the use tax. (Section 29.53.410 and Section 29.53.420)

The code allows as an alternative to municipal tax revenues derived from property and sales and use taxes a municipal income tax up to 10% of the state income tax. This tax would be levied by the municipality, but collected by the state and remitted to the municipality less the cost of collection. (Section

Chapter 58. Municipal Debt

There is now no authority for issuance of tax anticipation notes by general law municipalities. Such notes as a matter of practice are issued despite the lack of clear authority. The code clears up the authority by specifically allowing tax anticipation notes. (Sections 29.58.010 through 29.58.040)

Municipalities are allowed to issue general obligation bonds as approved by the voters after proper notice. The notice includes a statement of total current bonded indebtedness, the cost of current debt service, and the total assessed valuation. (Section 29.58.160) Second class cities do not have the power to assess and levy property taxes except when municipal bonds financed by another form of revenue are in danger of default (Section 29.58.180)

Under existing law, an election is required to authorize issuance of revenue bonds in general law municipalities. This requirement is deleted in the new code since no general tax obligation is assumed and revenue bonds are generally a management tool for the utility involved. (Section 29.58.205)

Chapter 63. Special Assessment and Service Areas

Under existing law, there are two distinct sections on special assessments, each with minor variations and procedures. The major variation was cleaned up last session, but the procedures still vary slightly, depending upon whether the special assessment is initiated by petition of the people or by ordinance of the governing body. While these distinctions are not substantial, it becomes troublesome to determine precisely what procedure should be followed. In both instances, the procedures are extremely cumbersome.

This code standardizes the sections on special assessments to provide the same notice and hearing requirements as in existing codes. The procedural fairness requirements are retained, but much of the unnecessary cumbersomeness is eliminated.

Significantly, the new code also provides that special assessments may be levied against property owned by other governmental units. (Section 29.63.010) The rationale is that special assessments are based upon special benefits conferred to the assessed property and that, should property owned by the state be specially benefited by public improvements which increase the

value of state property, the state no less than any other property owner should pay for such special benefits.

Chapter 68. Alteration of Boundaries

Procedures for review of all municipal boundaries are consolidated. The Local Boundary Commission is required to establish procedures for annexation and exclusion by local action. (Section 29.68.010)

Merger and consolidation of municipalities is allowed by either petition to the Local Boundary Commission or by local option. (Section 29.68.030)

Unification of municipal government is allowed as under current law. (Sections 29.68.240 through 29.68.440)

Dissolution of municipalities may be proposed by either petition to the Local Boundary Commission or by local option. (Section 29.68.500 (a)) In addition, the Local Affairs Agency is required to investigate municipalities which it considers inactive and to report on their status. The Local Boundary Commission may recommend that inactive municipalities be dissolved. (Section 29.68.500)

Chapter 73. Miscellaneous Provisions

The current law regarding municipal tort liability is left unchanged.

SUMMARY

The proposed revised municipal code is primarily a series of technical changes which reconcile inconsistent provisions in existing law, modernize the archaic language found throughout Title 29 and provide a more workable and immensely more understandable basic framework for local government. Substantive changes are necessary in many areas. The proposed code provides a better framework for existing law. It also provides a better framework from which to develop proposals for substantive changes which may be added after individual consideration of each change on its own merits.

MUNICIPAL CODE

S U M M A R Y

COMPARISON OF CSSB 113 AND EXISTING MUNICIPAL LAW

INTRODUCTION

Senate Bill 113, the current version of the revised municipal code, is an entire recodification of the laws relating to cities and boroughs now found in Titles 7 and 29. Like other reorganized and updated statutory titles, it incorporates changes from existing law both in form and in substance.

The revision was directed by the 1963 Legislature, which noted that the bulk of law relating to cities (Title 29) was a disjointed product of the territorial period. Addition of the Borough Act as a separate title in 1961 (Title 7) further confused the municipal law area.

In 1963 and 1964, the Local Affairs Agency, Department of Law and the Legislative Council prepared the first draft of legislation combining and attempting to reconcile the provisions of Titles 7 and 29. The revision was introduced as SB 101 in 1965 and was the subject of widespread hearings around the state, committee deliberations, and further revision.

Revised versions of SB 101 were introduced into the legislature in 1966, 1967 and 1969.

SB 113, the basis of the current proposal, represents a thorough review by the Alaska Municipal League and governmental agencies at the municipal and state levels. The League felt that revision should be primarily technical and should not attempt to solve the substantive problems existing in two areas, that of relations between cities and boroughs and that of relations between schools and general government.

Accordingly, the bill in these areas is substantially the same as existing law, with some exceptions as noted further (see references on pages 6, 7, 9 and 12 - 14).

It is virtually impossible to detail all of the changes that have taken place between the code and existing municipal law, but this summary will explain the major impact of the revision. It takes into account changes made after joint deliberations of the Senate and House Local Government Committees which resulted in CSSB 113. These changes between CSSB 113 and SB 113 are also separately treated in an attachment following this summary.

Chapter 3. The Unorganized Borough

The law relating to the unorganized borough is unchanged. The present provisions of Title 7 granting authority to the division of lands to adopt zoning regulations for federal lands in the unorganized borough at the request of the Secretary of the Interior and only for purposes of facilitating federal land sales in the unorganized borough is placed in Title 38 (Sec. 6 of the proposed Act).

Chapter 8. Classification of Municipalities (i.e. Cities and Organized Boroughs)

One of the most significant changes is the change from four classes of cities to two classes of cities. The primary difference in the revision between the first and second class cities is that the first class city has the school function and has the power to assess, levy and collect a general property tax while the fourth class city has neither of these powers. Under present law, first, second and third class cities all have these powers, while fourth class cities do not. A population minimum of 400 persons has been set as the number

necessary to incorporate a first-class city under the code, as in present law. The status of existing home rule cities, and existing first class cities with populations of 400 or more, remains unaffected by the proposed Act. Existing second and third class cities of 400 or more persons will automatically become first class cities, retaining their school and tax powers. The revision takes into account the fact that certain existing first, second and third class cities of under 400 persons may not have sufficient population or tax base to assume the burden of the school function. Therefore, these cities are given the option of becoming either first class or second class, depending upon their abilities and desires, as assessed by the local boundary commission and subject to legislative review. Existing fourth class cities will automatically become second class cities with the same powers and responsibilities which they now possess (Sections 29.08.010 through 29.08.050 and Sections 29.18.010 and 29.18.020). The code provides for reclassification of cities and boroughs to a higher class. Upon reclassification of a third class borough to a second or first class borough the borough may retain a combined assembly-school board or may separate the functions between an assembly and a board, depending upon the wishes of the voters (Sec. 29.08.040).

Chapter 13. Home Rule Municipalities

The new code standardizes the procedures for adopting a charter by either a first class city or borough (Secs. 29.13.010 - 29.13.080). Home rule limitations are gathered together in one place and listed. This section makes explicit the legislative intention to make only the sections of the code which are specifically listed as applicable to home rule municipalities so applicable. Additionally, the sections

themselves contain a specific reference making them applicable to home rule municipalities (Sec. 29.13.100).

Chapter 18. Incorporation

Incorporation procedures for all municipalities are gathered together and standardized (Secs. 29.18.050 - 29.18.110). The election of the first slate of officers is separated from the question of incorporation itself.

Present law provides for transitional assistance upon the incorporation of a new borough. In the revision, such transitional assistance is also made available to cities incorporating after the code takes effect. Organizational money grants based on an allocation of $10 per voter are allowed the newly incorporating boroughs and cities of all classes, other than unifying or consolidating municipalities. A minimum grant of $25,000 is authorized for communities assuming the school function for the first time, either by incorporating as boroughs or first class cities outside organized boroughs or by reclassifying from second class to first class cities outside boroughs (Sec. 29.18.180).

Under the revised code boroughs and cities of all classes may also select 10 per cent of the vacant, unappropriated, unreserved state land within their boundaries. (Secs. 29.18.190 - 29.18.200). Previously, only boroughs and, as of 1970, first and second class cities, were given this privilege. The code provisions declare that the policy of the state in making land selections under the Statehood Act is to make available the maximum land area for borough and city selections under the code provisions, consistent with the best interests of the state.

Chapter 23. Municipal Officers and Employees

The law relating to borough assemblies, city councils and all

municipal officers is gathered into this chapter.

Local officials' election dates and terms of office are changed to conform to the date of state general elections, but terms of office may be varied by local ordinance so as to provide either staggered or simultaneously expiring terms up to four years (Secs. 29.23.040, 29.23.200(c) and 29.23.310). If a locality chooses to have other than two-year terms it may, of course, hold the elections in odd-numbered years, but the elections would occur on the Tuesday after the first Monday in November. Elections are nonpartisan for all municipalities (Sec. 29.28.010).

The executive power has remained essentially the same except that the veto power of borough chairmen and mayors of first class cities has been broadened and clarified. In the past, there has been a question of whether a veto could be used for motions and other actions of the assembly or council. It is clearly spelled out that they may be.

Additionally, a new authority for the line item veto in municipal budgets has been added. This line item veto is expressly stated not to apply to the school budget (since the only power the assembly or council has is to approve or disapprove the total school budget, and the chairman or mayor may only veto that which the assembly or council has power to enact) (Secs. 29.23.170 and 29.23.270). The mayor of a second class city is a member of the council and has no veto power (Sec. 29.23.270(b)).

The mayor of a first class city is elected separately from the council. The mayor of a second class city is a council member who is elected to the council along with the other council members. The

mayor of a first class city votes only in case of a tie and has the veto power. The mayor of a second class city may vote on all matters as a council member, but he has no veto power (Secs. 29.23.260 and 29.-23.270). The borough chairman does not vote on matters before the assembly but has the veto power (Secs. 29.23.160 and 29.23.170).

A provision of present law applying only to first class cities and requiring written examination of police officer applicants on laws and ordinances, the examination to be graded by the council, is not retained in the code.

The revision makes clear that city councils may be elected from election districts within the city as well as citywide or partly at large and partly by districts, the choice being left to the local governments (Sec. 29.23.200(a)). Election sections for election of borough assemblymen in the borough area outside cities are permitted, as under present law, with sections to be of approximately equal population (Sec. 29.23.100).

Utility boards elected by the voters or appointed by the municipal executive and confirmed by the governing body are permitted for boroughs and cities (Sec. 29.23.340). (Elected boards only are authorized to general law municipalities under existing statutes.)

With respect to school board relations with local governments there are no substantive changes from present law except that election dates and terms of office have been established to coincide with state general elections with different terms not exceeding three years authorized by local ordinance, and local governing bodies are authorized to provide for centralized purchasing of those school supplies and equipment which are of a kind used by municipal departments (Sec. 29.-48.250, and Sec. 29.23.310).

In addition, [illegible] Sec. 29.33.050 setting out school board-governing body relationships is not intended to apply to home rule municipalities. There is uncertainty whether the same provisions as they appear in present law apply to home rule governments.

Either a borough or a city may adopt or repeal a manager form of government, as under existing law. However, a standard procedure is established for both types of municipality. Under this procedure, either the voters by petition, or the assembly or council by its own motion, may initiate an election on the manager plan (Secs. 29.23-410 - 29.23.480).

The code requires certain reports to be made to the Local Affairs Agency, including up-to-date maps, tax assessment figures, a financial report, and reports relating to long-term debt as already required under AS 44.19.205. The financial report takes the form of the annual audit for boroughs and first class cities, but second class cities may submit a statement of income and expenditures. Furnishing the reports is made a condition of receipt of authorized shared revenues under AS 43.18 (Sec. 29.23.560).

Chapter 28. Elections

The major change affecting elections is the scheduling of municipal elections to coincide with state general elections rather than being held approximately one month earlier, as under current law (Sec. 29.28.020). Terms of office of borough, city and school elected officials are also set at two years, but different terms not exceeding four years for borough and city governing bodies, and three years for school boards (the maximum term permitted under present law)

may be set in all cases by local ordinance.

Municipalities may, but are not required to, impose registration requirements over and above those of the state. However, a local voter registered with the state to vote in state elections is eligible to vote in local elections, whether or not he meets local registration requirements (Sec. 29.28.030). Also, the municipality may at its option require a majority vote for election of officials and utilize a runoff election or other means of obtaining a majority for the purpose (Sec. 29.28.040).

Assemblies and councils are required to provide by ordinance for election appeals. If the appeal is successful, the assembly or council bears the cost; if unsuccessful, the contestant must pay (Sec. 29.28.-050).

The powers of initiative and referendum are reserved to municipalities and the procedure for exercise of these powers by municipal residents is outlined (Secs. 29.28.060 - 29.28.110).

The section on recall has been changed to eliminate the successor running at the same election as the recall election. Should the recall be successful, a subsequent election is required to elect a successor (Secs. 29.28.130 - 29.28.250).

Chapter 33. Areawide Borough Powers and Duties

Boroughs retain their basic areawide responsibilities prescribed by current law: (1) assessment and collection of taxes, (2) education, and (3) planning, platting and zoning. Under current law, however, the borough is charged only with assessment and collection of real and personal property taxes. The assessment and collection provision of the new code broadens this to include the collection of use

and sales taxes authorized by the voters (Sec. 29.33.030).

There has been considerable smoothing out in the planning, platting and zoning article, with two significant alterations. One is that the planning commission itself may decide on variances subject only to appeal to the board of adjustment. Under the current procedure all variances, no matter how routine, must go to the board of adjustment. The second change is the placing of power to adopt and enforce building, housing, and related codes clearly within the jurisdiction of cities within boroughs rather than the boroughs as part of the areawide planning, platting and zoning responsibility. Boroughs may exercise the powers in the area outside cities or areawide by acquiring the power in the same manner as they obtain other powers in those areas. However, boroughs now exercising the powers within cities may continue to do so upon agreement to that effect between a city and a borough; if there is no agreement, the city is required to exercise the powers within the city and the borough now exercising the powers is required to continue doing so outside the city. Areawide borough exercise of the powers may subsequently be acquired through transfer by the cities or by vote of the people (Sec. 29.48.035). (Present borough law has been interpreted by the Attorney General's office to vest boroughs with areawide building code powers as part of the required areawide planning and zoning function.)

Under existing laws relating to acquisition of additional areawide powers, it is unclear whether second class boroughs may, like first class boroughs, acquire additional areawide powers by transfer from cities. The revision explicitly authorizes this method. Also, the Local Affairs Agency is no longer required to pass upon the acquisition

of additional areawide powers. In both the revision and present law, additional areawide powers require approval by a majority of the borough voters (Secs. 29.33.250 - 29.33.290).

Chapter 38. Borough Powers and Duties in the Area Outside Cities

This chapter is designed to encourage areawide or joint city-borough exercise of powers by requiring the borough to seek these alternatives before exercising powers in the area outside cities only. If transfer or joint exercise is not acceptable, a first class borough may exercise any general law municipal power outside cities (Sec. 29.38.-010).

A second or third class borough requires an election in the area outside cities in order to add additional powers in that area (Sec. 29.-38.020), except with respect to certain special matters specified in Sec. 29.48.020, including regulation of fireworks, animals, vehicles, snow machines, garbage and solid waste, and water pollution. The latter two powers are newly conferred in the code for second class borough exercise in the area outside cities without a vote of the area; the others are already conferred for such exercise under existing law. Acquisition of additional powers and duties in the area outside cities again no longer requires review by the Local Affairs Agency.

Chapter 41. Powers of Third Class Boroughs

Third class borough powers are unchanged.

Chapter 43. Powers of Cities Outside Boroughs

Authority is continued for cities outside boroughs to assess, levy and collect property and sales taxes. Use tax authority is also conferred. Taxes are to be assessed, levied and collected in the same manner as set forth for boroughs in the code.

First class cities outside boroughs continue to comprise city school districts, with relationships between school boards and city councils to be governed in the same manner as those between borough school boards and assemblies, as under present law.

Home rule and first class cities outside boroughs must, and second class cities may, provide for planning, platting and zoning in the manner provided in the code for boroughs under the code (present law does not expressly require home rule or first class city exercise of planning, platting or zoning authority).

The chapter makes borough laws incorporated by reference under the chapter applicable to home rule cities only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Chapter 48. Powers Applicable to All Municipalities

An entirely new approach has been taken to delineation of municipal powers, facilities and services. Under existing law these are in many cases spelled out in substantial detail. This detail often serves no useful purpose. The new code merely lists the powers and provides for liberal construction of the powers, as required by the constitution (Secs. 29.48.010, 29.48.030, and 29.48.310). The listings the code provides are not intended to be all-inclusive but rather illustrative of the object or purpose intended to be accomplished (Secs. 29.48.320 and 29.48.330).

The procedure for enactment of ordinances has been simplified and streamlined without changing substantive rights. The code, however, changes the time between publication and hearing from one week to five days. The change permits special meetings for final consideration of

a proposed ordinance to be held on the same day as regular meetings (Sec. 29.48.140). The code also eliminates the requirement for a new hearing should there be an amendment as to substance, since the purpose of the hearing is to allow the public to propose changes to improve the ordinance.

Each municipality is required to codify its permanent ordinances (Sec. 29.48.180). Under existing law, boroughs are required to keep codes, but cities are not clearly included in the requirement.

The new code fixes July 1 to June 30 as the fiscal year for home rule and general law municipalities (Sec. 29.48.190).

Municipalities are given the option of establishing central purchasing (Sec. 29.48.250).

Under current law, emergency disaster powers are applicable only to first class municipalities. The new code allows all municipalities, regardless of class, to exercise emergency disaster powers (Sec. 29.-48.270). The thinking is that should a disaster strike the classification of the city is not particularly relevant.

Chapter 53. Municipal Assessment and Taxation

This chapter grants municipalities the power to levy property, sales and use taxes. Boroughs and home rule and first class cities may utilize all these taxes. Second class cities may levy sales and use taxes but not property taxes (Sec. 29.53.400). Within a borough the borough collects all of the taxes, provided the borough itself levies a sales or use tax (under existing law boroughs are required to assess and collect only property taxes levied by cities). Within a borough a city collects sales or use taxes if the borough does not levy and collect such taxes itself (Sec. 29.53.450). Within a borough which

levies and collects sales or use taxes on an areawide basis, cities which levy such taxes must levy upon the same sources as are taxed by the borough and in the same manner as the borough (Sec. 29.53.440). (This uniformity requirement is an addition to present law.) Outside boroughs the city collects its own taxes.

The sales and use tax provisions of the code are made binding only on general law cities and boroughs, but provisions governing assessement, levy and collection of property taxes (Secs. 29.53.010 - 29.53.350, and 29.53.400) are made to apply uniformly to all municipalities, home rule as well as general law (Sec. 29.13.100(19)). Under present law only selected provisions of the taxing statutes, relating to required exemptions from property tax and collections of penalties and interest on property and sales taxes, are made expressly applicable to home rule governments, but there remains doubt whether other taxing provisions of present law (as well as many other provisions of existing local government law generally) apply, particularly in light of a recent state supreme court decision on applicability of general municipal laws of the state to home rule as well as general law governments (Chugach Electric Assn. v. City of Anchorage, Sup. Ct. Opin. No. 647, November 2, 1970).

In addition to certain exemptions from property tax required or authorized under present law, the code authorizes additional optional exemptions by ordinance ratified by the municipal voters. Any exemptions or exclusions granted by home rule cities and in effect on the effective date of the proposed code would not be affected by enactment of the code.

Procedures for assessment of property are consolidated and simplified. No tax limitation is imposed insofar as payment of principal and

interest on bonded indebtedness (Sec. 29.53.050). Property taxes for other purposes may not exceed three per cent of the assessed property valuation per year, including the combined levy of such taxes within a city by a borough and the city within the borough (Sec. 29.53.050).

There are several changes concerning the enforcement of tax liens. One is that the foreclosure list no longer must be presented to the court on the day of publication. This requirement has created substantial difficulty where the newspaper of publication is not located within the same city as the borough seat or within the city which is foreclosing the taxes. Under the current law, tax foreclosed property is deeded to the borough.

Under the new code, tax-foreclosed property lying within a city is deeded to the city while tax-foreclosed property lying within the borough but outside the city is deeded to the borough. The code further provides that should property deeded to the city not be needed for public use by the city but needed for public use by the borough, the borough may obtain such property. The same holds true for property deeded to the borough. When property is taken for public use by any governmental unit, the amount of taxes owing to the other governmental units will be paid by the governmental unit taking title (Secs. 29.53.-360 and 29.53.385).

Under present law, general law municipalities are allowed to levy a sales tax but are not allowed to levy a use tax. Under the code both a sales tax and use tax may be levied. The code requires an election on sales tax. Since use tax is a correlative of the sales tax and can only be adopted subsequent to or at a referendum where the sales tax is adopted, no separate election is required for adoption of the use tax (Secs. 29.53.410 and 29.53.420).

The code expressly authorizes differential property tax zones within cities to provide services not provided throughout a city or provided at a different level than in the remainder of the city (Sec. 29.53.405).

Chapter 58. Municipal Debt

There is now no express statutory authority for issuance of tax anticipation notes by general law municipalities. Such notes as a matter of practice are issued despite specific statutory authority (presumably on the basis of authority conferred to the state and political subdivisions under Art. IV, sec. 10 of the state constitution relating to the borrowing of money in anticipation of revenue collection.). The code specifically authorizes tax anticipation notes in anticipation of tax or other revenues (Secs. 29.58.010 - 29.58.040).

As under present law, municipalities are permitted to issue general obligation bonds as approved by the voters after proper notice; the notice includes a statement of total current bonded indebtedness, the cost of current debt service, and the total assessed valuation (Sec. 29.58.160). Second class cities do not have the power to assess and levy property taxes except when municipal bonds or other debt financed by another form of revenue are in danger of default (Sec. 29.58.350), essentially the same provision as under present law for fourth class cities.

Under existing law, an election is required to authorize issuance of revenue bonds in general law municipalities. This requirement is deleted in the new code since no general tax obligation is assumed and revenue bonds are generally a management tool for the utility involved (Sec. 29.58.205). In boroughs if the full faith and credit of

the borough is pledged for the debt of the borough area outside cities or a service area, majority voter approval must be obtained both areawide as well as in the area outside or the service area (Sec. 29.58.340(b)); under present law, a boroughwide pledge is expressly authorized for bonds of a service area only.

Chapter 63. Special Assessment and Service Areas

Under existing law, there are two distinct sections on special assessments, each with minor variations and procedures. The major variation was cleaned up last session, but the procedures still vary slightly, depending upon whether the special assessment is initiated by petition of the people or by ordinance of the governing body. While these distinctions are not substantial, it becomes troublesome to determine precisely what procedure should be followed. In both instances, the procedures are extremely cumbersome.

This code standardizes the sections on special assessments to provide the same notice and hearing requirements as in existing codes. The procedural fairness requirements are retained, but much of the unnecessary cumbersomeness is eliminated.

Significantly, the new code also provides that special assessments may be levied against property owned by other governmental units (Sec. 29.63.010). The rationale is that special assessments are based upon special benefits conferred to the assessed property and that, should property owned by the state be specially benefited by public improvements which increase the value of state property, the state no less than any other property owner should pay for such special benefits.

Chapter 68. Alteration of Boundaries

Procedures for review of all municipal boundaries are consolidated. The Local Boundary Commission is required to establish procedures for

annexation and exclusion by local action (Sec. 29.68.010).

Merger and consolidation of municipalities is allowed by either petition to the Local Boundary Commission or by local option election (Sec. 29.68.030).

Unification of local governments is authorized as under present law (Secs. 29.68.240 - 29.68.440), with authority of the unified government to allocate preunification debt spelled out more specifically than under present law (Secs. 29.68.350(a)(1) and 29.68.410).

Dissolution of municipalities may be proposed by either petition to the Local Boundary Commission or by local option election (Sec. 29.-68.500(a)). In addition, the Local Affairs Agency is required to investigate municipalities which it considers inactive and to report on their status. The Local Boundary Commission may recommend that inactive municipalities be dissolved (Sec. 29.68.500).

Chapter 73. Miscellaneous Provisions

Municipalities are authorized the powers of eminent domain and declaration of taking in the performance of an authorized municipal power or function (Sec. 29.73.020).

THE CODE IN GENERAL

The proposed revised municipal code is primarily a series of technical changes which reconcile inconsistent provisions in existing law, modernize the archaic language found throughout Title 29 and provide a more workable and immensely more understandable basic framework for local government. Substantive changes are necessary in many areas. The proposed code provides a better framework for existing law. It also provides a better framework from which to develop proposals for substantive changes which may be added after individual consideration of each change on its own merits.

MEMORANDUM

COMPARISON BETWEEN SB 113 AND EXISTING MUNICIPAL LAW

Introduction

Senate Bill 113, the current version of the revised Municipal Code, is an entire recodification of the laws relating to cities and boroughs now found in Titles 7 and 29. Such a recodification, of course, has innumerable changes from existing law both in form and in substance.

The revision was directed by the 1963 Legislature, which noted that the bulk of law relating to cities was a disjointed product of the territorial period. Addition of the Borough Act as a separate title had further confused the municipal law area.

In 1963 and 1964, the Local Affairs Agency, Department of Law and the Legislative Council prepared the first draft of legislation combining and attempting to reconcile the provisions of Titles 7 and 29. The revision was introduced as SB 101 in 1965, and was the subject of widespread hearings, deliberation and further revision. Revised versions were submitted in 1966, 1967 and 1969. SB 113, the current proposal, represents a thorough review by the Alaska Municipal League and governmental agencies at the municipal and state levels. The League felt that revision should be primarily technical and should not attempt to solve the substantive problems existing in two areas, that of relations between cities and boroughs, and relations between school and general government. Accordingly, the bill in these areas is identical with existing law.

It is virtually impossible to detail all of the changes that have taken place between this code and existing municipal law. This summary will explain the major impact of this revision.

Chapter 3. The Unorganized Borough

The law regarding the unorganized borough is unchanged.

Chapter 8. Classification of Municipalities

One of the most significant changes is the change from four classes of cities to two classes of cities. The primary difference in the revision between the first and second class cities is that the first class city has the school function and has the power to assess, levy and collect a general property tax while the fourth class city has neither of these powers. Under present law first, second and third class cities all have these powers, while fourth class cities do not. A population limit of 400 persons has been set as the number necessary to become a first class city under this code as in present law. Existing first, second and third class cities, if over 400 persons will automatically become first class cities, retaining their school and tax powers. The revision takes into account the fact that certain existing first, second and third class cities of under 400 persons may not have sufficient population or tax base to assume the burden of the school function. Therefore, these cities are given this option of becoming either first class or second class, depending upon their abilities and desires. Existing fourth class cities will automatically become second class cities with the same powers and responsibilities which they now possess. (Sections 29.08.010 through 29.08.050 and Sections 29.18.010 and 29.18.020)

Chapter 13. Home Rule Municipalities

The new code standardizes the procedures for adopting a charter by either a first class city or borough. (Sections 29.13.010 through 29.13.080) Home rule limitations are gathered together in one place and listed. This section makes explicit the legislative intention to make only the sections specifically listed as applicable to home rule municipalities so applicable. Additionally, the sections themselves contain a specific statement that they are applicable to home rule municipalities. (Section 29.13.100)

Chapter 18. Incorporation

Incorporation procedures for all municipalities are gathered together and standardized. (Sections 29.18.050 through 29.18.110) The election of the first slate of officers is separated from the question of incorporation itself for three reasons: 1) Many will not run for an office which they are not sure will exist; 2) It is unfair to ask people to expend funds to run for an office which may not be created; and 3) The merits of incorporation should not be distorted by the personalities who might file for office.

Present law provides for transitional assistance upon the creation of a new borough. In this revision, such transitional assistance is also made available to cities. Organizational money grants based upon $10.00 per voter are allowed to boroughs and cities of all classes. (Section 29.18.180) Boroughs and first class cities, which undertake the school function upon incorporation, are given a minimum of $25,000.00. The grant provisions are made retroactive in order to assist many small communities which have recently incorporated under present law without the benefit of transitional assistance.

Under the revised code, both boroughs and cities of all classes may also select 10 percent of the vacant, unappropriated, unreserved state land within their boundaries. (Sections 29.18.190 through 29.18.200) Previously only boroughs were given this privilege.

Chapter 23. Municipal Officers and Employees

The law concerning borough assemblies, city councils and all municipal officers is gathered into this chapter.

Municipal election dates and terms of office are changed to conform to the date of state general elections. (Sections 29.23.040 and 29.23.200 (c))

The executive power has remained essentially the same except that the veto power of borough chairmen and mayors of first class cities has been broadened and clarified. In the past, there has been a question of whether a veto could be used for motions and other actions of the assembly or council. It is clearly spelled out that they may be. Additionally, a new authority for the line item veto in municipal budgets has been added. This line item veto does not apply to the school budget since the only power the assembly or council has is to approve or disapprove the total budget. The chairman or mayor may only veto that which the assembly or council has power to enact. (Sections 29.23.170 and 29.23.270) The mayor of a second class city is a member of the council and has no veto power. (Section 29.23.270 (b))

The mayor of a first class city is elected separately from the council. The mayor of a second class city is a council member who is elected to the council along with the other council members, who then designate a mayor from among their membership. (Section 29.23.250) The mayor of a first class city votes only in case of a tie and has the veto power. The mayor of a second class city may

vote on all matters as a council member, but he has no veto power. (Sections 29.23.260 and 29.23.270) The borough chairman does not vote on matters before the assembly, but has the veto power. (Sections 29.23.160 and 29.23.170)

The article on school boards has been substantially shortened eliminating matters found in Title 14. Utility boards are allowed for boroughs and cities. There are no substantive changes between these sections and current law. (Section 29.23.310 and 29.23.340)

Either a borough or a city may adopt or repeal a manager form of government, as under current law. However, a standard procedure has been set forth covering both types of municipality. (Sections 29.23.410 through 29.23.480)

Chapter 28. Elections

The major change with regard to elections is the scheduling of municipal elections to coincide with state general elections rather than being held approximately one month earlier, as under current law. (Section 29.28.020)

Municipalities may, but are not required to, impose registration requirements over and above those of the state. (Section 29.28.030) Also, the municipality may at its option require majority elections. (Section 29.28.040)

The powers of initiative and referendum are reserved to municipalities and the procedure for exercise of these powers by municipal residents is outlined. (Sections 29.28.060 through 29.28.110)

The section on recall has been changed to eliminate the successor running at the same election as the recall election. Should the recall be successful, a subsequent election is required to elect a successor. (Section 29.28.130 through 29.28.250)

Chapter 33. Areawide Borough Powers and Duties

Boroughs retain their basic areawide responsibilities prescribed by current law: 1) Assessment and collection of taxes; 2) Education; and 3) Planning, platting and zoning. However, under current law, the borough is charged only with assessment and collection of real property taxes. The assessment and collection provision of the new code broadens this to include the collection of use and sales taxes. (Section 29.33.030)

There has been considerable smoothing out in the planning, platting and zoning article, with two significant alterations. One is that the planning commission itself may decide on variances subject only to appeal to the board of adjustment. Under the current procedure all variances, no matter how routine, must go to the board of adjustment. The second change is the addition of an official map act section. (Section 29.33.095) The official map act, in effect, allows assembly adoption of an official map after hearing. After adoption, and notice to affected property owners, the map prohibits construction in areas designated for streets, parks, water courses and so on for the limited period of one year. (Sections 29.33.095 (g) and (h))

Under the current provisions of acquisition of additional areawide powers, it is unclear whether second class boroughs may acquire additional areawide powers by transfer from the city. This section explicitly allows this. Additionally, this section no longer requires the Local Affairs Agency to pass upon the acquisition of additional areawide powers. In both this and present law, additional areawide powers require a vote of the people in the areas involved which is considered to be sufficient. (Section 29.33.250 through 29.33.290)

Chapter 38. Borough Powers and Duties in the Area Outside Cities

This chapter is designed to encourage areawide a joint city-borough exercise of powers by requiring the borough to seek these alternatives before exercising powers in the area outside cities only. If transfer or joint exercise is not acceptable, a first class borough may exercise any general municipal power outside cities. (Section 29.38.010) A second or third class borough requires an election in order to add additional powers (Section 29.38.020) except in certain special matters specified in Sec. 29.48.020, including regulation of fireworks, animals, vehicles, snow machines, garbage, solid waste and water pollution. The acquisition of additional powers and duties in the area outside cities again no longer requires review by the Local Affairs Agency.

An entirely new approach has been taken to delineation of municipal powers, facilities and services. Under existing law these are spelled out in substantial detail. This detail serves no useful purpose. The new code merely lists the powers and provides for liberal construction of the powers, as required by the constitution. (Section 29.48.010, 29.48.030, and 29.48.210) The listings are not intended

to be all inclusive, but illustrative of the object or purpose intended to be accomplished. (Section 29.48.320 and 29.48.330)

The procedure for enactment of ordinances has been simplified and streamlined. This does not change any substantive rights. It does, however, change the time between publication and hearing from one week to 5 days. This allows special meetings for final consideration of an ordinance to be held on the same days as regular meetings. (Section 29.48.140) The code also eliminates the requirement for a new hearing should there be an amendment as to substance, since the purpose of this hearing is to allow the public to propose changes to improve the ordinance.

Each municipality is required to codify its permanent ordinances. (Section 29.48.180) Under current law, boroughs are required to keep codes, but cities are not clearly included in the requirement.

The new code fixes July 1 to June 30 as the fiscal year for general law municipalities. (Section 29.48.190)

Municipalities are given the option of establishing central purchasing. (Section 29.48.250)

The code allows municipalities to acquire real and personal property and requires municipalities to provide by ordinance for the disposition of real property. Ordinance requirements which protect the interest of the public are specified. (Section 29.48.260)

Under current law, emergency disaster powers are applicable only to first class municipalities. The new code allows all municipalities regardless of class to exercise emergency disaster powers. The thinking is that should a disaster strike, the classification of the city is not particularly relevant. (Section 29.48.270)

Chapter 53. Municipal Assessment and Taxation

This chapter grants municipalities the power to levy property, sales and use taxes. Boroughs and home rule and first class citiescan use all of these taxes. Second class cities can levy sales and use taxes, but not property taxes. (Section 29.53.400) Within a borough, the borough collects all of these taxes, provided the borough itself levies a sales and/or use tax. Outside boroughs, the city collects its own taxes. Within a borough, a city collects sales and/or use taxes if the borough does not levy and collect such taxes itself.

Procedures for assessment of property are consolidated and simplified. No tax limitation is imposed insofar as payment of principal and interest on bonded indebtedness. (Section 29.53.050) Property taxes for other purposes may not exceed three percent of the assessed property valuation per year.

There are several changes concerning the enforcement of tax liens. One change is that the foreclosure list no longer must be presented to the court on the day of publication. This requirement has created substantial difficulty where the newspaper of publication is not located within the same city as the borough seat or within the city which is foreclosing the taxes. Under current law, tax foreclosed property is deeded to the borough. Under the new code, tax foreclosed property lying within a city is deeded to the city while tax foreclosed property lying within the borough but outside the city is deeded to the borough. This code further provides that should property deeded to the city not be needed for public use by the city but needed for public use by the borough; the borough may obtain such property and the same, of course, holds true for property deeded to the borough. This code also provides that should property be taken

for public use by any governmental unit, upon such taking, the amount of taxes owing to the other governmental units will be paid by the governmental unit taking title. (Section 29.53.360 and Section 29.53.385)

Persons having mortgages, liens or other interest in foreclosed properties are allowed to redeem the property or their interest in the property. (Sections 29.53.280 and 29.53.310 (b))

Under current law, general law municipalities are allowed to levy a sales tax but are not allowed to levy a use tax. Under this code, both a sales tax and use tax may be levied. The code requires an election on sales tax. Since use tax is a correlative of the sales tax and can only be adopted subsequent to or at a referendum where the sales tax is adopted, no separate election is required for adoption of the use tax. (Section 29.53.410 and Section 29.53.420)

Chapter 58. Municipal Debt

There is now, no authority for issuance of tax anticipation notes by general law municipalities. Such notes as a matter of practice, are issued despite the lack of clear authority. The code clears up the authority by specifically allowing tax anticipation notes. (Sections 29.58.010 through 29.58.040)

Municipalities are allowed to issue general obligation bonds as approved by the voters after proper notice. The notice includes a statement of total current bonded indebtedness, the cost of current debt service, and the total assessed valuation. (Section 29.58.160) Practically, second class cities will not be able to incur bonded indebtedness because they do not have the power to assess and levy property taxes.

Under existing law, an election is required to authorize issuance of revenue bonds in general law municipalities. This requirement is deleted in the new code since no general tax obligation is assumed and revenue bonds are generally a management tool for the utility involved. (Section 29.58.205)

Chapter 63. Special Assessment and Service Areas

Under existing law, there are two distinct sections on special assessments; each with minor variations and procedures. The major variation was cleaned up last session, but the procedures still vary slightly depending upon whether the special assessment is initiated by petition of the people or by ordinance of the governing body.

While these distinctions are not substantial, it becomes troublesome to determine precisely what procedure should be followed. In both instances, the procedures are extremely cumbersome.

This code standardizes the sections on special assessments to provide the same notice and hearing requirements as in existing codes. The procedural fairness requirements are retained, but much of the unnecessary cumbersomeness is eliminated.

Significantly, the new code also provides that special assessments may be levied against property owned by other governmental units. (Section 29.63.010) The rationale is that special assessments are based upon special benefits conferred to the assessed property and that, should property owned by the state be specially benefited by public improvements which increase the value of state property, the state no less than any other property owner should pay for such special benefits.

Chapter 68. Alteration of Boundaries

Procedures for review of all municipal boundaries are consolidated. The Local Boundary Commission is required to establish procedures for annexation and exclusion by local action. (Section 29.68.010)

Merger and consolidation of municipalities is allowed by either petition to the Local Boundary Commission or by local option. (Section 29.68.030)

Unification of municipal government is allowed as under current law. (Sections 29.68.240 through 29.68.440)

Dissolution of municipalities may be proposed by either petition to the Local Boundary Commission or by local option. (Section 29.68.500 (a)) In addition, the Local Affairs Agency is required to investigate municipalities which it considers inactive and to report on their status. The Local Boundary Commission may recommend that inactive municipalities be dissolved. (Section 29.68.500)

Chapter 73. Miscellaneous Provisions

The current law regarding municipal tort liability is left unchanged.

Summary

This act is a series of technical changes which reconcile inconsistent provisions in existing law, modernize the archaic language found throughout Title 29 and provide a more workable and immensely more understandable basic framework for local government. Substantive changes are necessary in many areas. The revised municipal code provides a better framework for existing law. It also provides a better framework from which to develop proposals for substantive changes which may be added after individual consideration of each change on its own merits.