

HB

89

SENATE COMMITTEE REPORT

DATE: 4/15/93

FURTHER: _____

DATE TURNED INTO OFFICE: _____

CRA Committee considered HOUSE BILL NO. 89

"An Act revising the law on borough assembly apportionment as recommended by the revisor of statutes; and providing for an effective date."

and recommends:

- replace with _____ CS _____ (_____)
- or adopt previous _____ CS _____ (_____)
- attaches amendment(s)

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTES

Department	Date	Zero	Fiscal
Dept of Law	2/10/93	0	

Appropriation No Fiscal Note

DO PASS:

Al Bedar

John A. Lerman

OTHER RECOMMENDATIONS:

Frank J. Zeff No Rec

Roll E. King Do Pass

Chair: Signature and Recommendation

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Bill Version: HB 89
(H) Publish Date: 3/3/93

Revision Date: February 26, 1993
Title: "...revising the law on borough assembly apportionment..."
Sponsor: House Rules Committee
Requestor: House C&RA Committee

Department Affected: Law
BRU: Legal Services
Component: Operations
COMPONENT SERIAL NO. 0093

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see attached analysis.

Prepared by: Richard I. Peques, Director Phone: 465-3672
Division: Administrative Services Division Date: February 26, 1993
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law Date: February 26, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 89
No. 1

ANALYSIS: (continued)

This is a legislative revisor's bill that updates, for clarity purposes, the rules governing the apportionment of borough assemblies, found in AS 29.20. The Department of Law has previously advised that there are no substantive differences between this bill and the state's existing law. Consequently, there should not be a fiscal impact.

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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MEMORANDUM

April 16, 1993

SUBJECT: House Bill 89 - General Law Borough Reapportionment

TO: Senator Randy Phillips, Chair
Senate Community & Regional Affairs Committee

FROM: David R. Dierdorff *DRD*
Revisor of Statutes

The referenced bill, HB 89, has been referred to your committee for consideration. It passed the House unanimously after receiving unanimous "do pass" recommendations from the House C&RA and Judiciary committees.

This bill is a technical rewrite of the laws providing for apportionment and reapportionment of the borough assembly in general law boroughs. It applies only to general law boroughs that have chosen to have all or some seats on the assembly represent districts within the borough. It does not affect at large seats or the ability of a borough to chose to have all seats be at large. Primarily, it clarifies the appeal and review process.

I have enclosed a sectional analysis that was prepared for Legislative Council, together with a letter from the Department of Law reflecting their favorable review of the bill.

I would be happy to answer any questions that you or your committee may have regarding the bill. Thank you in advance for your prompt consideration of this house-keeping measure.

DRD:mi:gc
93-072.mai

Enclosures

**DIVISION OF LEGAL SERVICES
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MEMORANDUM

January 21, 1993

SUBJECT: Special Revisor's Bill (Work Order No. 8-LS0381E)

TO: Representative Eldon Mulder
Chair, Legislative Council

FROM: David R. Dierdorff
Revisor of Statutes

The enclosed work draft was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

* * * shall prepare for submission to the legislature legislation * * * to otherwise improve the form or substance of * * * the statute law of this state.

The work draft proposes a rewriting of the laws governing apportionment of borough assemblies.

BACKGROUND. Last year, during routine editorial work on AS 29 (municipal government), our office and the editors of the Michie Company discovered a manifest error in an internal reference in AS 29.20.110, which was corrected under AS 01.05.-031. However, when researching that error, it became apparent that AS 29.20.070 - 29.20.110 contained other references that seemed either incorrect or incomplete. Furthermore, it was difficult to make any sense of the provisions. Consequently, I asked Tam Cook to prepare a draft revision of the law that would retain the substantive scheme set out in existing law, but would be reorganized and readable. That draft provided a starting point for the enclosed work draft. A review of our microfilm records of ch. 128, SLA 1980, which enacted the laws that became AS 29.20.060 - 29.20.110, confirmed that several references had been inadvertently omitted, and also provided insight into the legislative intent in enacting the provisions.

EXISTING LAW. The existing law on borough assembly composition and apportionment (AS 29.20.060 - 29.20.120) is set out in an appendix so that it can be easily compared with the draft. The relevant provisions are:

AS 29.20.060 (Assembly composition and apportionment) - Subsection (a) requires that composition and apportionment meet federal equal representation standards. Subsection (b) provides for composition and apportionment of the assembly of a new borough (as set out in the voter approved incorporation petition or as prescribed by a preexisting ordinance or charter). This section is not amended in the draft, but is set out here because it is referenced in several other provisions. This section applies to all boroughs.

AS 29.20.070 (Assembly composition and form of representation) - Applicable by the terms of subsection (e) only to general law boroughs and to home rule boroughs that do not have charter provisions on the same subject, this section requires a vote on the form of representation and assembly composition after each federal census. A vote on apportionment must also be taken at that time if relevant to the form of representation chosen, which must be one of three types set out in subsection (b).

AS 29.20.080 (Assembly recomposition and reapportionment) - Subsection (a) requires that the assembly determine, within two months after each federal census, whether the existing apportionment meets the legal standards. It further requires submitting to the voters a plan of apportionment, which may include a plan that merely readopts an existing plan (if it is found to comply with the law). Subsection (b) grants the assembly the power to change the apportionment by ordinance whenever it determines that it needs changing to comply with the law, and also authorizes a change in "composition" (which we believe means "form of representation" in this context) at the same time. Subsection (c) allows 50 voters to petition the assembly to request a review of an existing apportionment. Subsection (d) requires that ordinances adopted under (b) or (c) be submitted to the voters for approval. Subsection (e) places a six month deadline on the assembly to adopt a reapportionment ordinance after a determination under (b) or (c) that the existing plan does not comply. Failure to take action triggers the authority of the commissioner of community and regional affairs to issue an order of reapportionment.

AS 29.20.090 (Apportionment appeals) - Provides for an administrative appeal to the commissioner of a reapportionment ordinance approved by the voters or of a decision by the assembly that an existing plan complies with the law. The appeal is undertaken by the petition of 50 voters. If the commissioner determines that a reapportionment ordinance is defective or that a new plan is needed, the assembly must adopt a plan and submit it to the voters. If the assembly fails to act, the commissioner may issue an order of reapportionment.

AS 29.20.100 (Judicial review and relief) - Subsection (a) gives the commissioner authority to request the courts to enforce a reapportionment order. In

1980, when the free conference committee bill that became ch. 128, SLA 1980 was drafted, the statutory reference to the commissioner's orders was inadvertently incomplete. That error was repeated in subsection (b), which sets out the actions that may be appealed (presumably by anyone with standing) to the superior court.

AS 29.20.110 (Effective date of apportionment) - This section, which provides for the effective date of apportionment ordinances or orders that are the product of the various preceding provisions, contains one error dating back to 1980, and another that was created when the AS 29 revision (enacted in 1985) was prepared. The first is the omission of a statutory reference and the second was the substitution of irrelevant language for an important provision in (b)(2) of the section. There was a third error (an erroneous statutory reference) that was corrected editorially in 1992.

AS 29.20.120 (Applicability) - Provides that AS 29.20.080 - 29.20.110 do not apply to unified municipalities or to home rule boroughs if the home rule charter provides for reapportionment of the assembly.

SECTIONAL ANALYSIS.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

* **Section 1.** This section moves a portion of current AS 29.20.080(a) into AS 29.20.070(c) for organizational clarity.

* **Sec. 2.** AS 29.20.080 is rewritten for clarity. It contains all of the substantive provisions of the existing law, with the exception of material transferred to AS 29.20.070(c). In subsection (c), the existing provision of AS 29.20.080(b) relating to changes in "composition" of the assembly is carried forward as an authorization to change the "form of representation". If the legislature meant to equate "composition" with "size" rather than "form," this proposal can be easily modified. Subsection (d) is new, and simply restates a provision now found in AS 29.20.070(c) to ensure that in any vote relating to assembly apportionment, the plan will be explained to the voters.

* **Sec. 3.** AS 29.20.090 is rewritten for clarity. There are no substantive changes.

* **Sec. 4.** AS 29.20.100 is amended to update statutory references to reflect the rewriting of AS 29.20.070 - 29.20.090.

Representative Eldon Mulder
January 21, 1993
Page 4

* Sec. 5. AS 29.20.110 is amended to update references and to correct, in subsection (b), what we believe was an error in the preparation of the AS 29 revision. Before ch. 74, SLA 1985 was enacted, the predecessor to AS 29.20.110(b)(2) (AS 29.23.031(b)(2)) read:

(2) receipt by the borough assembly of a statement of nonobjection from the Attorney General of the United States to the proposed change in the composition or apportionment of the assembly; or

For some reason, in ch. 74, which simply reenacted the prior law, the same paragraph read:

(2) the delivery to the mayor of a reapportionment order of the commissioner under AS 29.20.090(e); or

That provision makes no sense in the context. In bill sec. 5, existing (b)(2) is deleted and the substance of the prior law is incorporated in the amendment to (b)(1).

* Sec. 6. Provides an immediate effective date.

If you or your staff have any questions, or if I can be of further assistance, please feel free to contact me.

DRD:gc
93-051.glc

CC: Deborah Behr
Department of Law

Enclosure

APPENDIX - TEXT OF AS 29.20.060 - 29.20.120

Sec. 29.20.060. Assembly composition and apportionment. (a) Assembly composition and apportionment shall be consistent with the equal representation standards of the Constitution of the United States.

(b) The assembly of a newly incorporated borough is, after incorporation and until the adoption of an ordinance providing for a change in composition or apportionment, composed of the number of members and apportioned as set out in the incorporation petition approved by the voters. If the borough is already incorporated, the assembly shall be composed and apportioned in a manner that is consistent with the requirements of this section and prescribed by charter or ordinance.

(c) An assembly may not provide for weighted voting.

(d) A member of the assembly may not be elected or appointed by and from the council of a city in the borough.

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

Sec. 29.20.070. Assembly composition and form of representation. (a) The assembly shall provide for its composition and for the form of its representation.

(b) Not later than the first regular election that occurs after the report of a federal decennial census, the assembly shall propose and submit to the voters of the borough, at that regular election or at a special election called for the purpose, one or more forms of assembly representation. The forms of representation that the assembly may submit to the voters are:

(1) election of members of the assembly at large by the voters throughout the borough;

(2) election of members of the assembly by district, including

(A) election at large by the voters throughout the borough, but with a requirement that a candidate live in an election district established by the borough for election of assembly members; or

(B) election from election districts established by the borough for the election of assembly members by the voters of a district;

(3) election of members of the assembly both at large and by district.

(c) A form of assembly representation that includes election of assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.20.080.

(d) The assembly shall, within 30 days after certification of the results of the election held under this section, adopt an ordinance providing for

(1) composition of the assembly;

(2) the form of assembly representation that received the most votes;

and

(3) if applicable, the apportionment of assembly seats in accordance with the form of representation that received the most votes.

(e) This section applies to home rule and general law municipalities, except it does not apply to a

- (1) unified municipality;
- (2) home rule borough if the home rule charter contains procedures for changing assembly composition and form of representation.

Sec. 29.20.080. Assembly recomposition and reapportionment. (a) Not later than two months after the official report of a federal decennial census, the assembly shall determine and declare by resolution whether the existing apportionment of the assembly meets the standards of AS 29.20.060. If the assembly submits to the voters a form of representation that includes election of assembly members under AS 29.20.070(b)(2) or (b)(3) the assembly shall submit with the proposition a proposed plan of apportionment that corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner that it believes accurately describes the apportionment that is proposed under the form of representation. If the assembly determines that its existing apportionment meets the standards of AS 29.20.060, the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats that corresponds to a form of representation that is proposed.

(b) The assembly shall provide, by ordinance, for a change in an existing apportionment of the assembly whenever it determines that the apportionment does not meet the standards of AS 29.20.060. At the same time, the assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 voters requests the assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.20.060, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The assembly shall make a determination required by this subsection within two months of receipt of a petition that meets the requirements of this subsection.

(d) An ordinance adopted by the assembly under (b) or (c) of this section shall be submitted to the voters for approval. In order for the ordinance to be approved it must receive the approval of a majority of the votes cast.

(e) Within six months after a determination by the assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.20.060 the assembly shall adopt an ordinance providing for reapportionment and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner shall provide for the reapportionment in accordance with the standards of AS 29.20.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.20.090. Apportionment appeals. (a) A reapportionment ordinance approved by the voters, or a decision of the assembly that the standards of AS 29.20.060 do not require a change in apportionment, may be appealed to the commissioner. Fifty voters may submit a petition to the commissioner requesting the

commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.20.060 or whether a decision of the assembly that the standards of AS 29.20.060 do not require a change of apportionment is correct. If the petition asks the commissioner to review an ordinance approved by the voters under AS 29.20.080(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner to review a decision of the assembly under AS 29.20.080(c), the petition shall be delivered to the commissioner within 20 days of the decision of the assembly.

(b) The commissioner shall review the petition and may make the determination requested. The commissioner shall provide copies of the determination to the persons petitioning for appeal and to borough officials not later than 60 days after the commissioner receives the petition.

(c) If the commissioner determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.20.060, or if the commissioner determines that the decision of the assembly that the standards of AS 29.20.060 do not require a change of apportionment is not correct, the commissioner shall, by order, direct the assembly to prepare a reapportionment ordinance that meets the standards of AS 29.20.060 and submit the ordinance to the voters.

(d) When the assembly has been directed by the commissioner to prepare a reapportionment ordinance under (c) of this section, the assembly shall, within two months after its receipt of the commissioner's order, adopt an ordinance providing for reapportionment. The assembly shall submit an ordinance adopted under this subsection to the voters at an election held within 60 days after the date of adoption of the reapportionment ordinance.

(e) If at the end of the time period provided under (d) of this section an ordinance providing for reapportionment has not been approved by the voters, the commissioner shall provide for the reapportionment of the assembly in accordance with the standards of AS 29.20.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.20.100. Judicial review and relief. (a) The commissioner may request the superior court to enforce a reapportionment order issued under AS 29.20.090(e).

(b) Each of the following is subject to judicial review:

(1) a plan of reapportionment approved by the voters under AS 29.20.080(a);

(2) a determination by the assembly under AS 29.20.080 that the standards of AS 29.20.060 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.20.080(d);

(4) a reapportionment order of the commissioner made under AS 29.20.090(c);

(5) a reapportionment ordinance approved by the voters under AS

29.20.090(d); and

(6) a reapportionment order of the commissioner made under AS 29.20.090(e).

Sec. 29.20.110. Effective date of apportionment. (a) A change in assembly apportionment or composition under AS 29.20.080 or 29.20.090 is effective beginning with the first regular election for members of the assembly that is held more than 60 days after the later of

(1) approval of a reapportionment ordinance by the voters under AS 29.20.080(a), 29.20.080(e), or 29.20.090(d); or

(2) the delivery to the mayor of a reapportionment order of the commissioner under AS 29.20.090(e).

(b) The provisions of (a) of this section do not apply to a borough in which a change in assembly composition or apportionment is subject to review and approval or determination of nonobjection by the Attorney General of the United States under 42 U.S.C. 1971-1974 (Voting Rights Act of 1965), as amended. A change in assembly composition or apportionment subject to review under 42 U.S.C. 1971-1974, as amended, is effective beginning with the first regular election for members of the assembly that is held more than 60 days after

(1) receipt by the assembly of approval by the Attorney General of the United States of the proposed change in the composition or apportionment of the assembly;

(2) the delivery to the mayor of a reapportionment order of the commissioner under AS 29.20.090(e); or

(3) the last day on which the Attorney General of the United States may review a proposed change in the composition or apportionment of the assembly.

Sec. 29.20.120. Applicability of apportionment provisions. The provisions of AS 29.20.080 - 29.20.110 apply to home rule and general law municipalities, except they do not apply to a

(1) unified municipality;

(2) home rule borough if the borough, by home rule charter, provides for reapportionment of the assembly.

DRD:gc
93-052.glc

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

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February 9, 1993

David Dierdorff, Revisor of Statutes
Legislative Affairs Agency
130 Seward Street
Goldstein Bldg., Rm. 414
Juneau, AK 99801-2105

Dear Dave:

Thanks for providing me with a copy of the 1993 special revisor's bill governing apportionment of borough assemblies, as well as a copy of the regular revisor's bill.

I have circulated the copies to the appropriate assistant attorneys general. They reported uniformly that the bills make technical improvements in the law and that the bills present no legal problems if enacted into law.

I appreciated the opportunity to review these bills.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Deborah E. Behr*
Deborah E. Behr
Assistant Attorney General

DEB:cl

GENERAL LAW BOROUGHES

There are eight general law boroughs in Alaska. Only those which have chosen to have their assembly members elected by district are affected by this legislation. The eight general law boroughs are:

Aleutians East

Kenai Peninsula

Bristol Bay

Ketchikan Gateway

Fairbanks North Star

Kodiak Island

Haines

Matanuska-Susitna

I do not know which of these, if any, have apportioned their assembly.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

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February 9, 1993

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Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Deborah E. Behr*
Deborah E. Behr
Assistant Attorney General

DEB:cl

GENERAL LAW BOROUGHs

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