# SCOMM

#23:1

**ISSUES TO BE IDENTIFIED IN A POLICY ADVISORY GROUP REPORT**

1. How to provide representation for people living outside municipal boundaries, but within a municipal service area (as when a city extends utility service beyond its boundaries).

2. Should a uniform provision on executive sessions be included in Title 29 delineating specific occasions when it is appropriate to call for an executive session of a municipal governing body?

3. Should there be only two classes of borough -- home rule and general law?

4. Should there be only two classes of city -- home rule and general law?

5. Should villages which are currently unincorporated be recognized as municipal corporations under state law? Should IRA councils be recognized as municipal governing bodies?

6. Should the state or local government be primarily responsible for providing the following services: water system and sewage disposal inspections; subdivision review of on-site sanitation capabilities; sanitation inspections of restaurants, hotels, etc; clean-up of small oil spills; the issuing of oily waste burn permits and surface oiling permits; litter control; vehicular emmisions control? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to meet applicable standards to qualify for federal funding and to avoid state liability if the programs are not properly carried out by the local governments?

7. Should the state or local government be primarily responsible for the provision of health services? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to qualify for federal funding?

8. How to insure that local issues are dealt with in the unorganized borough, since the legislature rarely meets as the assembly for the unorganized borough.

9. How to avoid establishing multiple governmental and administrative bodies with duplicate functions in small communities which suffer from a lack of people to fill the positions.

10. Should there be a regionally elected body in the unorganized borough to manage local service programs and to deal with the state?

Technical Committee Notes Jan. 6, 9

Ted will do powers section

29.42.040

29.33.110 change recommended by technical group.
Use Ted's - add (c)

29.33.120 - change
Eliminate limit against regulating private utilities and allow regulation to the extent not regulated under 42.05

29.45.610. change
~~29.42.080~~. change

~~29.45.130~~ - ~~left in~~ leave in except for last two lines

~~29.42.050 (c)~~ 29.36.270. - change

move 29.39.030

Add new section on liability for dedications

Allow 2nd class city to go home rule

29.24.010 - reassert original recommendation.

i ponded on The assembly may authorize a city to levy and collect sales and use taxes on other sources.

A city which agrees to become part of a service area under this section may not ~~revoke the agreement~~ withdraw from the service area or exercise a power exercised by on a service area basis.

(New Section)

29.42 __ Dedicated Areas: Municipal Services

Dedication of streets, rights of way, easements or other areas ~~deemed necessary~~ for public use ~~[under land use regulations] enacted by a municipality under this chapter]~~ shall not, ~~by itself~~, be construed to require the municipality to maintain, improve, or provide or otherwise be responsible for municipal services to those areas ~~[until the municipality has acquired the power to provide such services] under Chapter 33 of this Title.~~

nor shall that dedication impose any liability of the municipality ~~with respect to~~ regarding the condition of those areas.

~~does not constitute an acceptance of a municipality, by itself, be construed to create liability for the condition of or for the maintenance, improvement or for providing other services to those areas.~~

Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all the legislative powers not prohibited by law or charter.

Sec. 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of four classes:

(1) first class boroughs;

(2) second class boroughs;

(3) repeal

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. Section unchanged to:

(g) A second class borough may reclassify as a first class borough in the manner provided by AS 29.36.110 - 29.36.130 for the addition of powers by boroughs, except that the petition or proposal requests reclassification instead of requesting addition of powers.

(h) repeal.

(i) repeal.

(j) repeal.

Sec. 29.06.050. TRANSITION. (a) A third class borough existing on the effective date of this act shall continue as a third class borough under the conditions established by law prior to the effective date of this act until it becomes reclassified in accordance with this section.

(b) A third class borough may reclassify as a first or second class borough in the manner provided by AS 29.36.110 - 29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers. If reclassification is approved, a school board shall be elected in conformity with AS 14.12 at the next regular election if it occurs within 90 days of the date of the

reclassification election, or at a special election within 90 days of the date of the reclassification election. Expiration dates of terms of members elected at a special election must coincide with the date of the regular election. Until a board is elected and qualified, the assembly continues to serve as the board.

EXPLANATION; Third class boroughs are eliminated. A transition section provides that the existing third class borough retain its status until it is reclassified. The option of allowing the assembly to continue to serve as school board of a borough which is reclassifed from third to first or second class currently contained in AS 29.06.030(i) has been eliminated, so that if the third class borough changes its classification it must elect a school board. (NOTE: This was prepared as a request of the Policy Group to eliminate third class boroughs. If it is approved upon reconsideration, additional technical drafting changes will be required to eliminate references to third class boroughs in other sections.)

Sec. 29.09.180. ORGANIZATIONAL GRANTS. (a) For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or for a second class city reclassified after January 1, 1981, is entitled to an organizational grant of $150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organizational grant.

EXPLANATION: This section is being resubmitted as the recommendation of the Technical Group after considering legislation on the matter proposed by Community and Regional Affairs.

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all the powers

(1) not prohibited it by law or charter;

(2) granted to home rule boroughs.

EXPLANATION: Existing language in (2) is confusing in that the reference to cities may imply a limitation of some sort on the powers of a unified municipality. This is a clearer statement of existing law.

Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law municipality shall adopt a conflicts of interest ordinance which other provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest.

EXPLANATION: The second sentence is deleted as redundant. After considering the alternative proposed by the Policy Group, the Technical Group reasserts its original recommendation. It is felt that a person should not vote on a matter in which he has a substantial financial interest and that disclosure of the interest is not adequate protection for the public.

Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor and member of the school board. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor or member of the school board, vacant when the person elected.

(The rest of the section was previously approved by the Policy Group).

EXPLANATION: The Technical Group upon reconsideration recommends that the governing body not be allowed to declare the office of a school board member vacant. Current law allows the members to determine vacancy on the school board.

Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. The governing body may, by ordinance, establish advisory or quasi-judicial boards and commissions.

EXPLANATION: Upon reconsideration, the Technical Committee would like to limit specific authority to set up boards to exclude administrative boards. In addition, subsection (b) is deleted from the draft which was originally approved by the Policy Group because it is felt that appointment power is adequately included under general separation of powers principles and ought not to be further restricted in an inflexible statute applying to every type of board.

Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. A member of the governing body may not be appointed manager of the municipality sooner than one year after leaving office except by a vote of three-forths of the authorized membership of the governing body.

EXPLANATION: Upon reconsideration, it is felt that the prohibition against serving as manager ought not to apply to officials other than members of the legislative body. This change would allow the governing body to appoint a municipal official to the office of manager without the one year or super majority restriction.

Sec. 29.24.680. PROHIBITIONS. Repeal.

EXPLANATION: (a) and (b) have been approved for repeal by the Policy Group. Upon reconsideration it is felt that the rest of the section should also be repealed. (c) and (d) were adopted for a specific Juneau problem which no longer exists according to Mr. Lee Sharp.

Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCE. (a)

(12) repeal.

The rest of the section is unchanged.

EXPLANATION: It is felt that (12) should be repealed as redundant because the provision is contained in AS 36.25. (Note: changes to (2), (5), (7), and (8) were previously approved by the Policy Group and the Technical Committee makes no further recommendation with regard to those paragraphs.)

Sec. 29.27.050. CODES OF REGULATION. The governing body may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopted ordinance need be printed after adoption. The governing body shall provide for the adopted code to be made available to the public at no more than cost.

EXPLANATION: The Policy Group previously approved changes made to the last line of this section - "The governing body shall provide for the adopted code to be sold or made available at no charge to the public." It is felt that this would be more flexible in that a municipality would also have the option of collecting a fee which represents only a part of the cost.

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance the governing body may prescribed penalties not to exceed those imposed for a class B misdemeanor and may require mandatory, nonsuspendable imprisonment not to exceed five days.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

EXPLANATION: Technical drafting changes with no substantive impact on the section as previously approved by the Policy Group in (a) and (b). Subsection (c) has been changed from the language previously approved so that a municipality has the option of charging less than full cost.

Sec. 29.30.030. ELECTION DATES. (a) The governing body shall give at least 20 days notice of a regular or special election.

(b) The date of a regular election is the first Tuesday of each October unless a different date or interval of years is provided by ordinance.

EXPLANATION: Technical changes. The notice requirement is applied to the regular election as well as the special election.

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition.

Other subsections as previously approved.

EXPLANATION: The Technical Committee wishes to reassert its first recommendation that no special election be required in the initiative process. In rejecting this suggestion, the Policy Group appears to have felt that the initiative process should be treated the same as the recall and referendum processes, both of which require a special election if a regular election is not held within a given time period. The Technical committee feels that the initative process, seeking to establish new law, is not as much of an emergency situation as the recall of an official or the repeal of an unpopular law, and therefore that the expense and inconvenience of holding a special election on an initiative ought not to be placed on municipalities.

Sec. 29.30.300. ELECTION NOTICE. At least 20 days notice of an election to recall an official shall be given notwithstanding an ordinance or charter provision to the contrary.

EXPLANATION: It is felt that since a recall must be done at a regular or special election, procedural requirements dealing with election apply so most of this section is eliminated as redundant. The notice provision is necessary to bind home rule municipalities.

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body his office becomes vacant and is filled in accordance with AS 29.24.175.

(b) Nothwithstanding subsection (a), if all members of the governing body are recalled, the governor shall appoint three qualified persons to the governing body. The appointees shall appoint additional members to fill remaining vacancies in accordance with AS 29.24.175.

(c) If all officials are recalled from a school board the governor shall appoint three qualified persons to the school board. The appointees shall appoint additional members to fill remaining vacancies.

(d) A person appointed under (a) - (c) of this section shall serve until a successor is elected and takes office.

(e) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held not more than 60 days from the date the recall election is certified, except that if a regular election occurs within 75 days after certification the successor shall be chosen at that election.

(f) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: Redrafted at the request of the Policy Group. This would provide that vacancies in a governing body resulting from recall would be filled as any other vacancy, unless all members of the body are recalled, in which case the governor shall appoint members so that local government can continue to function. If all members of a school board are recalled, the governor would have the same power of appointment to that board.

Sec. 29.42.150. DELEGATIONS. The assembly may by ordinance authorize the planning commission and the platting authority to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the planning commission or platting authority, to other boards or commissions or to a hearing officer designated by the planning commission or platting authority.

EXPLANATION: The Technical Committee originally recommended repeal of this section. Upon reconsideration, it is recommended that it be retained in a slightly redrafted form to insure that there is no question that hearing officers may be used by the planning commission and platting authority to hear individual cases.

Sec. 29.45.610. POWER OF LEVY. (a) A city within a borough which levies and collects areawide sales or use taxes may levy sales or use taxes on all sources taxed by the borough in the manner provided for boroughs, except that the assembly may by ordinance authorize a city to levy and collect sales or use taxes on other sources.

(b) A city within a borough which does not levy and collect areawide sales or use taxes may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Repeal.

EXPLANATION: Subsection (a) is altered to allow a city to levy taxes on other sources if authorized by a borough. It is felt that borough authorization should be required since the borough does the collecting and would experience added administrative difficulties if the city and borough tax differ. Subsection (b) contains the material formerly in AS 29.45.620.

Sec. 29.33.200. MUNICIPAL PROPERTIES. (Section as previously approved by the Policy Group with the following new subsection:)

(g) Dedication of streets, rights of way, easements or other areas for public use shall not be construed to require the municipality to maintain, improve or provide for municipal services in the area dedicated and the dedication shall not impose any liability on the municipality for the condition of the area dedicated.

EXPLANATION: Since the municipality may be the recipient of land deeded over by a private person without the muncipality's approval, it is felt that the municipality should not be liable for the condition of property just as the result of dedication. This would not affect the liability of a municipality for the condition of land which it undertakes to improve or maintain.

**Municipality of Anchorage**

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*GEORGE M. SULLIVAN, MAYOR*

OFFICE OF THE MUNICIPAL ATTORNEY

January 7, 1981

TO: Title 29 Policy Committee Members

Re: Proposed Draft on Municipal Powers & Duties

Attached please find a proposed draft of a new Title 29 chapter on Municipal Powers and Duties. This draft was prepared and reviewed by the Technical Committee in response to numerous complaints that the present law on this subject is extremely confusing and overly restrictive for municipal governments. The proposed draft attempts to consolidate in one place all provisions dealing with the powers of various classes of local government, including all provisions for the assumption of new municipal powers.

Since this work represents a major reorganization of the present statutes, a section by section comparison of old and new provisions will be difficult. For reference, the proposed material would replace the following provisions in present law:

AS 29.33.010 - .050
AS 29.33.250 - .290
AS 29.38.010 - .050
AS 29.41.010 - .020
AS 29.43.010 - .110
AS 29.48.010 - .110
AS 29.48.190; .210; .220; .270;
AS 29.48.310 - .330

Hopefully, you will find the proposed organization a bit easier to follow and understand than the rather confusing collection of present statutes listed above.

Aside from reorganization, the primary change in the proposed draft is to eliminate the "laundry list" approach to describing permissible municipal powers. The proposed statutes would identify those powers that can be exercised by the assembly or council for various classes of governments and would then allow exercise of any other general law power provided such powers are assumed by vote of the people or transferred as required under present law.

Given the short time before the January 17 Policy meeting, Tam Cook and I agreed to mail the proposed draft to the Policy Committee members so that there would be a chance to review it prior to the Juneau meeting. There is certainly no pride of authorship on my part, and your comments and criticisms will be most welcome.

If you have questions on the proposed draft prior to the January 17 meeting, please feel free to contact me at 264-4236, and I will do my best to answer them.

Sincerely yours,

DEPARTMENT OF LAW

Theodore D. Berns
Municipal Attorney

TDB:gml
Attachments
cc: Tam Cook

Prepared by: Theodore D. Berns
Title 29 Technical Committee
January 2, 1981

# CHAPTER 33. MUNICIPAL POWERS AND DUTIES

## (CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

### Article 1. GENERAL POWERS

Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments and to impose liens for the enforcement thereof;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property, and interests in such property whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

(13) to regulate the operation and use of its public rights of way, public facilities and services.

Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL JURISDICTION. (a) A municipality may, to the extent otherwise authorized or permitted by law, provide parks, roads (including ice roads), trails, playgrounds, solid and septic waste disposal, wharves, harbors and other marine facilities, emergency medical services, cemeteries, airports, transportation systems and utility services outside its boundaries, and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030 (Sec. 29.73.020.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside cities in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS_____.

(c) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

Sec. 29.33.050. FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges and may grant permits for use of streets and other public places.

(b) No exclusive franchise is valid until it has been ratified by a majority of the qualified voters voting on the question at a regular or special municipal election.

Sec. 29.33.060. (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a utility to the extent that the utility is not regulated under AS 42.05, provided that interest must be paid on any deposit required by the utility. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return in invested capital.

Sec. 29.33.070. MUNICIPAL PROPERTY.

The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land of the municipality. Each disposal of land or an interest in land shall be by ordinance unless the assembly or council finds by resolution that the land or interest in land is without substantial value to the municipality.

Sec. 29.33.080. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

(b) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

Sec. 29.33.090. (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes and levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to unified municipalities.

Sec. 29.33.100. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of

the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 2. MANDATORY AREAWIDE POWERS

Sec. 29.33.110. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this article on an areawide basis, both inside and outside cities within their boundaries.

(b) No city may exercise an areawide power once that power is being exercised by a borough.

Sec. 29.33.120. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

**Sec. 29.33.130. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION)** Boroughs shall assess and collect property, sales and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

**Sec. 29.33.140. LAND USE REGULATION.**

First and second class boroughs shall provide for land use regulation in accordance with AS 29.42._____

Article 3. ADDITIONAL CITY AND BOROUGH POWERS

Sec. 29.33.150. FIRST CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through .140, a first class borough in the areas outside cities, may exercise any power not otherwise prohibited by law.

(b) A first class borough may, by ordinance, exercise the following powers on an areawide basis:

1. Providing transportation systems
2. Water pollution control
3. Air pollution control as provided in AS 46.03.140-.240
4. Licensing of day care facilities
5. Regulation of animals

(c) In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise any other power not otherwise prohibited by law provided that such power has been transferred by a city and approved by the borough

assembly or has been acquired pursuant to sec. .190 of this chapter.

Sec. 29.33.160. SECOND CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through .150, a second class borough, in the area outside cities, may, by ordinance, exercise the following powers:

1. Providing transportation systems
2. Regulation of fireworks
3. Regulation of animals
4. Regulation of drivers and motor vehicles, including snow vehicles and off highway vehicles, to the extent allowed under AS 28.01.010.
5. Provision of garbage and solid waste collection and disposal.
6. Air pollution control as provided in AS 46.03.140-.240
7. Water pollution control
8. Participation in federal or state loan programs for housing rehabilitation and improvement for energy conservation.
9. Economic development programs and activities.

(b) A second class borough may, by ordinance, exercise the following powers on an areawide basis:

1. Providing transportation systems
2. Regulation of animals

3. Air pollution control as provided in AS 46.03.140-.240

4. Water pollution control

5. Licensing of day care facilities

(c) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis or in the area outside cities, exercise any other power and may provide other services or facilities not otherwise prohibited by law on an areawide basis provided that such power has been transferred by a city and approved by the borough assembly for exercise within the city or has been acquired by election under Sec. .190 of this chapter, or in the area outside cities, provided it has been acquired by election under Sec. .190.

Sec. 29.33.170. CITIES WITHIN ORGANIZED BOROUGHS. (a) In addition to the power conferred under Sec. .010, a first or second class city within an organized borough may exercise any power not otherwise prohibited by law. In accordance with Sec. .110, a city may not exercise a power once that power is being exercised by a borough.

Sec. 29.33.180. CITIES OUTSIDE ORGANIZED BOROUGHS. (a) Cities outside an organized borough may exercise any power not otherwise prohibited by law.

(b) Cities outside an organized borough may assess, levy and collect a general property tax and a sales or use tax. A property, sales or use tax if levied must be assessed, levied and collected as provided by Chapter 45 of this title for boroughs.

Cities may, by ordinance, establish, alter and abolish differential tax zones for property taxes for services not provided in the entire city or provided at a different level than provided generally within the city.

(c) Home rule and first class cities outside an organized borough shall constitute city school districts and shall establish, operate and maintain a system of public schools as provided by AS 29.36.040 for boroughs.

(d) Home rule and first class cities outside an organized borough shall, and second class cities outside an organized borough may, provide for land use regulation as provided by AS 29.42.010-.245 for boroughs.

Sec. 29.33.190. ACQUISITION OF ADDITIONAL POWERS. (a) A borough acquires additional powers by holding an election on the question as provided by this section. For acquisition of areawide powers, the election shall be held areawide. For acquisition of powers in the area outside cities the election shall be held in the area outside cities only.

(b) An election under this section may be initiated by a petition signed by a number of voters equal to 15% of the number of votes cast at the preceeding regular election in the area in which the election is to be held or by the assembly. A petition under this section shall be filed with the borough clerk who shall certify to the assembly whether the petition contains sufficient signatures. Upon certification, the assembly shall, at the next regular meeting, order an election on the question to be held

within 60 days of the order. If more than one power, service or facility is proposed, each shall appear separately on the ballot.

(c) In the case of acquisition of additional areawide borough powers, the borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the

bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

## Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33.200. (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.210. (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.220. (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title area illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

Prepared by: Theodore D. Berns
Title 29 Technical Committee
January 2, 1981

# CHAPTER 33. MUNICIPAL POWERS AND DUTIES

## (CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

### Article 1. GENERAL POWERS

same

Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) regulate the operation and use of public rights-of-way, public facilities and services;

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments and to impose liens for the enforcement thereof;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property, whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

Use our language no change

Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL JURISDICTION. (a) A municipality may, to the extent otherwise authorized or permitted by law, provide parks, roads (including ice roads), trails, playgrounds, solid and septic waste disposal, wharves, harbors and other marine facilities, emergency medical services, cemeteries, airports, transportation systems and utility services outside its boundaries, and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

NO Change

Sec. 29.33.030 (Sec. 29.73.020.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

Changed

Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside cities in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS_____.

(c) Powers granted by this section must be initiated within a period of not more than five years from the date of

declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

Repeal

Sec. 29.33. . (Sec. 29.48.033.) GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance, award contracts for collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste meterial carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier

or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

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

Sec. 29.33.___. FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges. and may grant permits for the use of streets and other public places.

(b) No exclusive franchise is valid until it has been ratified by a majority of the qualified voters voting on the question at a regular or special municipal election.

(c) repeal

Sec. 29.33.___. (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a ~~municipally owned~~ utility to the extent not regulated under AS 42.05 ~~and may regulate and provide~~ what is a ~~reasonable deposit for meters and security for service to be given~~, provided that interest is paid on ~~the~~ any required deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return in invested capital.

Sec. 29.33.___. MUNICIPAL PROPERTY.

Use Allaska

The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land f the municipality. Each disposal of land or an interest in land shall be by ordinance unless the assembly or council finds by resolution that the land or interest in land is without substantial value to the municipality.

(Same) Sec. 29.33.___. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

(b) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

Repeal
Same Sec. 29.33. . (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues ~~levied and collected~~ received through taxes on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes and levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to unified municipalities.

Same Sec. 29.33.230. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 2. MANDATORY AREAWIDE POWERS

Sec. 29.33. . (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this article on an areawide basis, both inside and outside cities within their boundaries.

(b) No city may exercise an areawide power once that power is being exercised by a borough.

Sec. 29.33. . (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the

borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.33.___. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess and collect property, sales and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

Sec. 29.33.___. LAND USE REGULATION.

First and second class boroughs shall provide for land use regulation in accordance with AS 29.42.____.

Article 3. ADDITIONAL CITY AND BOROUGH POWERS

Sec. 29.33.___. FIRST CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 and _____, a first class borough in the areas outside cities, may exercise any power ~~and may~~ provide ~~any service or facility~~ not otherwise prohibited by law.

(b) A first class borough may, by ordinance, exercise the following powers ~~and provide the following services~~ on an areawide basis:

providing
1. Transportation ~~services~~ systems
2. Water pollution control
3. Air pollution control as provided in AS 46.03.140-.240
4. Licensing of day care facilities
5. ~~Licensing impounding and disposition of animals~~ regulation of animals

(c) In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise any other power ~~and may provide any~~ other ~~service or facilities~~ not otherwise prohibited by law provided that ~~such~~ the power, ~~service~~

a first class a ~~first class~~ Boro

~~or facility~~ has been transferred by a city and approved by the borough assembly or has been acquired pursuant to sec._____.

Sec. 29.33.___. SECOND CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 and _____, a second class borough, in the area outside cities, may, by ordinance, exercise the following powers ~~and may provide the following services~~:

1. Providing Transportation ~~services~~ systems
2. Regulation of fireworks
3. Regulation of animals
4. Regulation of drivers and motor vehicles, including snow vehicles and off highway vehicles, to the extent allowed under AS 28.01.010.
5. Provision of garbage and solid waste collection and disposal.
6. Air and water pollution control (use 2 & 3 of First class boroughs)
7. Participation in federal or state loan programs for housing rehabilitation and improvement for energy conservation.
8. Economic development programs and activities.

(b) A second class borough may, by ordinance, exercise the following powers ~~and provide the following services or facilities~~ on an areawide basis:

1. Transportation services
2. Regulation of animals
3. Air and water pollution control
4. Licensing of day care facilities

(c) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis or in the area outside cities, exercise any other power ~~and may provide other services or facilities~~ not otherwise prohibited by law provided on an areawide basis that ~~such~~ the power, ~~service or facility~~ has been transferred by a city and approved by the borough assembly for exercise within the city or (on a nonareawide basis) has been by acquired provided the power election under Sec._____.

redraft so areawide only are approved by cities

Allows substantial assumption of powers over what is now allowed.

Sec. 29.33. . CITIES WITHIN ORGANIZED BOROUGHS. (a) A first or second class city within an organized borough may exercise any power and may provide any service or facility not otherwise prohibited by law. In accordance with Sec _____, a city may not exercise a power once that power is being exercised by a borough.

Sec. 29.33. . CITIES OUTSIDE ORGANIZED BOROUGHS. (a) In addition to powers conveyed by 29.33.010 Cities outside an organized borough may exercise any power and may provide any service or facility not otherwise prohibited by law.

(b) Cities outside an organized borough may assess, levy and collect a general property tax and a sales or use tax. A property, sales or use tax if levied must be assessed, levied and collected as provided by Chapter 45 of this title for boroughs. Cities may, by ordinance, establish, alter and abolish differential tax zones for property taxes for services not provided in the entire city or provided at a different level than provided generally within the city.

(c) Home rule and first class cities outside an organized borough shall constitute city school districts and shall establish, operate and maintain a system of public schools as provided by AS 29.36.040 for boroughs. 2nd class cities shall not be school districts

(d) Home rule and first class cities outside an organized borough shall, and second class cities outside an organized borough may, provide for land use regulation as provided by AS 29.42.010-.245 for boroughs.

Sec. 29.33. . ACQUISITION OF ADDITIONAL POWERS. (a) A ~~city or~~ borough ~~may acquire~~ acquires additional powers, ~~services or~~ facilities as provided by sec._____ by holding an election on the question as provided by this section. For acquisition of areawide powers, the election shall be held areawide. For acquisition of powers in the area outside cities ~~or within a city~~ the election shall be held in the area outside cities only ~~or within the city~~.

(b) An election under this section may be initiated by the assembly or by a petition signed by a number of voters equal to 15% of the number of votes cast at the preceeding regular election in the area in

which the election is to be held ~~or by an ordinance adopted by the assembly or council~~. A petition under this section shall be filed with the borough ~~or city~~ clerk who shall certify to the assembly ~~or council~~ whether the petition contains sufficient signatures. Upon certification, the assembly ~~or council~~ shall, at the next regular meeting, order an election on the question to be held within 60 days of the order. If more than one power, service or facility is proposed, each shall appear separately on the ballot.

Same (c) In the case of acquisition of additional areawide borough powers, the borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties

and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

No change

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33. . (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33. . (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33. . (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title area illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

SCOMM

#23:2

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

## ARTICLE 2. RECLASSIFICATION OF A SECOND CLASS CITY, A SECOND CLASS BOROUGH, A THIRD CLASS BOROUGH

Sec. 29.06.040 (29.08.040). RECLASSIFICATION OF A SECOND CLASS CITY. (a) If the department determines that the population of a second class city has reached 400 permanent residents, the city may be reclassified as a first class city by holding an election on the question initiated by

(1) petition filed with the council and signed by a number of voters equal to at least 15 percent of the votes cast in the city at the preceding regular election; or

(2) proposal of the council.

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

(c) Within 30 days after its findings have been made public, the council shall order an election on the question of reclassification. The election shall be held at least 30 days after the order, but not later than the next regular election which occurs 30 days after the order. If more than one question is to be voted on, each shall appear separately on the ballot.

(d) The council shall certify the election results to the department. If the majority vote is favorable, the city is reclassified to a first class status 30 days after certification of the results.

Sec. 29.06.050 (New). RECLASSIFICATION OF A SECOND CLASS BOROUGH. (a) A second class borough may be reclassified as a first or third class borough in the manner provided by AS 29.36.110 - 29.36.130 (29.33.270 - 29.33.290) for the addition of a power, except the petition or proposal shall request reclassification.

(b) During an election on reclassification of a second class borough to third class status, voters shall elect an assembly to serve as the combined assembly and school board if reclassification is approved. The effective date of reclassification to third class status is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification has been approved by the voters.

Sec. 29.06.060 (New). RECLASSIFICATION OF A THRID CLASS BOROUGH. (a) A third class borough may be reclassified as a first or second class borough in the manner provided by AS 29.36.110 - 29.36.130 (29.33.270 - 29.33.290) for the addition of a power by a first or second class borough, except the petition or proposal shall request reclassification.

(b) During an election on reclassification of a third class borough, voters shall vote also on whether the borough upon reclassification shall retain a combined assembly and school board or adopt a separate assembly and board. Upon voter approval of reclassification, if a majority vote favors retention of the combined assembly and school board, the assembly serving at the time of the election shall continue to serve as the assembly and board as provided before reclassification. If a majority vote favors a separate assembly and school board, a board shall be elected in accordance with AS 14.12 at the next regular election which occurs within 90 days of the reclassification election or at a special election held within 90 days of the reclassification election. Expiration of the term of a member of the board elected at a special election shall coincide with the date of the regular election. Until a school board is elected and qualified, the assembly continues to serve as the board.

Sec. 29.08.050. TRANSITION. (Repeal)

ARTICLE 2. PROCEDURES

Sec. 29.09.060 (29.18.050). PETITION. (a) Municipal incorporation is proposed by filing with the department a petition containing the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

(4) maps, documents, and other information required by the department;

(5) a proposed municipal budget projecting sources of income and items of expenditure through the first full fiscal year of operation;

(6) composition and apportionment of the assembly or council;

(b) In addition to requirements set out in (a) of this section, a petition proposing incorporation of a borough shall contain the following:

(1) based on the number who voted in the last general election, the signature and resident address of 15 percent of the permanent resident voters in each first class city located within the area of the proposed borough and of 15 percent of the permanent resident voters within the area of the proposed borough but outside of a first class city;

(2) for a first class borough, a designation of areawide powers to be exercised;

(3) for a second class borough, a designation of areawide and nonareawide powers to be exercised.

(c) In addition to requirements set out in (a) of this section, a petition proposing incorporation of a city shall contain

(1) a designation of the powers to be exercised by the city;

(2) for a first class city, the signature and resident address of 50 permanent resident voters in the area of the proposed city or of 15 percent of the permanent resident voters in the area of the proposed city, whichever is greater based on the number who voted in the last general election;

(3) for a second class city, the signature and resident address of 25 permanent resident voters in the

area of the proposed city or of 15 percent of the permanent resident voters in the area of the proposed city, whichever is greater, based on the number who voted in the last general election.

Sec. 29.09.070 (29.18.060, 070). REVIEW AND INVESTIGATION. (a) The department shall review a petition for municipal incorporation and return a deficient petition for correction.

(b) If a petition contains the required information and number of signatures, the department shall investigate the proposal.

(c) After investigation of a proposal, the department shall report its findings and recommendations to the Local Boundary Commission.

(d) The department may combine petitions received from the same general area and treat them as one petition.

Sec. 29.09.080 (29.18.080, 090). HEARING AND DECISION. (a) Prior to making a decision regarding an incorporation petition, the Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated.

(b) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards for incorporation, it shall accept the petition. If the

commission determines that the proposed boundaries can be altered to meet the standards for incorporation, it may alter the boundaries and accept the petition.

(c) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition.

(d) A decision by the Local Boundary Commission under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110 (29.18.110). INCORPORATION ELECTION. (a) Within 30 days after notification of acceptance of an incorporation petition, the lieutenant governor shall order an election in the proposed municipality to be held not less than 30 nor more than 90 days after the order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed. If the voters approve incorporation, initial officers are elected in the same election.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) In an election for incorporation of a first or second class borough, areawide powers included in the incorporation petition are considered part of the incorporation question.

(d) In an election for incorporation of a second class borough, each proposed nonareawide power shall be placed separately on the ballot. A majority vote limited to voters residing outside a city is required for adoption of a nonareawide power.

(d) The lieutenant governor shall supervise the election in the manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under this section.

Sec. 29.09.120 (29.18.120). ELECTION OF INITIAL OFFICERS. (a) A nomination for an initial officer is made by petition in the form prescribed by the lieutenant governor and containing:

(1) the name and address of the nominee;

(2) a statement by the nominee that he is qualified for the office he seeks;

(3) to nominate an elected officer, the signature and resident address of 50 voters in the area of the proposed municipality or in the area from which the officer is to be elected under the composition and apportionment set out in the incorporation petition;

(4) to nominate an officer of a second class city, the signature and resident address of ten voters in the area of the proposed city.

(b) A person may file for and occupy more than one office, but may not serve simultaneously as

(1) borough mayor and as a member of the assembly;

(2) city mayor and a member of the council of a home rule city;

(3) city mayor and a member of the council of a first class city.

(c) An initial elected municipal officer takes office on the first Monday following certification of his election, unless provided otherwise by the incorporation petition.

(d) Initial elected assembly and council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130 (29.18.130). INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. (Consider addressing the integration of REAA's under this section, per Lee Sharp's suggestion.)

Sec. 29.09.140 (29.18.140). TRANSITION. (a) A power or duty exercised by a city or service area which is succeeded

to by a newly incorporated borough continues to be exercised by the city or service area until assumed by the borough. A power or duty exercised by a service area which is succeeded to by a newly incorporated city continues to be exercised by the service area until assumed by the city. A newly incorporated municipality shall assume all authorized powers and duties within two years of incorporation. An ordinance, rule, resolution, procedure, and order in effect before assumption of a power or duty by a newly incorporated municipality remains in effect until superseded by the municipality.

(b) Before assuming a power or duty, a newly incorporated municipality shall give written notice of the assumption to the city or service area exercising the power or duty. Officials of the newly incorporated municipality shall consult with officials of the city or service area concerned to arrange an orderly transfer of a power or duty.

(c) After incorporation of a new municipality, no service area within it may assume additional bonded indebtedness, make a contract, or transfer an asset without the consent of the assembly or council.

Sec. 29.09.150 (29.18.150). CHALLENGE OF LEGALITY. A challenge to the formation of a municipality must be made within six months of the date of its incorporation.

NOTE: (1) substantive change in 29.18.070 to eliminate public hearing by the department since one is held by Local Boundary Commission and the issue is decided by election.

(2) substantive change in 20.18.120(c) to provide for local flexibility "unless provided otherwise by the incorporation petition."

(3) substantive change in 29.18.140 intended to address confusion over whether a newly created municipality may succeed a previously incorporated municipality.

(4) 29.18.130 needs to be re-drafted.

(5) add a definition of "department" and of "nonareawide power" to the definition section.

# CHAPTER 12. ALTERATION OF A MUNICIPALITY

## Article 1. Change of Municipal Name

Sec. 29.12.010 (29.73.050). CHANGE OF NAME. (a) The name of a municipality may be changed by ordinance which is ratified by majority vote at a regular or special election and filed with the lieutenant governor. Upon receipt of a ratified ordinance, the lieutenant governor shall issue an order to the municipality changing its name in compliance with the ordinance. A name change shall become effective within 45 days of receipt of the ordinance on a date fixed in the order. A copy of the order shall be sent to the department.

(b) An ordinance changing the name of a municipality which is ratified by the voters may not be repealed, except by adopting a different name as provided in (a) of this section.

(c) Suits, applications, petitions, hearings and other proceedings to which a municipality is a party which are pending or brought after a change of municipal name shall proceed in the name of the municipality as changed by order.

NOTE: substantive change in (b). I cannot see any reason to allow repeal of an ordinance which has been ratified by the voters, unless the voters will ratify the change.

ARTICLE 2. ANNEXATION AND EXCLUSION.

Sec. 29.12.040 (29.68.010). MUNICIPAL BOUNDARY CHANGE. (a) No change. Follows language of the constitution.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall establish procedures for annexation and exclusion of territory by a municipality by local action. The regulations shall include a requirement that

(1) a proposed annexation or exclusion be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or exclused;

(2) municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) an area adjoining a municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a change initiated by local action, without regard to priority in time. (No change)

Sec. 29.12.040 (29.68.020). ANNEXATION OF A MILITARY RESERVATION. A military reservation may be annexed to a municipality in the manner prescribed by AS 29.12.040 (29.68.010). If a city within a borough annexes a military reservation, the area encompassing the reservation is automatically annexed to the borough.

## ARTICLE 3. MERGER AND CONSOLIDATION

Sec. 29.12.080 (29.68.030). No change.

Sec. 29.12.090 (29.68.040). PETITION. Merger or consolidation of two or more municipalities is proposed by filing with the department a petition containing

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information required by the department;

(5) the signature and resident address of 15 percent of the permanent resident voters in each municipality based on the number who voted in the last regular election.

Sec. 29.12.100 (29.68.050, 070). REVIEW AND INVESTIGATION. (a) The department shall review a petition for merger or consolidation and return a deficient petition for correction.

(b) If a petition contains the required information and number of signatures, the department shall investigate the proposal.

(c) After investigation of a proposal, the department shall report its findings and recommendations to the Local Boundary Commission.

Sec. 29.12.110 (29.68.070, 080). HEARING AND DECISION. (a) Prior to making a decision regarding a petition for merger or consolidation, the Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the petition, unless officials of the municipalities agree to a single hearing.

(b) If the Local Boundary Commission determines that a proposed merger or consolidation fails to meet the standards for municipal incorporation, it shall reject the petition. If the commission determines that the proposed merger or consolidation meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition.

(c) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition.

(d) A decision by the Local Boundary Commission under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140 (29.68.090). ELECTION. (a) Within 30 days after notification of acceptance of a merger or consolidation petition, the lieutenant governor shall order an election within the area to be included in the proposed municipality to be held not less the 30 nor more than 90 days after the order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within ten days, order an election for officers of the new municipality to be held not less than 30 nor more than 90 days after the order. The election order must specify the dates during which nomination petitions for election of officers may be filed. The merger or consolidation becomes effective upon election of municipal officers.

Sec. 29.12.150 (29.68.100). ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities as specified in the merger petition.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160 (29.68.110). ORDINANCES. No change.

NOTE: (1) substantive change in AS 29.68.040(a) in the number of signatures required to petition (from 25 to 15 percent) in order to conform to percentages required for petition for other boundary alterations or for formation of a municipality. Why should this be different? Residents are protected since they ultimately vote on the question.

(2) technical change in AS 29.68.090(d) to add procedural requirements and eliminate the cross-reference to the procedural requirements of AS 29.18.120 for ease of use of this section.

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

...UCH Y - STATE CAPITOL
JUN... ...SKA 99811
907-465-3800

MEMORANDUM

September 25, 1980

SUBJECT: Proposed drafting change

TO: Advisory Policy Committee -
Title 29 Revision

FROM: Tamara Brandt Cook TBC
Legislative Counsel

This is a technical revision which includes no substantive changes in the law. The section numbers used match existing section numbers, however, the sections have been arranged in the order proposed by the Technical Committee as part of their reorganization of Title 29. This draft contains the complete Article 1 (General Powers) under the proposed reorganization scheme.

TBC:ljb

Enclosure

# CHAPTER 48. POWERS APPLICABLE TO HOME RULE AND GENERAL LAW MUNICIPALITIES

## ARTICLE 1. General Powers

Sec. 29.48.010. GENERAL POWERS. Subject to other provisions of law, a municipality has the following powers:

(1) to combine two or more appointive or administrative offices; (Note: this provision appears currently as AS 29.-23.510)

(2) to establish and prescribe the functions of municipal departments, offices or agencies;

(3) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(4) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(5) to prescribe salaries for elected and appointed municipal officers and employees;

(6) to levy taxes and special assessments;

(7) to expend funds for public purposes;

(8) to borrow money and issue evidences of indebtedness;

(9) to acquire, manage, control, use and dispose of real and personal property for a purpose authorized by law irrespective of whether the property is situated within or outside the municipal boundaries; this power includes the power of a second class borough to expend money received from the disposal of land in a services area created under AS 29.63.090(f);

(10) to enforce ordinances and prescribe penalties for violations;

(11) to enter into agreements with a local government, the state, or the United States, including those for cooperative or joint administration of duties or powers;

(12) to sue and be sued; and

(13) to acquire membership in an organization which promotes legislation for the good of the municipality.

Sec. 29.48.037. EXTRATERRITORIAL JURISDICTION. (a) Subject to AS 29.33.010, a municipality may provide parks, playgrounds, roads (including ice roads), trails, airports, emergency

medical services, and cemeteries outside its boundaries and may regulate their use. If adopted under this section, a regulation must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, that municipality must by ordinance approve the exercise of the power; and

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

Sec. 29.73.020. EMINENT DOMAIN. (a) A home rule or general law municipality may exercise the power of eminent domain and declaration of taking in the performance of an authorized power or duty of the municipality in accordance with AS 09.55.250 - 09.55.460.

(b) Before exercising the power of eminent domain and declaration of taking, the council of a second class city shall request permission from the Department of Community and Regional Affairs and the council may not exercise the power without formal approval. The exercise of the power of eminent domain and declaration of taking shall be by ordinance which shall be submitted to the voters at the next regular election or special election called for that purpose. A majority vote is required for the approval of the ordinance.

Sec. 29.48.270. EMERGENCY DISASTER POWER. (a) A municipality which is wholly or partially within an area declared by the President to be a disaster area may participate in projects providing for housing, urban renewal, and redevelopment in the same manner as a home rule city. Notwithstanding AS 29.38.020 - 29.38.050, a second class borough may exercise this power.

(b) Unless the power for a housing, urban renewal, or redevelopment project is transferred as provided by AS 29.-33.260 by a city to the borough, a borough may exercise the emergency disaster power only in areas of the borough which are outside a city.

(c) The power granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President, but this power may be extended for an additional period of not more than three years.

# STATE OF ALASKA
# THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM September 26, 1980

SUBJECT: Proposed drafting change

TO: Advisory Policy Committee -
Title 29 Revision

FROM: Tamara Brandt Cook
Legislative Counsel

This is a proposed technical revision which makes no substantive legal changes. I have used the chapter and article numbers which these sections are organized under according to the reorganization proposed by the Technical Committee. The section number, AS 29.23.310, is the section in which this material appears in the existing Title 29.

In an effort to make this section clearer to the unsophisticated user, I am proposing a new opening section containing a cross-reference to the appropriate statute dealing with school districts. I have subdivided the existing section 29.23.310 in order to segregate material applicable to specific types of municipalities. I have also somewhat expanded this section to include a reference to the fact that the assembly serves as school board for third class boroughs. I added subsection (c) to provide notice within Title 29 of the existence of a provision outside of the title providing for an alternative to the school board membership requirements set out in Title 29.

In general, I have expanded the section dealing with school boards in order to provide more complete coverage of that topic in one place in the statutes for ease of use.

TBC:ljb

Enclosure

# CHAPTER 23. MUNICIPAL OFFICERS AND EMPLOYEES

## ARTICLE 5. School Boards

Sec. New. SCHOOL BOARDS. Each borough and city school district established under AS 14.12.010 has a school board.

Sec. 29.23.310. MEMBERSHIP. (a) Members of the school board in city, first and second class borough school districts are elected at the regular election for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished.

(b) The borough assembly shall serve as the school board for third class boroughs.

(c) Notwithstanding (a) of this section, a borough assembly may serve as the school board in a first or second class borough in accordance with AS 14.12.110.

## ARTICLE 6. SERVICE AREAS

Sec. 29.63.090. SERVICE AREAS. (a) Subject to AS New 1 and AS New 2, a service area to provide a special service within a borough may be established, operated, altered or abolished by the assembly by ordinance. A special service includes a service not provided on an areawide basis within the borough or the borough area outside cities, or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in a service area to finance the special service. The rate of taxation and the issuance of bonds are subject to assembly approval.

(c) The assembly may provide for an appointed or elected board to supervise the furnishing of a special service in a service area.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

Sec. New 1. SERVICE AREAS IN FIRST CLASS BOROUGHS. The assembly in a first class borough may exercise within a service area any power which may be exercised by a first class borough in the area outside cities, and any power granted to a first class city by general law.

Sec. New 2. (a) SERVICE AREAS IN SECOND AND THIRD CLASS BOROUGHS. The assembly in a second or third class borough may exercise within a service area any power which may be exercised by a first class borough in the area outside cities, and any power granted to a first class city by general law.

(b) Except as provided by (c) of this section; in a second or third class borough each power to be exercised in a service area, must be approved by a majority vote at a regular or special election held within the service area.

(c) A second or third class borough may establish a service area which may include only vacant, unappropriated and unreserved land owned by the municipality. A second or third class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second or third class borough may provide those services in a service area established under this subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance.

## ARTICLE 6. SERVICE AREAS

Sec. 29.63.090. SERVICE AREAS. (a) Subject to AS New 1 and AS New 2, a service area to provide a special service within a borough may be established, operated, altered or abolished by the assembly by ordinance. A special service includes a service not provided on an areawide basis within the borough or the borough area outside cities, or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in a service area to finance the special service. The rate of taxation and the issuance of bonds are subject to assembly approval.

(c) The assembly may provide for an appointed or elected board to supervise the furnishing of a special service in a service area.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

Sec. New 1. SERVICE AREAS IN FIRST CLASS BOROUGHS. The assembly in a first class borough may exercise within a service area any power which may be exercised by a first class borough in the area outside cities, and any power granted to a first class city by general law.

Sec. New 2. SERVICE AREAS IN SECOND AND THIRD CLASS BOROUGHS. (a) The assembly in a second or third class borough may exercise within a service area any power which may be exercised by a first class borough in the area outside cities, and any power granted to a first class city by general law.

(b) In a second or third class borough, each power to be exercised in a service area, except as provided by (c) of this section, must be approved by a majority vote at a regular or special election held within the service area.

(c) A second or third class borough may establish a service area which may include only vacant, unappropriated and unreserved land owned by the municipality. A second or third class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second or third class borough may provide those services in a service area established under this subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance.

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Sec. 29.63.090. ~~Service area~~ to provide special service within a borough may be established, operated, altered or abolished by the assembly by ordinance. A special service includes a service not provided on an areawide basis within the borough or the borough area outside cities, or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in a service area to finance the special service. The rate of taxation and the issuance of bonds are subject to assembly approval.

(c) The assembly may provide for an appointed or elected board to supervise the furnishing of a special service in a service area.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

Sec. New 1. SERVICE AREAS IN FIRST CLASS BOROUGHS. The assembly in a first class borough may exercise within a service area ~~or delegate to a service area~~ any power which may be exercised by a first class borough in the area outside cities, and ~~and may exercise within a service area~~ any power granted to a first class city by general law.

Sec. New 2. SERVICE AREAS IN SECOND AND THIRD CLASS BOROUGHS. (a) ~~The~~ the assembly in a second or third class borough may exercise ~~or delegate to a~~ within a service area any power which may be exercised by a first class borough in the area outside cities, ~~subject to (c) of this section,~~ and ~~may exercise within a service~~ any power granted to a first class city by general law.

except as provided by (c) of this section,

(b) In a second or third class borough, each ~~exercised or delegated~~ power to be exercised in a service area must be approved by a majority vote at a regular or special election held within the service area.

(c) A second or third class borough may establish a service area ~~by ordinance~~ which may include only vacant, unappropriated and unreserved land owned by the municipality. A second or third class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second or third class borough may provide those services in a service area established under this subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance.

Sec. 29.41.010
Tamara Brandt Cook

## ARTICLE 4. POWERS AND DUTIES OF THIRD CLASS BOROUGHS

Sec. 29.41.010. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessement and collection in the manner provided for a second class borough. Areawide exercise of other powers may be assumed. A third class borough may establish, operate, alter or abolish a service area in the manner provided by AS 29.63.090.

(b) A third class borough may exercise the general powers set out in AS 29.48.010 and may assume other general powers.

(c) Before a third class borough may assume a power under (a) of this section, assumption of the power must be approved by a majority vote in a general or special election. The acquisition of an additional power by the borough may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

Sec. 29.41.020. SCHOOL BOARD. The borough assembly is the school board for a third class borough. The mayor is the president of the school board. While acting as president of the school board he has all the powers of a borough executive except for the veto power.

Sec. New. MILITARY RESERVATION NOT PART OF SCHOOL DISTRICT. A military reservation within a third class borough is not part of the borough school district until inclusion in the district is approved by the Department of

Education or the military mission is terminated. However, operation of a military reservation school by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a reservation terminates or if continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of a school on a military reservation transfers to the borough school district in which the reservation is located.

NOTE: I have omitted AS 29.41.010(c) from this draft, because it appears that AS 29.58.010 - .140 apply to third class boroughs (to the extent they assume powers and become thereby authorized to incur indebtedness under AS 29.58.010) as well as the section cited in (c).

## ARTICLE 4. POWERS AND DUTIES OF THIRD CLASS BOROUGHS

Sec. 29.41.010. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessement and collection in the manner provided for a second class borough. Areawide exercise of other powers ~~is not authorized~~ may be assumed.

(b) ~~A third class borough may by a majority vote in a general or special election provide for planning, platting, and zoning in accordance with AS 29.33.070 - 29.33.245.~~ A third class borough may exercise the general powers set out in AS 29.48.010 and may assume other general powers. In addition to the general powers set out in AS 29.48.010, a third class borough ~~may assume~~ any other general law powers ~~which a second class borough is authorized to assume by this title.~~

(c) ~~Powers assumed by a third class borough under~~ (b) of this section ~~may be exercised only within service areas.~~ Before a third class borough may assume a power under (a) or acquisition of the power by a third class borough must be approved by a majority vote in a general or special election. A third class borough may establish, operate, alter or abolish a service area in the manner provided by AS 29.63.090. The acquisition of ~~an~~ additional powers ~~on a service area basis~~ may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the ~~proposed service area at the~~ preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

Sec. 29.41.020. SCHOOL BOARD. The borough assembly is the school board for a third class borough. The mayor is the president of the school board. While acting as president of the school board he has all the powers of a borough executive except for the veto power.

[redacted] DRAFTING CHANGE
Sec. 29.41.010
Tamara Brandt Cook

Sec. New. MILITARY RESERVATION NOT PART OF SCHOOL DISTRICT. A military reservation within a third class borough is not part of the borough school district until inclusion in the district is approved by the Department of Education or the military mission is terminated. However, operation of a military reservation school by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a reservation terminates or if continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of a school on a military reservation transfers to the borough school district in which the reservation is located.

NOTE: I have omitted AS 29.41.010(c) from this draft, because it appears that AS 29.58.010 - .140 apply to third class boroughs (to the extent they assume powers ~~which second class boroughs may assume~~ and become thereby authorized to incur indebtedness under AS 29.58.010) as well as the section cited in (c). Under AS 29.48.010 third class boroughs have the power to borrow money and issue evidences of indebtedness, unless this power is limited under some other section. Is it?

No I suspect that (c) is redundant in that all of AS 29.58 applies to third class boroughs.

AND DUTIES

ARTICLE 4. POWERS/OF THIRD CLASS BOROUGHS

Sec. 29.41.010. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for a second class borough. Areawide exercise of other powers is not authorized.

(b) A third class borough may by a majority vote ~~of the voters~~ in a general or special election provide for planning, platting and zoning in accordance with AS 29.33.070 - 29.33.245. In addition to ~~those~~ the general powers set out in AS 29.48.010, a third class borough may assume any general law power which a second class borough is authorized to assume by this title.

(c) Powers assumed by a third class borough under (b) of this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish a service area in the manner provided by AS 29.63.090. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 per cent of the number of votes cast in the proposed service area at the preceding regular election may file a peition with the assembly; or

(2) the assembly may place the question on the ballot.

Sec. 29.41.020. SCHOOL BOARD. The borough assembly is the school board for a third class borough. The mayor is the president of the school board. While acting as president of the school board he has all the powers of a borough executive except for the veto power.

Sec. New. MILITARY RESERVATION NOT PART OF SCHOOL DISTRICT. A military reservation within a third class borough is not part of the borough school district ~~until~~ the military mission is terminated. until inclusion in the district is approved by the Department of Education

However, operation of a military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a reservation terminates or if continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of a schools on a military reservation transfers to the borough school district in which the reservation is located.

Note: I have omitted AS 29.41.010(c) from this draft, because it appears that AS 29.58.010 - .140 apply to third class boroughs (to the extent they assume powers which second class boroughs may assume and become thereby authorized to incur indebtedness under AS 29.58.010) as well as the section cited in (c). Under AS 29.48.010 third class boroughs have the power to borrow money and issue evidences of indebtedness, unless this power is limited under some other section. Is it? I suspect that (c) is redundant in that all of AS 29.58 applys to third class boroughs.

# STATE OF ALASKA
# THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

October 2, 1980

SJUBJECT: Proposed drafting change

TO: Policy Group
Title 29 Revision Commission

FROM: Tamara Brandt Cook TBC
Legislative Counsel

This is a proposed technical revision of AS 29.53.020 dealing with exemptions from property taxation but containing no important substantive legal changes. However, I wish to alert you to a change which may have some substantative impact.

AS 29.53.020(e) currently contains the language

> Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall between or among themselves which shall receive the benefit of the exemption.

This sentence has been in subsection (e) since 1972, but its meaning is unclear. I checked with Mr. Lee Sharp, Municipal Attorney for Juneau, and Mr. Terry Early, State Assessor regarding the meaning of this provision. Both of them agreed with me that the section is unclear and Mr. Early advised me to check with an assessor to see how it has been applied in the field. I contacted Mr. Bob Howe, Juneau assessor, and he imformed me that the sentence in question has been ignored as a practical matter. I also checked with the Department of Revenue and was informed that they rely upon information supplied by the boroughs in determining the amount of the state rebate, and therefore have not been interpreting this sentence themselves. Consequently, I have deleted this sentence from this draft.

Please let me know of any changes which you would like me to make in this draft.

TBC:maf

Enclosure

Sec. 29.53.020. REQUIRED EXEMPTIONS. (a) The following property is exempt from the property tax:

(1) municipal, state, or federal property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(2) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes including the following property owned by a religious organization:

(A) a structure, its fixtures and furniture used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(B) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(C) a lot supporting and adjacent to a structure set out in (A) or (B) of this paragraph which is necessary to use of the structure;

(D) a lot required by ordinance for parking near a structure set in (A) of this paragraph;

(3) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of the organization;

(4) household furniture of the head of a family or householder not exceeding $500 in value;

(5) money on deposit;

(6) inventories located within a foreign trade zone established under AS 45.77.010, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce;

(7) the real property owned and occupied as a permanent place of abode by a resident 65 years of age or older, including a mobile home whether classified as real or personal property for municipal tax purposes; and

(8) a structure containing a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure.

(b) Property described in (a) of this section from which income is derived is exempt only if that income is

solely from use of the property by a nonprofit religious, charitable, hospital, or educational group for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from municipal taxes.

(d) An exemption may not be granted except upon written application on a form prescribed by the state assessor for use by local assessors. A claimant must file the application no later than January 15th of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause may waive the claimant's failure to make timely application for the exemption and authorize the assessor to accept the application. If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If failure to file by January 15th of the assessment year is waived and the application is approved, the amount of tax which a claimant may have already paid for the assessment year for property exempted shall be refunded. The assessor may require proof at any time of the right to and amount of an exemption claimed. A claimant must file a separate application for each assessment year in which an exemption is sought.

(e) Real property which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption under (a)(7) of this section may not be exempted.

The determination of the assessor is appealable under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or city for the real property tax revenues lost to it by the operation of (a)(7) of this section. However, reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city or which, upon application, would have been granted under AS 29.53.025(a).

(f) The exemption granted by (a)(8) of this section is limited to:

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1st of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

(g) Except as provided in (e) of this section, nothing affects similar exemptions from property taxes granted by municipalities on September 10, 1972.

and rep... by Technical Group 10/20/80

# STATE OF ALASKA
# THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM September 26, 1980

SUBJECT: Proposed drafting changes

TO: Advisory Policy Committee - Title 29 Revision

FROM: Tamara Brandt Cook
Legislative Counsel TBC

As noted in several of the comments submitted to the Advisory Policy Committee, the status of an ordinance between the time of adoption and the time of veto is unclear in the current statutes. This draft contains several substantive legal changes which would clarify this situation.

1. An ordinance takes effect 30 days after adoption or at a later date specified in the ordinance. Currently the statutes are unclear as to when an ordinance is effective. The 30 day period, could, of course, be shortened or lengthened.

2. Copies of the ordinance are to be made available within five days. Currently, there is no time period designated and the statutes merely indicate that copies of an ordinance are to be made available. The five day period, could, of course, be lengthened or shortened.

3. In order to go along with the first two proposed substantive changes, I have added a requirement that ordinances be vetoed within 30 days. The existing law gives no time frame within which a veto must be exercised.

4. In the case of a veto, the mayor must immediatly submit a statement advising of the veto and giving reasons. Under existing law, the mayor is required advise of a veto during the next regular meeting of the assembly or council. Since an assembly or council may not meet very often on a regular basis, I feel that the assembly or council ought to be

informed of a veto so that it can call a special session to attempt to override it.

5. An emergency ordinance is immediately effective after adoption, which appears to be the case under existing law. If vetoed, it ceases to be effective immediately and a veto may not be overriden. Since it takes a larger majority to pass an emergency ordinance than to override a veto, absent this provision, it appears that a veto could always be overriden. The assembly or council would still have the alternative of passing an ordinary ordinance, should an emergency ordinance be vetoed.

6. Copies of emergency ordinances are to be made available within 24 hours after adoption. The current law provides that copies be made available without specifying a time period for compliance.

In addition to the substantive changes mentioned above, this draft constitutes a complete technical revision of the sections. Section numbers match the numbers as they currently exist in Title 29.

Please let me know whether this approach appears satisfactory. I would be glad to make any desired changes to this draft.

TBC:ljb

Enclosure

Sec. 29.23.170. VETO. (a) Except as provided in (b) and (c) of this section, the borough mayor may within 30 days veto any ordinance, resolution, motion or other action of the assembly and may strike or reduce items in appropriation ordinances except for school budget items. He shall immediately submit to the assembly a written statement advising of his veto and giving his reasons. A veto may be overridden by two-thirds of all the votes to which the assembly is entitled on the question, except that a veto of an emergency ordinance may not be overridden.

(b) A borough mayor may not veto actions of the assembly taken under AS 29.23.130(d) or actions of the board of equalization and the board of adjustment.

(c) The mayor of a third class borough may not veto actions of the assembly taken in its capacity as school board.

Sec. 29.23.260. VETO. (a) The mayor of a first class city may veto within 30 days any ordinance resolution, motion, or other action of the council and may strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items. He shall immediately submit to the council a written statement advising of his veto and giving his reasons. A veto may be overridden by two-thirds of all the votes to which the council is entitled on the question, except that a veto of an emergency ordinance may not be overridden.

(b) The mayor of a second class city has no veto power.

Sec. 29.48.130. ACTS REQUIRED TO BE BY ORDINANCE. In addition to other actions which, by law, are required to be by ordinance, the assembly or council of a municipality shall use ordinances to

(1) designate the borough seat;

(2) establish, alter or abolish a municipal department;

(3) fix the compensation of members of the assembly or council;

(4) approve the transfer of a power to a borough from a city;

(5) provide for the levying of taxes;

(6) provide for the retention or sale of tax-foreclosed property;

(7) make an appropriation, make a supplemental appropriation or transfer an appropriation;

(8) provide for a fine or other penalty;

(9) establish a regulation for violation of which a fine or penalty is imposed;

(10) regulate the rate charged by a public utility;

(11) adopt, modify or repeal the comprehensive plan, the official map, a land use regulation, and a building or housing code;

(12) grant, renew or extend a franchise;

(13) within the limitations set out in AS 36.25.025, exempt a contractor from compliance with requirements relating to payment and performance bonds in the construction or repair of a municipal public works project.

Sec. 29.48.140. FORM OF ORDINANCES. An ordinance shall be introduced in writing in the form required by the assembly or council.

Sec. 29.48.150. ORDINANCE PROCEDURE AND EFFECTIVE DATE. (a) The following procedure governs the enactment of all ordinances except emergency ordinances:

(1) an ordinance may be introduced by a member or committee of the assembly or council or by the municipal executive or chief administrator;

(2) an ordinance shall be set for public hearing by the affirmative vote of a majority of the authorized votes;

(3) at leave five days prior to the public hearing, a summary of the ordinance and available amendments shall be published with a notice of the time and place for the hearing;

(4) a copy of the ordinance and all amendments offered shall be made available to each person present at the public hearing, or the ordinance and amendments shall be read in full;

(5) during the public hearing, the assembly or council shall hear each person wishing to speak about the ordinance or amendments;

(6) after the hearing, the assembly or council shall consider the ordinance and may adopt it with or without amendment or reject it;

(7) within five days after adoption, copies of an ordinance shall be made available to the public.

(b) Unless vetoed, an ordinance takes effect 30 days after adoption or at a later date specified in the ordinance.

Sec. 29.48.160. EMERGENCY ORDINANCES. (a) The assembly or council may adopt, amend and adopt, or reject an emergency ordinance at the meeting at which it is introduced. Every emergency ordinance adopted shall

(1) receive the affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less;

(2) contain a finding by the assembly or council that an emergency exists and a statement of the facts upon which the finding is based;

(3) be printed with copies made available to the public within 24 hours after adoption.

(b) An emergency ordinance is effective immediately after adoption. If an emergency ordinance is vetoed it shall cease to be effective and the veto may not be overridden by the assembly or council. Unless vetoed, an emergency ordinance is effective for 60 days.

(c) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Section
10. Planning, platting, and land use regulation
20. Planning commission
30. Comprehensive plan
40. Land use regulations
50. Appeals from administrative decisions
60. Judicial review
70. Platting jurisdiction and power
80. Application to state and political subdivisions
90. Waiver in certain cases
100. Procedure
110. Information required
120. Alteration of replat petition
130. Notice of hearing
140. Hearing and determination
150. Recording
160. Title to vacate area
170. Penalties

Sec. 29.42.010. Planning, platting, and land use regulation. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The Assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

EXPLANATION

This section is substantially similar to AS 29.33.070. A reference in subsection (a) to "zoning" has been changed to the more flexible term "land use regulation". Subsection (b) is a redrafted version of AS 29 33.070(b). The proposed language clarifies the issue of whether a city's consent is required before delegated powers are revoked by the Assembly.

(Alternate Section suggested by Joanne Shanley)

Sec. 29.42.010. Planning, platting and land use regulation. (a) First and second class boroughs shall provide for planning, platting and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the Borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

Sec. 29.42.020. Plnning commission. (a) By ordinance the assembly shall establish a planning commission consisting of not less than five persons appointed and confirmed as provided by law. The assembly by ordinance shall also prescribe the qualifications, terms, and compensation of planning commissioners.

(b) In addition to those responsibilities prescribed by law, the planning commission shall:

(1) Prepare and recommend to the assembly a comprehensive plan for the systematic and organized development of the borough, as defined in .030 of this chapter.

(2) Prepare, recommend, and as required by law to administer those measures necessary to implement the comprehensive plan.

EXPLANATION

This section is a shortened and revised version of AS 29.33.080. Major changes include: elimination of apportionment requirements based on residency of specified members within first class cities; elimination of specific language regarding appointments, terms, and compensation of planning commissioners and substitution of more general language requiring the Assembly to prescribe by ordinance the qualifications, terms and compensation of commissioners; elimination of detailed and unnecessary specifications of the commission's duties in favor of a general statement requiring the commission to prepare and recommend measures necessary to implement the comprehensive plan; and elimination of public meetings and public records requirements as redundant.

Sec. 29.42.030. Comprehensive plan. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

(b) The assembly shall adopt, or may modify the a comprehensive plan with the recommendations of the planning commission. The assembly shall, with the advice and recommendations of the planning commission, undertake an overall review of the plan and update the plan as necessary to ensure the continued validity and effectiveness of the plan.

EXPLANATION

This section is derived from AS 29.33.085. Subsection (a) is identical to AS 29.33.085(a). Subsection (b) is redrafted to eliminate the mandatory two year review requirement of AS 29.33.085(b) and contains a more flexible review requirement premised on a determination that the continued validity and effectiveness of the plan requires review.

Sec. 29.42.040. Land use regulation. In accordance with a comprehensive plan adopted under Section .030 of this chapter and in order to implement that plan, the assembly by ordinance and as a legislative act, may enact or amend regulatory measures governing the use and occupancy of land, including but not limited to:

(1) Zoning regulations which restrict or govern use of land and improvements by geographic districts;

(2) Construction, fire and life safety codes governing placement, erection and occupancy of structures;

(3) Land use permit systems designed to encourage specified uses and structures and to discourage others, or to minimize unfavorable externalaties of certain uses and structures.

(4) Other regulatory measures reasonably necessary to further the goals and objectives of the comprehensive plan.

(5) Measures defining and regulating public nuisances.

EXPLANATION

The proposed Section 29.42.040 represents a substantial modification of AS 29.33.090. Present law requires implementation of the comprehensive plan through traditional zoning applicable to geographically defined districts, and allows so called "contract zoning." Although the present AS 29.33.090(b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important catagories of land use regulations available to the Borough. Passage of AS 29.42.040 would clearly enable second class boroughs to enact building and fire codes and to regulate public nuisances.

Sec. 29.42.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for appeals from administrative decisions of borough employees or boards and commissions made in the enforcement, administration, or application of land use regulations adopted by the borough under this chapter to a board of adjustment, hearing

**officer, or other independent quasi-judicial body established by the borough.**

**(b) By ordinance the assembly shall provide for appointment of hearing officers, or the composition, appointment and terms of office of a board of adjustment or other quasi judicial body established to hear appeals from administrative actions specified in (a) of this section and the assembly may define proper parties, prescribe evidentiary rules and standards of review and define remedies available to such bodies or hearing officers.**

EXPLANATION

This section consolidates provisions of existing Section 29.33.110 and Section 29.33.120. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundent public records and meeting requirements, and allows the Assembly to define proper parties, evidentary rules, and standards of review rather than follow more restrictive rules of the present AS 29.33.120.

Sec. 29.42.060. Judicial review. (a) The assembly shall provide by ordinance for appeals from decisions of the board of adjustment, hearing officer or other quais-judicial board or others named under Sec. 050 of this chapter to the Superior Court by a municipal officer or person jointly or severally aggrieved.

(b) Appeals to the Superior Court under this section are administrative appeals and shall be governed by Rules of Court applicable to appeals from decisions of administrative agencies.

(c) Appeals are heard on the record established by the administrative agency, and the court may affirm, reverse, wholly or partly, the decision appealed from. Issues in proceedings under this section have preference over all other civil actions and proceedings.

**EXPLANATION**

Based on AS 29.33.130, the proposed section makes several important changes in procedures governing administrative appeals to Superior Court. The "automatic stay" requirement of AS 29.33.130(c) is eliminated, allowing parties to follow more customary appellate rules governing injunctions pending appeal; the language plainly makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

Sec. 29.42.070. Platting jurisdiction and power. (a) First and second class boroughs shall exercise the power to regulate platting and the subdivision of land on an areawide basis. By ordinance the assembly shall enact subdivision regulations:

(1) governing the form, size and other aspects of subdivision, dedications, and vacations of land;

(2) regulating dimensions and design features of lots or tracts;

(3) establishing strict width, arrangement, and right of way, including allowance for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements.

(4) requiring dedication of streets, rights of way, public utility easements and other areas deemed by the platting authority necessary for future public use.

(b) The assembly by ordinance shall establish a platting board to administer subdivision regulations adopted by the borough and perform other duties prescribed by law. The platting board may, in whole or in part, consist of members of the planning commission or of other municipal bodies, boards and commissions.

**EXPLANATION**

This section is derived from AS 29.33.150 and, aside from stylistic changes, makes the following modifications to existing law: requires adoption of subdivision regulations by ordinance; clearly allows the platting authority to require dedications; allows the Assembly to determine the composition of the platting board; and eliminates the provisions of 85 SLA 1979 which allow the State of Alaska to ignore capital improvement requirements of local subdivision regulations.

Sec. 29.42.080. Application to state and political subdivisions. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of this chapter or home rule ordinances or egulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter or under home rule authority, in the same manner and to the same extent as subdivisions made by private landowners.

EXPLANATION

This section contains the language of AS 40.15.200 and adds the word "private" preceeding the word "landowners" in the last line. It is believed that the provisions of AS 40.15.200 are more appropriately placed here rather than in AS 40.15.

Sec. 29.42.090. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that:

(1) each tract or parcel of land will have adequate legal and physical access by the public to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development which constitutes an isolated transaction and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

EXPLANATION

This section contains one modification to its predecessor, AS 29.33.170. A reference to "adequate legal and physical access" is added to subsection (a)(1) which will guarantee public access to tracts or parcels created by waiver.

Sec. 29.42.095. Short plat procedure. (a) Notwithstanding the requirements of this chapter governing the submission, consideration, or approval of vacations, subdivisions, or resubdivisions, by ordinance the Assembly may establish a short or abbreviated plat procedure for plats which will only relocate or vacate lot lines, subdivide a single tract, parcel or lot into not more than four tracts or lots and will not:

(1) deny legal and physical access to and from all lots or tracts created by, or adjacent to, the subdivision or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication except to match a half right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted under existing law;

**(4) require the granting of a vacation or variance from the subdivision regulations enacted by the Borough.**

**(b) Consistent with this section, regulations governing the short plat procedure may allow an administrative official to review, consider, and approve abbreviated plats with such notice, hearing, and other procedural requirements established by the Assembly.**

EXPLANATION

New section allowing short plat procedure under such expedited procedures as the Assembly may adopt.

Sec. 29.42.100. Procedure. (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010 -- 40.15.020.

EXPLANATION

Subsections (a) and (b) are identical to AS 29.33.160(a) and (b). The proposed section eliminates AS 29.33.160(c) relating to submission of preliminary plats for state disposals under AS 38.05 or 38.08, because the proposed changes in Sections 29.42.070 require full state compliance with local capital improvement requirements.

**Sec. 29.42.110. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.**

EXPLANATION

Identical to AS 29.33.180.

Sec. 29.42.120. Alteration of replat petition. No recorded plat may be altered or replatted except upon petition of the owners of a majority of the land affected by the application of replat or by the platting board. No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

EXPLANATION

Identical to AS 29.33.200.

Sec. 29.42.130. Notice of hearing. The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a

copy of the notice to each affected property owner not signing the petition.

EXPLANATION

Identical to AS 29.33.210.

Sec. 29.42.140. Hearing and determination. At the hearing the platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

EXPLANATION

Identical to AS 29.33.220.

Sec. 29.42.150. Recording. If the alteration or replat is approved, the revised plat must be recorded by the platting board and is thereafter the lawful plat.

EXPLANATION

Identical to AS 29.33.240.

Sec. 29.42.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for

**another public purpose does not vest as provided in (a) of this section but remains in the city.**

EXPLANATION

Identical to AS 29.33.240.

Sec. 29.42.170. Remedies. (a) It shall be unlawful for the owner or agent of the owner of land located within a subdivision to transfer, sell, offer to sell, or to enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with applicable municipal subdivision regulations enacted under this chapter. It shall be unlawful for any person to file or record a subdivision plat or other instrument depicting subdivided land in any public recorder's office unless that plat or document bears the approval of the municipal platting authority. Every act prohibited by this chapter or the maintenance of any condition prohibited by municipal subdivision regulations adopted in accordance with this chapter is unlawful and the willful commission of such act or maintenance of such condition is a misdemeanor. Every person convicted of a violation of any provision of this title or any municipal subdivision regulation adopted under this title or the terms, conditions, or limitations imposed by a municipal platting authority in the exercise of its powers under this title is guilty of a misdemeanor and may be punished by a fine not to exceed $500.

(b) If there is a violation of the terms of this chapter, municipal subidivision regulations adopted under this chapter, or any terms, conditions, or limitations imposed by a platting authority in the exercise of its powers under this chapter, the Borough or any aggrieved citizen may institute or cause to be instituted any appropriate civil action to

prevent, abate, enjoin, estop, remove or punish such violation and to obtain monetary damages suffered by that party. In addition to injunctive and compensatory relief each violation shall be subject to a civil penalty not to exceed $1,000. An action to enjoin any violation to this title may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of an existing or threatened violation, the Superior Court shall grant injunctive relief to restrain that violation.

(c) Every day upon which an unlawful act or condition shall occur shall constitute a separate violation.

(d) The platting authority may enjoin any partition, lease, transfer, or sale of land which would result in an unlawful subdivision. Following an unlawful petition, transfer, lease or sale, the platting authority may enjoin any further transfer, sale of all unlawfully subdivided parcels until such time as the parcels are dully subdivided or returned to common ownership.

EXPLANATION

This section is derived in part from AS 29.33.190 and contains certain new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. The new section prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations; authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurrences of unlawful acts separate violations.

Not adopted

ARTICLE ____. CORRECTIONS, CANCELLATIONS AND REFUNDS OF TAXES.

Section 29.45.510 [new]. Corrections.

(a) Correction of Clerical Errors of Assessor.

(1) When it can be ascertained from an inspection of the property, the records of the assessee, or from the roll or any papers in the assessor's office what was intended, or what should have been assessed, defects in description or form or other errors of the assessor not involving the exercise of judgment as to value which result in the entry on the roll of assessed values other than those intended by the assessor, or which result in the assessment of nonexistent improvements or personal property which will not increase the amount of taxes due may be corrected as provided in this article at anytime, and if such correction will result in an increase in the amount of taxes, at anytime prior to January 1 of the year following the year in which such error was made.

(b) Correction of Clerical Errors of Tax Collector.

Clerical errors of the tax collector on the roll or delinquent tax roll may be corrected by the tax collector at anytime in the manner provided in this article.

(c) Making of Corrections. Corrections authorized in this section which do not affect any property other than the property taxed or assesed, and do not result in a decrease, increase, refund or cancellation of taxes due may be made by the assessor or tax collector. All other corrections shall be made only upon order of the assembly and provided in this article.

(d) Notice and Hearing Where Tax Increase Necessitated.

If the correction will increase the amount of taxes due, the assembly, sitting as the board of equalization, shall give the assessee an opportunity for a hearing after not less than thirty (30) days notice at which the assessee may present any objections to the change. The decision of the board of equalization may be appealed to the Superior Court pursuant to section 29.45.220(f).

(e) Tax Rate Applicable to Increased Assessment: Roll Entries: Collection of Taxes in Event of Bona Fide Transfer or Encumbrance.

In the event any correction authorized under this article has the effect of increasing the assessment, the assembly shall apply a tax rate to such increase at whatever tax rate was in existence in the year in which the error was made. All increased amounts of taxes shall be entered on the roll prepared or being prepared for the current assessment year and shall thereafter be treated and collected like other taxes on said roll; provided, however, that if the correction affects taxes on the secured roll for any year and subsequent to the entry of the original assessment but prior to the date of such correction the real property on which such taxes constitute a lien has been transferred or conveyed to a bona fide purchaser for value or becomes subject to a bona fide encumbrance for value, such increased amount of taxes shall not create, impose or constitute a lien on such real property but shall be collected as follows:

(1) The assessor or tax collector may record with the recorder in any recording district a certificate which shall set forth the name of the person who was the assessee in the year for which such correction was made as shown on the certified assessment roll for that year and the amount or amounts of any such correction. From the date of the recording of such certificate, a lien shall be created and attach against any real property of such person which is in the recording district and which is owned by him at the time or is acquired by him afterward but before the lien expires, for the amount of such taxes, which lien shall have the force, effect, priority and duration of a judgment lien.

(2) Where, in the opinion of the assessor there is no real property sufficient to secure such taxes they shall be entered on the unsecured roll in the name of the assessee as shown on the certified assessment roll for the year for which such correction was made.

(f) Payment in Installments. The assembly may, by ordinance, provide for spreading of payments for taxes when such taxes have been increased by the discovery of an error under the provisions of this article.

Section 29.45.512 [new]. Correction of Payment or Credit on Wrong Property.

(a) If an assessee, or agent of the assessee, by mistake pays the tax on other than the property intended, or if through no fault of the assessee or agent of the assessee, a tax payment is credited to property other than the property intended and by substantial evidence the tax collector is convinced that the payment should have been credited to another property, the tax collector shall, upon order of the assembly, cancel the credit on the unintended property and transfer the payment to the property intended at any time before a guaranty or certificate of title issues respecting the unintended property and before one (1) year has elapsed since the date of the payment.

(b) If a credit is cancelled on unintended property, the tax collector shall notify the owner of the unintended property as shown on the current assessment records, by registered mail at his last known address respecting the proposed transfer. The notice shall state that the owner of the unintended property may, within ____ (____) days after the mailing demand a hearing by the assembly. If made, the demand shall be filed with the tax collector. The assembly shall set a time for the hearing and its decision on the transfer shall be final.

(c) Payment of Amount Outstanding. If the amount that was paid is less than the amount due on the property intended, the balance of the amount due shall be paid before the transfer is made.

(d) Refund of Excess. If the amount paid exceeds the amount due on the property intended, the applicant is entitled to a refund of the excess; provided however, no interest shall be paid thereon unless payment to the unintended property was the result of an error of the tax collector or other employees of the borough.

Section 29.45.514 [new]. Cancellations.

(a) All or any portion of any tax, interest, penalty, or costs heretofore or hereafter levied, may, on satisfactory proof, be canceled by the tax collector on order of the assembly if it was levied or charged:

(1) more than once;

(2) erroneously or illegally; provided however, no cancellation shall be made on tax exempt property by reason of such exempt status if there has not been compliance with the statutory procedure for claiming the exemption;

(3) on the portion of an assessment that has been decreased pursuant to a correction authorized in this article;

(4) on property which did not exist on the lien date;

(5) on property of the United States, the state or any borough, city, school district or other public entity and which, because of such public ownership, was not subject to the tax involved.

(b) If property is acquired by a negotiated purchase, sale, gift, devise or eminent domain proceedings by the United States of America, or by the state or by any borough, city, school district or other public entity, and because of such public ownership becomes exempt from taxation, taxes shall be canceled or paid as follows:

(1) If there are any delinquent taxes, interest or penalties, for other than the current tax year, no cancellation shall be made in respect of all or any portion of any such delinquent unpaid tax, or penalties or costs, but such tax, together with such penalties and costs as may have accrued thereon while on the secured roll, shall be paid, or if unpaid for any reason, they shall be transferred to the unsecured roll and collected like any other taxes on the unsecured roll.

(2) If such property is acquired after the lien date but prior to the commencement of the fiscal year for which current taxes are a lien on the property, the amount of such current taxes shall be canceled and neither the person from whom the property was acquired nor the acquiring public entity shall be liable for the payment of such taxes unless otherwise provided by law.

(3) If such property is so acquired after the commencement of the fiscal year for which the current taxes are a lien on the property, that portion only of such current taxes allocable to the property acquired,

together with any allocable penalties and costs thereon, which are properly allocable to that part of the fiscal year which ends on the day before the date of acquisition of the property shall be paid, or if unpaid for any reason, they, shall be transferred to the unsecured roll and shall be collectible from the person from whom the property was acquired. The portion of such taxes allocable to the property acquired, together with any penalties and costs thereon, which are allocable to that part of the fiscal year which begins on the date of the acquisition of the property, shall be canceled and shall not be collectible either from the person from whom the property was acquired nor from the public entity unless otherwise provided by law.

In no event shall any transfer or cancellation of unpaid taxes, penalties or costs be made with respect to property which has been transferred or tax deeded to a borough or a city for delinquency.

(4) For purposes of this subdivision, if proceedings for acquisition of the property by eminent domain have not been commenced, the date of acquisition shall be the date that the conveyance is accepted by the acquiring authority. If proceedings to acquire the property by eminent domain have been commenced the date of acquisition shall be the date title vests in the acquiring authority.

Section 29.45.516 [new]. Refunds.

On order of the assembly, any taxes paid before or after delinquency shall be refunded if they were:

(a) paid more than once or in excess of the amount due on the property as shown on the roll;

(b) erroneously or illegally collected; provided however, no refund shall be made on tax exempt property by reason of such exempt status if there has not been compliance with the statutory procedure for claiming the exemption;

(c) paid on an assessed value of the property by reason of the assessor's clerical error and a correction of such error has been made as provided in this article;

(d) paid on an assessment of improvements when the improvements did not exist on the lien date;

(e) paid on an assessment in excess of the equalized value of the property as determined by the board of equalization pursuant to section 29.45.220.

(f) paid on property later acquired by a public entity to the extent that taxes would have been subject to cancellation pursuant to Section 29.45.514 had such taxes not been paid prior to the date of acquisition.

No refunds under the provisions of this section shall be made because of any error involving the exercise of judgment as to valuation of property, except as authorized in subsection (e).

Section 29.45.518 [new]. Refund by Tax Collector in Event of Multi- or Overpayment. Notwithstanding the provisions of section 29.45.516 any taxes paid before or after delinquency may be refunded by the tax collector within ninety (90) days after the date of payment if:

(a) paid more than once;

(b) the amount exceeds the amount due on the property as shown on the roll.

Section 29.45.520 [new]. Refund Claims; Verification and Filing. No order for a refund under this article shall be made except on a written claim:

(a) verified by the person who paid the tax, his guardian, executor, or administrator stating the statutory grounds upon which the refund is claimed;

(b) filed within one (1) year after making of the payment sought to be refunded;

(c) interest shall be allowed on such refunds at the rate of eight percent (8%) per year from the date of payment.

Section 29.45.522 [new]. Action on rejected claim--Time for commencement. If the assembly rejects a claim, in whole or in part, or fails to act within six (6) months from the date of filing of a claim for refund the person who paid the taxes, his guardian, executor, or administrator may within two (2) years after the date of payment of the claimed refund amount commence an action in the superior court against the borough to recover the taxes which the assembly has refused

to refund. No action shall be commenced or maintained under this article unless a claim for refund shall have been filed in compliance with the provisions of this article, and no recovery of taxes shall be allowed in any such action upon a ground not asserted in the claim for refund.

Section 29.45.524 [new]. Uncollectible Accounts. The Assembly, by ordinance, may provide procedures for the writing off of taxes carried on the unsecured tax roll which are determined to be uncollectible at anytime after expiration of _____ years after the date such taxes were due, provided however, the write off of such taxes for such accounting purposes shall not operate as a release or discharge of liability of any person or property otherwise responsible for the payment of such taxes.

Section 29.45.526 [new]. Taxes Defined. As used in this article, "tax" or "taxes" includes penalties, interest and costs.

See State v. Wakefield Fisheries, Inc., 495 P.2d 166 (1972) [six (6) year statute of limitation provided for in AS 9.10.050 applies for action for refund of taxes.

Not adopted 12/6/80

Sec. 29.33.200 [29.48.260]

(e) A municipality, in order to make sites available for beneficial new industries, may acquire and hold real property, either inside or outside the corporate limits, and may sell, lease or otherwise dispose of such property to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality. A municipality may by ordinance exempt all or any specific sale, lease or other disposition of property under this paragraph (e) from the requirements of (c) of this section.

Formerly: AS 29.48.260

Addresses Libby v. City of Dillingham,
____ P.2d ____, Op. No. 2097 (1980)

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough, or;

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

EXPLANATION: Subsection (a) has been altered so that second class cities are included within the area outside cities for purposes of selecting representatives on the charter commission. This was done so that first class and home rule cities, with their greater concentrations of population, have less chance of overwhelming the rest of the borough. Subsection (b) has been added to avoid the expense and inconvenience of an election in the question of unification if not enough nominations of commission members are received. It is felt that failure to nominate a sufficient number of commission candidates indicates a general lack of interest in the question of unification.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. The following language was deleted as a duplication of AS 29.30.040: "The municipality may not alter voter qualification requirements of this title." Subsection (b), making this applicable to home rule municipalities, was deleted.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This requirement has been altered to apply to certain offices only and liberalized to allow a municipality to provide otherwise by ordinance. The provisions specifying when a runoff must be held and notice requirements are no longer mandatory. In addition, the procedure set out in (c), for the benefit of a municipality which desires specific procedural guidance, has been changed to provide three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoff elections.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

EXPLANATION: This is a new section. The first part is modeled after section two of the initiative article in the state constitution. Sponsors of a petition would be required to register with the clerk. The clerk would review an initiative for substantive legality, with his decision subject to immediate appeal. This allows for a judicial determination of the legality of an initiative prior to incurring the expense of an election on it.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.110. PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition. The statement provided under AS 29.30.110(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: The 60 day signature gathering period is carried forward. While the possibility of an initiative or referendum on a matter which affects only a service area is not eliminated, such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body. Additional changes require rejection of a signature not accompanied by a legible residence address and allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public recond.

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures the sponsors have only 10 days to gather the signatures. They may not use signatures which were gathered prior to the first filing but not submitted, and they may not use signatures gathered during the period in which the clerk is checking the petition.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If the assembly or council adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

EXPLANATION: The changes allow for the submission of an initiative measure to the voters within 75 days after certification of a petition rather than requiring that the vote be delayed until the next regular election. The 45 day requirement was added to insure that a petition certified after the legal notices of a regular election were published does not complicate the election. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer may reject a petition. An areawide vote is required whether the matter initiated is areawide or nonareawide because a service [illegible] a should not be allowed to become autonomous.

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

EXPLANATION: The ability to suspend an ordinance or resolution which has taken effect when a petition is filed within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as that is covered under AS 29.13.080. All questions are submitted to an areawide vote.

Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition process.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

EXPLANATION: The possibility of recalling an official who has been appointed to an elective position has been added. The date to be used in determining when the six month period has run has been clarified.

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signature and residence addresses of at least 10 municipal voters who will sponsor the petition;

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

EXPLANATION: This is a new section which describes the requirements for an application for recall petition.

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) the name of the official sought to be recalled;

(2) the statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section sets out requirements similar to those relating to the content of initiative and referendum petitions. Requiring the clerk to prepare the petition and supply copies insures that each copy is complete and legible. A petition must be filed within 60 days after the petition is issued rather than 60 days after the date of the earliest signature on the petition.

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by 35 percent of the voters residing within the municipality based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by 35 percent of the voters residing within the district based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: Which election to be used as a standard for determining the number of signatures required is clarified. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that this number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public recond.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

Sec. 29.30.260. NEW RECALL PETITION. The rejection of a recall petition for any reason does not preclude the filing of a new petition. However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficient signatures alone triggers the waiting period.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election occurs within 75 days the assembly or council shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The assembly or council may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

EXPLANATION: The 45 day requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

EXPLANATION: This section makes reference to the fact that each statement is limited to 200 words or less and provides that the statement of the official if published before the election will appear on the ballot.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the assembly or council, the assembly or council, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the assembly or council are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the assembly or council, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Subsections (f) and (g) were changed to take into account time periods required for election notice and nominations.

## CLASSES AND POWERS OF MUNICIPALITIES

.010 Classes of Municipalities. A municipality shall be a home-rule or general law municipality.

.020 Power of General Law Municipalities (a) Powers of general law of municipalities are 1) regulatory powers enumerated in section ____ or 2) powers to provide services and facilities enumerated in section _____.

(b) General law municipalities may exercise powers assumed upon incorporation or acquired in accordance with section .030.

.030 Procedure for Acquiring Powers. A city within its jurisdiction and a borough on an area-wide or non-areawide basis may acquire additional regulatory powers or powers to provide public facilities or services by ordinance approved by a vote of two-thirds (2/3) of the membership of the assembly or council. A decision to acquire powers under this section is subject to referendum.

.040 Exercise within Cities. Except as provided in section .070, a borough may not exercise within a city in the borough a power which the city is then exercising if the city council by ordinance approved two-thirds vote of its membership states its opposition.

.050 Service Area. A borough may exercise a power to provide services and facilities on a service area basis only upon approval of a majority of those voting on the question in the area affected at a general or special election in accordance with section ____.

.060 Transfer of Powers. By vote of a majority of the membership of the council or by initiative, a city within a borough may transfer to the borough any power exercised by the city.

.070 Mandatory Areawide Borough Powers. Boroughs shall exercise on an area-wide basis the powers of 1) planning and zoning; 2) taxation and 3) education.

.080 Mandatory City Powers. A city in the area outside boroughs shall exercise the powers of 1) planning and zoning; 2) taxation.

.090 Education in City's Outside Borough's. A city in the area outside boroughs may assume the education power upon incorporation, by ordinance approved by two-thirds of the membership of its council, or by initiative.

D Not adopted 12/6/80

November 18, 1980

TO: TITLE 29 TECHNICAL AND POLICY COMMITTEES

FROM: ALASKA ASSOCIATION OF MUNICIPAL CLERKS

SUBJECT: TITLE 29 REVISIONS

We respectfully submit the following comments:

1) Sec. 29.30.040. We support the drafted changes as recommended by the Technical Committee, dated October 10, 1980, with the following amendment to (b):

> "(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of and registered in the precinct, district, or service area in which he votes."
>
> Explanation: Those voting on the issue are residents of the specific area and thus will have to live with the outcome of the election; requiring registration in the precinct, district or service area will hopefully eliminate some of the problems and the time demanded in trying to prove residency; such a procedure will give the Canvass Board clearer direction.

2) Regarding new AS 29.30.110 and .230, the AAMC feels it is within the scope of responsibilities of the clerks to provide an acceptable petition format; however, we object to being burdened with any of the responsibility of composing any type of initiative, referendum or recall statement. We feel that the newly-proposed sections are unclear in this regard and request that clarification of our position be considered.

3) AAMC strong supports the language as proposed in AS 29.30.050 regarding elections which gives the municipalities the option to provide for runoff elections by ordinance.

Not adopted

## APPENDIX A

### A BILL

For an Act entitled: "An Act Relating to Native Village Governments."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes Native Villages as distinct, independent, political communities exercising original tribal soverienty in

dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted Native village government, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. ELIGIBILITY FOR STATE PROGRAMS. A Native village government, for a village which is not incorporated under this title, and is not located within an organized borough is,

a) eligible to participate in all state programs to the same extent and in the same manner as a second-class city;

b) entitled to notice concerning proposed actions by the state to the same extent as a government of a second-class city is entitled to notice; and

c) entitled to consultation with the state on state actions and programs which affect the village to the same extent that the government of a second-class city is consulted on state actions and programs.

Sec. 29.--.030. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judical, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The

Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.040. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.050. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or

village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing this this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.060. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC, Sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

## APPENDIX B

## A BILL

For an Act entitled: "An Act Relating to Native Village Governments Establishing Third Class Cities."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) Provide for incorporation of Native village.

(3) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

Not adopted 12/6/80

Sec. 29.33.200 MUNICIPAL PROPERTIES. (a) A municipality may acquire and hold real or personal property or interest in real or personal property. A municipality may sell lease or otherwise dispose of property no longer required for municipal purposes or to achieve a public purpose.

(b) Except as provided in (c) of this section, the assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require: (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, or if no such newspaper of general circulation exists, posted within that time in at least three public places in the municipality; (3) public auction or opening of sealed bids or lottery; and (4) other terms and conditions fixed by the assembly or council. However, no ordinance for the sale, lease, or disposition of real property or interest in real property valued at $25,000 or more is valid unless ratified by a majority of the qualified voters voting at a regular or special election at which the question of the ratification of the ordinance is submitted. Thirty days notice shall be given of the election and during that period the assembly or council shall have published at least once a week in a newspaper of general circulation distributed within the municipality a notice stating the time of the election and the place of voting. describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, and stating the title and date of passage of the ordinance. Notice shall also be given by posting a copy of it in at least three public places in the municipality at least 30 days before the election. If no newspaper of general circulation is distributed within the municipality, the notice given by posting is sufficient for the purposes of this section.

(c) When in the judgment of the assembly or council it is advantageous to the municipality, a municipality may by ordinance:

1) sell, lease, donate or exchange with the United States, the state, a Native village government or political subdivisions thereof real estate or other property or interests in such property;

2) establish a formal procedure for acquisition of real property or interests in real property from the state, or a village corporation formed pursuant to the Alaska Native Claims Settlement Act (43 USC 1601 et. seq.); or

3) sell, lease or dispose of real property or interests in real property to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality.

The provisions of this section shall not apply to acquisitions and disposals of real property or interests in real property made pursuant to this subsection.

(d) A deed, contract of sale, lease, or other instrument evidencing disposition by a borough of land or interest in land classified by the borough as agricultural land shall include, among other terms, conditions and limitations which may be required by law or which the assembly may elect to include, a condition that the land is restricted to agricultural use. The assembly may not by subsequent action waive or abrogate the condition for a period of 50 years. An abrogation of the restriction to agricultural use after the 50-year period requires the consent of any party having an interest in the land. The assembly shall provide for enforcement by appropriate legal means, including but not limited to forfeiture of the purchaser's interest for violation of the condition.

(e) For the purposes of this section, a Native village government is a government organized under the Indian Reorganization Act (49 Stat. 1250 as amended) or a traditional Native government for a community eligible for benefits under the Alaska Native Claims Settlement Act. (43 USC 1601 et. seq.).

## COMMENTS

This redraft of 29.48.260 solves several problems which occur under current law.

1) The new section is reorganized to state a general principle governing disposals (subsection b) and gathers together all the exceptions (subsection c). Under this version, the ambiguity which arose in the Libby case is eliminated and it becomes clear that the rule regarding disposals does not apply to any exception.

2) Adds disposals for public purposes to current authorization for surplus disposals.

3) Clarifies that posting notice is acceptable only when no newspapers of general circulation exists.

4) Clarifies that disposals accepted from the general rule must also be made pursuant to an ordinance.

5) Clarifies that disposals of land to a Native government is authorized in light of controversy as to whether a Native Government is a federal instrumentality.

6) Provides for exception for management of 14(c)(3) lands similar to municipal land grants. Currently existing and future cities for ANCSA communities will not receive municipal land grants. Instead they will receive 14(c)(3) reconveyances. There is no logical reason to distinguish the two types of municipal land grants.

7) Overrules Libby case.

## ARTICLE 2. MUNICIPAL LEGISLATIVE BODIES

Sec. 29.24.050. GENERAL LEGISLATIVE POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

EXPLANATION: The second sentence is added. Rather than dealing with assemblies in one article and councils in another, this article will deal with both legislative bodies. No substantive change.

Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

EXPLANATION: This section contains material now found in AS 29.23.200(a). The material currently in (b) has been moved to the section on qualifications. No substantive change.

Sec. 29.24.140. QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the council. A member of the assembly who ceases to be a qualified borough voter forfeits his office. A member of the council who ceases to be a qualified city voter forfeits his office.

(b) A legislative body may by ordinance establish a durational residency requirement for its members not to exceed three years.

(c) An assembly or council member who represents an area less than that of the total borough or city and who becomes a resident of another area within the municipality may continue to serve until the next regular election unless provided otherwise by ordinance.

(d) A municipality may by ordinance establish district residency requirements for members of its legislative body.

EXPLANATION: The qualification for members of the council or assembly are combined since they are identical. Subsection (c) has been altered to allow a municipality the flexibility of providing otherwise by ordinance. Subsection (d) has been added to allow a municipality to impose additional district residency requirements.

Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three year terms and until their successors have qualified unless different terms are prescribed by charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a legislative body is changed by charter or ordinance the term of an official holding office at the time the change becomes effective is not affected.

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

EXPLANATION: The term of both assembly and council members is combined into one section. Under existing law different terms not exceeding four years may be prescribed. The four year maximum has been eliminated for greater flexibility. The section is no longer mandatory for home rule municipalities.

Sec. 29.24.150. PROCEDURES OF LEGISLATIVE BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) A municipal legislative body shall hold at least one regular meeting every month, unless otherwise provided by ordinance. A special meeting may be held at the call of the presiding officer or at least one-third of the members provided a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held. A waiver shall be made a part of the journal for the meeting.

(c) A majority of the total membership of a legislative body authorized by law shall constitute a quorum. A member disqualified by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(d) Actions of a legislative body are adopted by a majority of members authorized to vote on the question. All members present shall vote on every question unless they are required to abstain from voting on a question by law. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it is necessary only to so state.

(e) A legislative body shall maintain a journal of its official proceedings which shall be a public record.

(f) A legislative body may, consistent with law or charter, determine by ordinance its own rules of procedure and order of business.

Sec. 29.24.150.

EXPLANATION: Combines the procedures to be followed by both assemblies and councils. Allows a special meeting to be held if a majority of members receive actual notice whereas existing law allows for a meeting only if all members receive notice and if an emergency exists. Reference to the fact that meetings are public is deleted because that requirement is contained in AS 29.24.020. A requirement that the journal maintained by the legislative body be public was added in (e). The material concerned with the expulsion of members for committing a corrupt practice was moved to AS 29.23.070.

Sec. 29.24.160. DEPARTMENTS. Repeal

EXPLANATION: The material contained in this section is placed in an article dealing with municipal departments and employees.

Sec. 29.24.170. VACANCIES. The legislative body shall provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor. Unless otherwise provided by ordinance the legislative body may declare an elective office vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the assembly or council, is absent for 90 days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) if a member of the assembly or council, misses three consecutive regular meetings unless excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice and two-thirds of the members concur in expelling him.

EXPLANATION: Allows the legislative body to provide the manner in which a vacancy occurs for all elected offices except for the office of mayor. If the body does not provide by ordinance situations which result in the vacancy of an office, the seven listed situations will result in a vacancy.

Sec. 29.24.175. FILLING A VACANCY. If a vacancy occurs in a legislative body, the remaining members shall within 30 days appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to serve the balance of the term. If less than 30 days remain in a term, a vacancy shall not be filled.

(b) Notwithstanding subsection (a), if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall within seven days appoint a number of qualified persons to constitute a quorum.

EXPLANATION: Contains material currently found in AS 29.23.080 and 29.23.220. Provides that no appointment shall be made where less than 30 days remain in a term. Subsection (b) was added to insure that a legislative body will be able to continue to function if the number of vacancies which occur destroys the possiblity of achieving a quorum.

## ARTICLE 3. MUNICIPAL EXECUTIVE

Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a municipality is vested in a mayor elected by the voters or by the legislative body as provided in this article.

(b) The mayor shall act as ceremonial head of government, execute official documents upon authorization of the legislative body, and is responsible for additional duties and powers prescribed by ordinance.

EXPLANATION: Under current law the executive and administrator are dealt with in one article. It is proposed that one article deal with executive functions and a separate article deal with administrative functions. Therefore, this section eliminates the material dealing with administrative functions.

Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a second class city is elected by and from the council.

(b) A mayor shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor commences on the first Monday following certification of his election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately.

EXPLANATION: This new section contains material currently found in AS 29.23.130(c) and 29.23.250. No substantive changes.

Sec. 29.24.206. QUALIFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter of a borough or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor in that city.

(b) Residency requirements for the office of mayor not exceeding three years may be prescribed by ordinance.

EXPLANATION: This section contains material now appearing in AS 29.23.130(b) and 29.23.250. No substantive change.

Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same powers and duties as those of the manager.

(b) The mayor may take part in the discussion of all matters before the assembly or council.

(c) The mayor may not vote on any matter before the assembly or council, except that the mayor of a first class city may vote in the case of a tie and the mayor of a second class city may vote on all matters as a council member.

EXPLANATION: This section contains material currrently found in AS 29.23.130(a), AS 29.23.260, and AS 29.23.160. No substantive change.

Sec. 29.24.240. VETO. (a) Except as provided in subsections (c) and (d), the mayor may veto any ordinance, resolution, motion, or other action of the legislative body and may strike or reduce appropriation items.

(b) A veto must be exercised before the next regular meeting of the legislative body and must be accompanied by a written explanation of the reasons for that action. A veto may be overridden by vote of two-thirds of the authorized membership of the legislative body within 21 days following exercise of the veto or at the next regular meeting, whichever is later.

(c) The veto does not extend to

(1) appropriation items in a school budget ordinance;

(2) actions of the Board of Equalization or the Board of Adjustment;

(3) adoption or repeal of the manager form of government.

(d) The mayor of a first class city has no veto power.

EXPLANATION: Contains material currently found in AS 29.23.170, 29.23.260, and 29.23.270. Adds a time period within which a veto must be overridden.

Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) The assembly or council shall provide by ordinance the manner in which a vacancy occurs in the office of mayor. Unless otherwise provided by ordinance the legislative body may, upon two-thirds concurring vote, declare the office of mayor vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the assembly or council, is absent for 90 days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) if a member of the assembly or council, misses three consecutive regular meetings unless excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occuring six months before a regular election shall be filled by the legislative body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the legislative body is chosen, he shall resign his seat on the assembly or council. If a vacancy occurs more than six months before a regular election, the legislative body shall call a special election to fill the unexpired term.

(c) In a second class city, the office of mayor is filled by and from the council.

EXPLANATION: This section is enlarged to deal with a vacancy occuring in the office of city as well as borough mayor. Allows the legislative body to establish the manner in which a vacancy occurs in the office of mayor and supplies situations which may result in vacancy if the body does not pro an alternative.

~~elected~~ ~~type~~ list officials only are subject to recall to avoid recall of service area Bds

TITLE 29 REVISION

PROPOSAL FOR RECALL
(Formerly AS 29.28.130-250)

October 20, 1980

29.30.210 Recall. An application for a petition for the recall of an elected official of a home rule or general law municipality may be filed with the municipal clerk after the official has served six months of the term for which elected or appointed.

(This revision clarifies the dates to be used in determining when the six months period has run; it also adds officials who are appointed to elected positions.)

29.30.220 Grounds. Grounds for recall are

Failure to perform to the satisfaction of petitioners

(1) violation of an ordinance, law, or regulation made applicable to the official by his candidacy for or holding of such elected office,

(2) judicially declared incompetence arising out of a medical or mental condition, or

(3) failure to perform a duty of the office prescribed by ordinance, law, or regulation.

(This revision retains the present grounds but attempts to remove some of the ambiguities of the present language.)

29.30.230 Application for Petition. (a) An application for a petition to recall an elected official shall be filed with the municipal clerk.

(b) The application shall contain

(1) the signatures and resident addresses of at least ten qualified voters of the municipality as sponsors,

(2) the address to which all correspondence relating to the application may be sent,

(3) a statement in 200 words or less of the grounds of recall stated with particularity as to specific instances, including reference to the pertinent ordinance, law, regulation, or judicial decree.

(This section requires a submission of an application to the clerk for a petition for recall. As provided in a later section, the clerk will provide the recall petition forms. The application procedure is necessary as a part of a new, proposed procedure whereby the official who is the subject of the petition will be given an opportunity to have his statement answering the accusation placed upon the petition before it is circulated.)

29.30.240 Petition. (a) If the municipal clerk determines that the application meets the requirements of §230, he shall submit a copy of the application to the officer who is the subject of the application.

(b) The officer shall have ten days from receipt of the application to provide the clerk with a statement of 200 words or less which shall be placed on the petition with the statement of the grounds for recall.

(c) The municipal clerk shall prepare a recall petition for circulation by the sponsors. A petition shall contain

(1) the name of the officer sought to be recalled,

(2) the statement of the grounds for recall as set forth in the application,

(3) the statement of the officer sought to be

recalled, if provided,

(4) the date the petition is first issued by the clerk,

(5) a statement that the signatures on the petition must be secured within ~~60~~ 30 days of the date first issued,

(6) spaces for the required signatures, the printed name of each person signing the petition, the date of each signature, and both the resident and mailing address of each signer,

(7) a statement to be signed and sworn to by the circulator stating the number of signatures on the petition page or pages, that the circulator personally circulated the page or pages, that all signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names they purport to be, that each signer had an opportunity before signing to read the grounds for recall and the statement of the official printed on the petition, and that he believes each signer to be a qualified municipal voter.

(This section is part of the application-petition procedure and sets forth requirements similar to those proposed under the initiative and referendum procedures as it relates to petition content.)

29.30.250 Required Signatures. (a) Every petition shall be signed by a number of registered voters residing within the territorial limits of the municipality equal to 25 (35) percent of the number of voters voting votes cast in the municipality in district - if elected person represents district

last regular municipal for that office.
at the last state general or primary election which was held on or prior to the date of the first issuance of the petition. The necessary signatures on the petition shall be secured within 60 days of the date the clerk first issues the petition.

(b) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(c) A petition signer may withdraw his signature upon written application to the clerk at any time prior to certification of the petition by the clerk.

(d) The petition pages shall be assembled and filed as a single instrument within ~~60~~ 30 days of the date of first issuance of the petition. within time petition forms given to petitioners

(This continues the current 60 day signature gathering period. It also clarifies the election which is to be used as a standard for determining the number of signatures required. It is proposed that a state election be used. Prior to the 1972 revision of Title 29, the last gubernatorial election was the standard.)

29.30.260 Sufficiency of Petition. (a) Within ten days of the date the petition is file, the municipal clerk shall certify on the petition whether or not it is sufficient.

(b) If the petition is insufficient, it may be supplemented within ten days with additional signatures which are obtained within ten days after the date on which the petition is rejected. If the petition is insufficient for any other reason, it shall be rejected and filed as a public record.

Add - No 10 days if petition invalid on its face

(c) Within ten days after the supplementary filing, the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

(The only significant change to the corresponding section of the present law is that the proposed section makes it clear that signatures for the supplementary filing must be those which are gathered during the ten day period after the petition is first rejected.)

29.30.270 New Application. The rejection of a petition for failure to contain sufficient signatures or for any other reason does not preclude the filing of a new application for a recall petition. However, a new application may not be filed sooner than six months after a petition is rejected.

(The only significant change is to prohibit a new petition if the prior petition was rejected for any reason in addition to rejection for insufficient signatures.)

29.30.280 Submission. If a recall petition is sufficient, the clerk shall submit it to the assembly or council at its next regular meeting.

(No significant change.)

29.30.290 Challenge of Petition. (a) The officer who is the subject of a recall petition submitted to the assembly or council may, within 30 days of the date the petition is filed with the assembly or council, file an action in the superior court for a determination of any of the following questions:

(1) Whether any of the grounds for recall stated are not grounds under §220.

Anyone can do this -

(2) Whether any of the acts alleged do not constitute one or more of the permitted and alleged grounds.

(3) Whether one or more of the accepted signatures should be rejected.

(b) Upon a finding that any of the acts alleged do not constitute a permissible and alleged ground or that any grounds alleged are not grounds set forth in §220 or that sufficient accepted signatures should have been rejected to cause the petition to be insufficient, or for any other reason which the court finds appropriate, the court shall order the petition rejected and shall order the name of the officer subject to the rejected petition to be removed from the ballot.

(c) If an officer who is the subject of a recall petition submitted to the assembly or council files suit under this section, no recall election may be held for the officer who has filed the suit nor for any other officer who is the subject of a recall petition until after the time for appeal of the superior court judgment has passed.

(I believe the foregoing is relatively clear on its face.)

29.30.300 Election. (a) If a regular election occurs within 75 days, but not sooner than 40 days of the later of either the submission to the assembly of a certified petition or the passage of the time for appeal of a judgment in a suit filed under §290, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within such time, the assembly or council shall hold a special election within 75 days, but not sooner than 40 days after, the later of the submission of a certified petition or the expiration of the time for the appeal of a judgment of a suit brought under §290.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the petition shall not be submitted to the voters. However, the assembly or council may not appoint to such a vacancy the officer who resigns from that office after a sufficient recall petition is filed.

(The 40 day minimum was added to insure that a petition submitted after the legal notices of the election were published would not complicate the election and that the election would not be held before the 30 days during which the official has to file suit. Added in section (c) is the prohibition against the appointment of an officer who resigns after a sufficient recall petition is filed.)

29.30.310 Form of Recall Ballot. A recall ballot shall contain:

(1) the grounds as stated in 200 words or less in the recall petition;

(2) the officer's statement of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election, otherwise the statement of the officer, if any, which appeared in the recall petition;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? Yes [ ] No [ ]".

(The only significant change is to make reference to the fact that the statement of the grounds is limited to 200 words and also to provide that the statement of the officer which was used in the recall petition will appear on the ballot unless the officer provides a different statement.)

29.30.320 Election Procedure. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election; otherwise, the procedures shall be those applicable to a special municipal election. [Except that 10 days notice will be required notwithstanding municipal procedure to the contrary]

(This section was changed to make reference to special election procedures if the election is a special election.)

29.30.330 Majority Required. A majority of those voting on the question must vote in favor of recall to recall an officer. Only those voters in the district or area which elects the officer may vote on the recall of the officer.

(This merely restates in different language the majority vote requirement. The section also adds a new sentence which makes it clear that if the officer is elected by the voters of a district, then only the voters in that district will vote on the recall question.)

29.30.340 Effect. If a majority of those voting on the question vote to recall the officer, the officer's seat shall become vacant immediately upon certification of the result of the election on the question. If an incumbent is not recalled at the recall election, a new application for a recall petition on the same incumbent may not be filed sooner than six months after the date of the certification of the recall election.

(The first sentence is added to this section to

make it clear precisely when a recalled officer looses his seat. The second sentence has been slightly changed to peg the commencement of the six month period as the date of certification of the election results.)

29.30.350 Successors. (a) If one or more officers are recalled from an assembly or council, the assembly or council, by the affirmative vote of a majority of the remaining members, may appoint qualified persons to fill any vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. Such appointees, by an affirmative vote of a majority of the appointees, shall appoint such additional members as are required to fill any remaining vacancies.

(c) If one or more officers are recalled from a school board or from a body created by the assembly or council, then the assembly or council may appoint such qualified persons as it deems necessary to fill any vacancy created by the recall.

(d) A person appointed to fill a vacancy under sections (a) through (c) shall serve until a successor is elected, qualified, and takes office.

(e) If the voters recall an officer, the clerk shall conduct an election for a successor to fill the unexpired term. The election shall be held at least ten but not more than 60 days from the date of the certification of the recall election. However, if a regular or special election occurs

within 75 days of the certification of the recall election and the certification occurs at least 20 days prior to the latest date upon which first notice of the election must be published, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section; provided, nominations may be filed until the later of seven days before the latest date upon which first notice of the election must be published or the deadline for the filing of nominations for regular elections. Nominations may not be filed before the certification of the recall election.

(Sections (a) through (d) are new and are submitted to prevent a local government from having to attempt to operate without a quorum of elected officers. Section (e) was changed to take into account times required for election notice and nominations.)

TITLE 29 REVISION

PROPOSAL FOR INITIATIVE AND REFERENDUM
(Formerly AS 29.28.060-110)

October 20, 1980

29.30.090 Reservation of Powers. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by §7, art. XI of the State Constitution.

(Unchanged.)

29.30.095 Application. An initiative or referendum is proposed by an application containing the legislative matter to be initiated or referred. The application shall be signed by not less than ten qualified voters as sponsors, shall contain the address to which all correspondence relating to the application may be sent, and shall be filed with the clerk. The clerk shall certify the application if he finds that the application is in proper form, and in addition, if the application is for an initiative, that the matter to be initiated is not restricted by §90, embraces only a single subject, and as to each part, would not be unenforceable as a matter of law. The clerk's certification or denial of certification shall be subject to judicial review.

(This section is new. The first part is modeled after §2 of the initiative article in the state constitution. As drafted, this section would also make it clear that the clerk is to review initiatives for substantive legality and that the clerk's decision is subject to appeal. This procedure will allow for a judicial determination of the legality of an initiative prior to the expense of an election.)

Within 2 weeks

29.30.110 Petition. After certification of the application, a petition, containing a summary of the subject matter shall be prepared by the clerk for circulation by the sponsors. The petition shall

(1) set out fully the ordinance or resolution sought to be initiated or referred by the petition;

(2) state upon the petition the date first issued by by the clerk;

(3) contain the statement, when circulated, that the signatures on the petition must be secured within 60 days of the date first issued;

(4) contain spaces for the required signatures, the printed name of each person signing the petition, the date of each signature, and both the resident and the mailing address of each signer;

(5) contain a statement to be signed and sworn to by the circulator stating the number of signatures on the petition page or pages, that the circulator personally circulated the page or pages, that all signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names they purport to be, that each signer had an opportunity before signing to read the full text of the proposed initiative or referred measure, and that he believes each signer to be a qualified municipal voter.

(This section would require the clerk to provide the petition forms to the petitioners. This is similar to the requirement levied upon the Lieutenant Governor in state

initiative proceedings. The petition contents are essentially the same as present law (AS 29.28.065) with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the petition signers must provide, and the addition of the circulator's affidavit in (5) of the section.)

29.30.120 Required Signatures. (a) The necessary signatures on a petition shall be secured within 60 days of the date the clerk first issues the petition. The petition shall be signed in ink or indelible pencil.

(b) Every petition, whether dealing with an areawide

or a non-areawide matter, shall be signed by a number of registered voters residing within the territorial limits of the municipality equal to ~~25~~ 10 leave as is 15 Big Areas 25 small ones percent of the number of votes cast at the last regular municipal election in the municipality which was held on or prior to the date of the first issuance of the petition.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk at any time prior to certification of the petition by the clerk.

(e) The petition pages shall be assembled and filed as a single instrument.

(This section carries forward the 60 day signature gathering period. Although it does not eliminate the possibility of an initiative or referendum on a matter which affects only a service area, it does require that such petitions contain the same number of signatures as a petition on an areawise matter. Permitting a service area to initiate and vote upon a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body. If service areas are permitted to initiate and vote upon service area only initiatives, service areas will have the authority to become essentially autonomous units of government without a governing body. Other minor changes were made to require rejection of signatures which were illegible or failed to have additional legible information accompanying the signature.)

29.30.130 Sufficiency of Petition. (a) Within ten days of the date the petition is filed, the municipal clerk shall certify on the petition whether or not it is sufficient.

(b) If the petition is insufficient, it may be amended or supplemented with additional signatures which are obtained within ten days after the date on which the petition is rejected as insufficient.

(c) Within ten days after the supplementary filing, the clerk shall recertify the petition. If the petition is still insufficient, the petition is rejected and filed as a public record.

(The only significant change is to make it clear that in providing supplementary signatures, the petitioners have only ten days to gather the signatures and may not use petition signatures which were gathered prior to the first filing but not submitted, and that they may not use signatures gathered during the period in which the clerk is checking the petition.)

29.30.140 Protest. If the clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting of the assembly or council which shall hear and decide the protest.

(No change.)

29.30.150 New Petition. Failure to secure sufficient signatures does not preclude the filing of a new application for an initiative or referendum petition. However, a new application for a petition may not be filed sooner than six months after the petition is rejected by the clerk.

(This section was changed slightly to take into account the application procedure and to indicate that the rejection from which the six months is counted is a rejection by the clerk, not a rejection which might be deemed to have occurred if the matter is appealed to the assembly and the assembly sustains the clerk's rejection.)

29.30.160 Presentation of Initiative. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council and not otherwise restricted by §90 of this chapter, the clerk shall present it to the assembly or council at its next meeting after certification. The assembly or council may reject the petition if it determines the subject matter of the initiative or referendum is within the restrictions of §90 of this chapter or is unlawful.

(b) An initative measure presented to the assembly or council and not rejected under section (a) shall be submitted to all the voters of the municipality at the next regular municipal election held more than 45 days after submission of the petition to the assembly or council, unless the assembly or council adopts substantially the same measure. If the assembly or council adopts substantially the same measure, the petition shall be void and the question shall not be submitted to the voters.

(c) The ordinance or resolution shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(The changes here allow for the submission of an initiative measure at any time during the year, but it would be placed before the voters at the first regular municipal election occuring 45 days after submission to the assembly or council, unless rejected for cause or adopted in substantially the same form as presented. It also requires an areawide vote whether the matter is areawide or non-areawide for reasons outlined above.)

29.30.170 Presentation of referendum. (a) When a

Leave "Ordinance".

petition seeks a referendum vote on a legislative ordinance or resolution, the clerk shall submit the ordinance or resolution to all the voters of the municipality at the next regular or special election unless the assembly or council repeals the ordinance or resolution to be referred. If no regular or special election occurs within 75 days of the certification of a sufficient petition by the clerk, the assembly or council shall hold a special election within 75 days of filing.

OK → (b) If a sufficient petition for referendum is certified before the effective date of the ordinance or resolution, the ordinance or resolution against which the petition is filed, ~~which is not in effect~~ shall be suspended pending the referendum on the matter. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure but may repeal the suspended ordinance or resolution.

(c) If the assembly repeals the ordinance or resolution before the election, the petition shall be void and the referred measure shall not be placed before the voters.

(d) If a majority of those voting favor the repeal of the referred measure, it is repealed; otherwise, it remains in effect or, if suspended under section (b), it shall become effective upon certification of the election results by the assembly or council. Leave immediate effective date

(The ability to suspend an ordinance or resolution which had taken effect if a referendum petition was filed

within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to be able to exercise a temporary repeal of the measure. The reference to amending a charter by initiative or referendum was deleted as it is already covered under AS 29.13.080. This also requires submission of the question to the areawide voters for reasons outlined above.)

29.30.180 Effect. (a) The assembly or council may not, within two years of its effective date, repeal an ordinance or resolution adopted through the initiative process nor may it amend such an ordinance or resolution in a way to substantially modify or negate the effect of the successful initiative.

(b) If an ordinance or resolution against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum election, or if an ordinance or resolution is repealed by the voters in a referendum election, the council or assembly may not enact substantially similar legislation for a period of one year after the repeal. A measure which is repealed in a referendum election shall be repealed effective upon the certification of the election results by the assembly or council.

(c) An unsuccessful initiative or referendum precludes the filing of a new application for the same or substantially the same purpose sooner than six months after the initiative or referendum election results are certified by the assembly or council.

(Minor changes to make dates more certain and to accommodate the petition application process.)

* * * * *

**TITLE 29**

**TECHNICAL REVIEW COMMITTEE**

**PROPOSED REVISIONS**

**THEODORE D. BERNS - 10/13/80**

1. **29.08.010 - Add reference to unified municipalities created under AS 29.68.**

2. **29.08.050 - Repeal. (The omnibus bill should have a section preserving status quo of existing local governments.)**

3. **29.18.180(a)**

For the purpose of defraying the cost of transition to borough or city government and in order to provide for [;DEVELOPMENT AND INTERIM] initial government operations, each borough and city incorporated after January 1, [1968] 1981, or, in the case of a second class city, incorporated or reclassified after January 1, [1968] 1981, other than [UNIFIED MUNICIPALITIES INCORPORATED UNDER TEH PROVISIONS OF AS 29.85, OR A MUNICIPALITY OTHERWISE INCORPORATED BY CONSOLIDATION] municipalities merged, consolidated, or unified under AS 29 _____, is entitled to an organization grant equal to _____ for every voter who voted in the borough or city incorporation election[.] [HOWEVER, EACH INCORPORATED BOROUGH AND EACH FIRST CLASS CITY INCORPORATED OR ESTABLISHED BY RECLASSIFICATION OUTSIDE AN ORGANIZED BOROUGH IS ENTITLED TO AT LEAST $25,000.] ; provided that such grant shall not be less than _____ .

4. AS 29.68.310 - add a subsection (b) to read:

(b) If at least 11 nominations for qualified charter commission candidates are not received on or before the date fixed pursuant to Section 290 of this chapter, the resolution or petition for unification shall be deemed void and an election shall not be held.

5. AS 29.13.020 - add subsections (b) and (c) to read:

(b) Nomination petitions shall be filed with the borough or city clerk on or before the date fixed by the borough assembly or city council, ~~which date shall be not less than 30 days prior to the election of the charter commission.~~ 45

Follow Teds suggestion

(c) If at least 7 nominations for qualified charter commission candidates are not received on or before the date fixed pursuant to this section, the petition or resolution calling for a charter commission shall be deemed void, and an election shall not be held. city - ~~[illegible]~~ ~~appointment~~ ~~[illegible]~~ write in problems

6. AS 29.13.050(a) - Municipal charters shall provide [THE] procedures for initiative and referendum.

7. AS 29.13.100 - delete the following items from the list of statutes as indicated:

[(4) AS 29.23.250(a) (ELECTION AND TERM OF MAYOR)]

[(8) AS 29.28.010, 29.28.020(g) - 28.25.030 (MUNICIPAL ELECTIONS)]

(17) AS 29.48.040 [-29.48.100] (utilities) ← leave on list

[(20) AS 29.48.210 (EXPENDITURE OF BOROUGH REVENUE)]

8. AS 29.18.205 - add (j):

(j) Any other provision f sections 201-213 of this chapter notwithstanding, a municipality which is unable to satisfy its entitlement because of a shortage of vacant, unreserved and unappropriated general grant land suitable for residential, commercial or industrial purposes may fulfill its remaining entitlement by selection of any other state land which is otherwise vacant, unappropriated or unreserved.

deals with municipality with paper entitlement & no ~~[illegible]~~ to fill it. (For acreage for which no compensation provided)

29.28.030 Does apply to home rule

# Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246 4801

BOROUGH ATTORNEY'S OFFICE


October 14, 1980

To: Members of AS 29 Technical Committee

Dear Member:

Enclosed please find drafts of AS 42 and 23 relating to planning, platting, and land use regulations and municipal officers and employees.

I would appreciate and welcome your comments on these drafts before or during the next meeting of the Technical Committee, scheduled for October 20, 1980.

Cordially,

Allan E. Tesche
Borough Attorney

er

Enclosure

Section
10. Planning, platting, and land use regulation
20. Planning commission
30. Comprehensive plan
40. Land use regulations
50. Appeals from administrative decisions
60. Judicial review
70. Platting jurisdiction and power
80. Application to state and political subdivisions
90. Waiver in certain cases
100. Procedure
110. Information required
120. Alteration of replat petition
130. Notice of hearing
140. Hearing and determination
150. Recording
160. Title to vacated area
170. Penalties

Sec. 29.42.010. Planning, platting, and land use regulation. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section (except as otherwise provided in this chapter) to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

[adapted from AS 29.33.070]

(Alternate section suggested by Joanne Shanrley)

Sec. 29.42.010. Planning, platting and land use regulation. (a) First and second class boroughs shall provide for planning, platting and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section (except as otherwise provided in this chapter) to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the Borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

[adapted from AS 29.33.070]

Sec. 29.42.020. Planning commission. (a) By ordinance the assembly shall establish a planning commission consisting of not less than five persons appointed and confirmed as provided by law. The assembly by ordinance shall also prescribe the qualifications, terms, and compensation of planning commissioners.

(b) In addition to those responsibilities prescribed by law, the planning commission shall:

(1) Prepare and recommend to the assembly a comprehensive plan for the systematic and organized development of the borough, as defined in .030 of this chapter.

(2) Prepare, recommend, and as required by law to administer those measures necessary to implement the comprehensive plan.

[adapted from AS 29.33.080]

Sec. 29.42.030. Comprehensive plan. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

(b) The assembly shall adopt a comprehensive plan based upon the recommendations of the planning commission. The assembly shall, with the advice and recommendations of the planning commission, undertake an overall review of the plan and update the plan as necessary to ensure the continued validity and effectiveness of the plan.

[adapted from AS 29.33.085]

Sec. 29.42.040. Land use regulation. In accordance with a comprehensive plan adopted under Section .030 of this chapter and in order to implement that plan, the assembly by ordinance and as a legislative act, may enact or amend regulatory measures governing the use and occupancy of land, including but not limited to:

(1) Zoning regulations which restrict or govern use of land and improvements by geographic districts;

(2) Construction, fire and life safety codes governing placement, erection and occupancy of structures;

(3) Land use permit systems designed to encourage specified uses and structures and to discourage others, or to minimize unfavorable externalaties of certain uses and structures.

(4) Other regulatory measures reasonably necessary to further the goals and objectives of the comprehensive plan.

**(5) Measures defining and regulating public nuisances.**

**[adapted from AS 29.33.090]**

Sec. 29.42.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for appeals from administrative decisions of borough employees or boards and commissions made in the enforcement, administration, or application of land use regulations adopted by the borough under this chapter to a board of adjustment, hearing officer, or other independent quasi-judicial body established by the borough.

(b) By ordinance the assembly shall provide for appointment of hearing officers, or the composition, appointment and terms of office of a board of adjustment or other quasi judicial body established to hear appeals from administrative actions specified in (a) of this section and the assembly may define proper parties, prescribe evidentiary rules and standards of review and define remedies available to such bodies or hearing officers. [adapted from AS 29.33.110 and .120]

Sec. 29.42.060. Judicial review. (a) The assembly shall provide by ordinance for appeals from decisions of the board of adjustment, hearing officer or other quais-judicial board established under Sec. 050 of this chapter to the Superior Court by a municipal officer or person jointly or severally aggrieved.

(b) Appeals to the Superior Court under this section are administrative appeals and shall be governed by Rules of Court applicable to appeals from decisions of administrative agencies.

(c) Appeals are heard on the record established by the administrative agency, and the court may affirm, reverse, wholly or partly, the decision

appealed from. Issues in proceedings under this section have preference over all other civil actions and proceedings.

[adapted from AS 29.33.130]

Sec. 29.42.070. Platting jurisdiction and power. (a) First and second class boroughs shall exercise the power to regulate platting and the subdivision of land on an areawide basis. By ordinance the assembly shall enact subdivision regulations:

(1) governing the form, size and other aspects of subdivision, dedications, and vacations of land;

(2) regulating dimensions and design features of lots or tracts;

(3) establishing strict width, arrangement, and right of way, including allowance for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements.

(4) requiring dedication of streets, rights of way, public utility easements and other areas deemed by the platting authority necessary for future public use.

(b) The assembly by ordinance shall establish a platting board to administer subdivision regulations adopted by the borough and perform other duties prescribed by law. The platting board may, in whole or in part, consist of members of the planning commission or of other municipal bodies, boards and commissions.

[adapted from AS 29.33.150]

Sec. 29.42.080. Application to state and political subdivisions. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of this chapter and AS

29.42.080 -- 29.42.170, or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter and AS 29.42.080 -- 29.42.170, or under home rule authority, in the same manner and to the same extent as subdivisions made by private landowners.

[AS 40.15.200]

Sec. 29.42.090. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that:

(1) each tract or parcel of land will have adequate legal and physical access by the public to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of 29.42.080 -- 29.42.170 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development which constitutes an isolated transaction and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

[AS 29.33.170]

Sec. 29.42.100. Procedure. (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010 -- 40.15.020.

[AS 29.33.160]

Sec. 29.42.110. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

[AS 29.33.180]

Sec. 29.42.120. Alteration of replat petition. No recorded plat may be altered or replatted except upon petition of the owners of a majority of the land affected by the application or replat or by the platting board. No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

[AS 29.33.200]

Sec. 29.42.130. Notice of hearing. The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a copy of the notice to each affected property owner not signing the petition.

[AS 29.33.210]

Sec. 29.42.140. Hearing and determination. At the hearing the platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

[AS 29.33.220]

Sec. 29.42.150. Recording. If the alteration or replat is approved, the revised plat must be recorded by the platting board and is thereafter the lawful plat.

[AS 29.33.240]

Sec. 29.42.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for

**another public purpose does not vest as provided in (a) of this section but remains in the city.**

**[AS 29.33.240]**

Sec. 29.42.170. Remedies. (a) It shall be unlawful for the owner or agent of the owner of land located within a subdivision to transfer, sell, offer to sell, or to enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with applicable municipal subdivision regulations enacted under this chapter. It shall be unlawful for any person to file or record a subdivision plat or other instrument depicting subdivided land in any public recorder's office unless that plat or document bears the approval of the municipal platting authority. Every act prohibited by this chapter or the maintenance of any condition prohibited by municipal subdivision regulations adopted in accordance with this chapter is unlawful and the willful commission of such act or maintenance of such condition is a misdemeanor. Every person convicted of a violation of any provision of this title or any municipal subdivision regulation adopted under this title or the terms, conditions, or limitations imposed by a municipal platting authority in the exercise of its powers under this title is guilty of a misdemeanor and may be punished by a fine not to exceed $500.

(b) If there is a violation of the terms of this chapter, municipal subidivision regulations adopted under this chapter, or any terms, conditions, or limitations imposed by a platting authority in the exercise of its powers under this chapter, the Borough or any aggrieved citizen may institute or cause to be instituted any appropriate civil action to prevent, abate, enjoin, estop, remove or punish such violation and to

**obtain monetary damages suffered by that party. In addition to injunctive and compensatory relief each violation shall be subject to a civil penalty not to exceed $1,000. An action to enjoin any violation to this title may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of an existing or threatened violation, the Superior Court shall grant injunctive relief to restrain that violation.**

(c) Every day upon which an unlawful act or condition shall occur shall constitute a separate violation.

(d) The platting authority may enjoin any partition, lease, transfer, or sale of land which would result in an unlawful subdivision. Following an unlawful petition, transfer, lease or sale, the platting authority may enjoin any further transfer, sale of all unlawfully subdivided parcels until such time as the parcels are dully subdivided or returned to common ownership.

[new]

# Chapter 23. Municipal Officers and Employees.

Article
1. Municipal legislative bodies
2. Municipal executive.
3. Chief administrative officers.
4. Municipal departments and employees.
5. Municipal boards and commissions.
6. Miscellaneous provisions.

## Article 1. Municipal Legislative Bodies

Section
10. General legislative power
15. Assembly composition and apportionment
20. Composition and form of representation
25. Assembly recomposition and reapportionment
30. Apportionment appeals
35. Judicial review and relief
40. Effective date of apportionment
45. Applicability of apportionment provisions
50. City councils - composition and form of representation
55. Qualifications
60. Term of office
65. Procedures of municipal legislative bodies
70. Vacancies
75. Filling a vacancy

Sec. 29.23.010. General legislative power. The legislative power of a Borough is vested in the assembly, and of a city, in the council.

[AS 29.23.021]

Sec. 29.23.015. Assembly composition and apportionment. (a) Assembly composition and apportionment shall be consistent with the equal representation standards of the Constitution of the United States.

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

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

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

**[AS 29.23.015]**

Sec. 29.23.020. Composition and form of representation. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be

submitted to the voters of the borough with a plan of apportionment as required by AS 29.23.025(a).

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which receives the most votes at the elction.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.60.240 - 29.68.440;

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation. [AS 29.23.021]

Sec. 29.23.025. Assembly recomposition and reapportionment. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.23.015. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.23.020(b)(2) or (b)(3), the assembly shall submit with the proposition a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.23.015, the

assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The Borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.23.015. At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registered voters who are residents of the borough requests the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.23.015, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.23.015, the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.23.015 by preparing an order of reapportionment and delivering the order to the borough mayor. [AS 29.23.025]

**Sec. 29.23.030. Apportionment appeals. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.23.015 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of the Department of Community and Regional Affairs requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 2.23.015, or whether a decision of the borough assembly that the standards of AS 29.23.015 do not require a change of apportionment is correct. If the petition asks the commissioner of the Department of Community and Regional Affairs to review an ordinance approved by the voters under AS 29.23.025(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of the Department of Community and Regional Affairs to review a decision of the borough assembly under AS 29.23.025(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.**

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

**(c) If the commissioner of the Department of Community and Regional Affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.23.015, or if he determines that the decision of the borough assembly that the standards of AS 29.23 .015 do not require a change of reapportionment is not correct, the**

commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.23.021 and submit the ordinance to the voters.

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

(e) If at the end of the time period provided under (d) of this section an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.23.015 by preparing an order of reapportionment and delivering the order to the borough mayor.
[AS 29.23.027]

Sec. 29.23.035. Judicial review and relief. (a) The commissioner of the Department of Community and Regional Affairs may request the superior court to enforce a reapportionment order issued under AS 29.23.030(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.23.025(a);

(2) a determination by the borough assembly under AS 29.23.025(c) that the standards of AS 29.23.015 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.23.025(d);

(4) a reapportionment order of the commissioner of the Department of Community and Regional Affairs made under AS 29.23.030(c);

(5) a reapportionment ordinance approved by the voters under AS 29.23.030(d); and

(b) a reapportionment order of the commissioner of the Department of Community and Regional Affairs made under AS 29.23.030(e).
[AS 29.23.029]

Sec. 29.23.040. Effective date of apportionment. (a) A change in assembly apportionment or composition under AS 29.23.025 or 29.23.030 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.23.025(a), 29.23.025(e), or 29.23.050(d); or

(2) the delivery to the mayor of a reapportionment order of the commission of the Department of Community and Regional Affairs under AS 29.23.027(e).

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

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

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

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

[AS 29.23.031]

Sec. 29.33.045. Applicability of apportionment provisions. The provisions of S 29.23.025 - 29.33.035 do not apply;

(1) to a unified municipality incorporated under AS 29.68.240 - 29.68.440;

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

[AS 29.23.033]

Sec. 29.23.050. City councils--composition and form of representation. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other thatn on an at-large basis for all members.

[AS 29.23.200]

A borough voter is eligible to

Sec. 29.23.055. Qualifications. (a) A person registered to vote within the borough is eligible to be an assemblyman and a person registered to vote within a city is eligible to be a member of the council. An assemblyman or council member who ceases to be a qualified borough or city voter respectively forfeits that office.

be a member of assembly and a city voter is eligible to be a council member.

(b) The assembly and council by ordinance may establish durational residency requirements for their members not to exceed ~~one year~~ 3 years.

(c) An assemblyman or council member elected from or selected to represent an area less than the borough or city area at large and who becomes a resident of another area within the municipality, may continue to serve until the next regular election unless the assembly or council by ordinance provides otherwise.

[AS 29.23.050, 29.23.200(b) and (c)]

(d) city & borough may establish district residency requirements.

delete from 29.13.102

Sec. 29.23.060. Term of office. (a) Assemblymen and members of the council are selected for three year terms and until their successors have qualified, unless different terms are prescribed by ~~charter or~~ ordinance.

(b) Except when otherwise required by a change in composition or reapportionment, if the term of an assemblyman or member of a council is changed by charter or ordinance, the term of that official holding office at the time such change becomes effective is not affected by that change.

members of assembly or council

But look in reference to charter concerning transitional from general law to home rule

(c) The regular term of office begins on the first monday following certification, unless a different date is prescribed by ~~charter or~~ ordinance.

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

[AS 29.23.040, 29.23.200(b)]

4 year maximum ~~deleted to provide flexibility.~~ Put back in

Sec. 29.23.065. Procedures of municipal legislative bodies. (a) The borough assembly ~~and city council~~ shall elect from among their members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.23.115 - .155, and in a city the mayor serves as presiding officer. If the prsiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) Municipal legislative bodies shall hold at least one regular meeting every month, unless otherwise provided by ordinance. Special meetings may be held at the call of the presiding officer or at least one third of the members provided at least a majority of the members are given at least 24 hours oral or written notice, and reasonable efforts are made to notify all members. A special meeting may be onducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. The waiver shall be made a part of the journal for each meeting.

(c) Meetings of all municipal legislative bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

(d) A majority of the total membership authorized by law shall constitute a quorum. Members disqualifid by law from voting on particular questions may nevertheless be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(e) Actions of the body are adopted by a majority of ~~votes~~ members authorized on the question. All members present shall vote on every question unless

by law ~~or charger~~ they are required to abstain from voting on any particular question. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", xcept that if the vote is unanimous, it is necessary only to so state.

(f) Municipal legislative bodies shall maintain a journal of their official proceedings which, as a public record, shall be available to the public.

(g) Municipal legislative bodies may, consistent with law or charter, determine by ordinance their own rules of procedure and order of business. [AS 29.23.060, 29.23.210, 29.23.580]

Sec. 29.23.070. Vacancies. (a) ~~An elected municipal office is vacated under the following conditions and upon the declaration of vacancy by the assembly or council.~~ The assembly shall provide by ordinance the manner in which a vacancy occurs in any elected office or mayor. Unless otherwise provided by ordinance the assembly or council ~~shall~~ may declare an elective office vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) is physically absent from the nunicipality for a 90-day period, unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

~~(5) is removed from office;~~

(6) council/borough members only misses three consecutive regular meetings unless excused;

(7) is convicted of a felony or of an offense involving a violation of his oath of office; or

(8) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice and two thirds of the members concur in explusion of the member for commission of a corrupt practice.

(b) Upon occurrance of any of the grounds stated in (a) of this section for expulsion of a member, the assembly or council shall take action authorized in this section at its next regular meeting or as soon thereafter as practical.

[AS 29.23.570, 29.23.060, 29.23.130, 29.23.210]

Sec. 29.23.075. Filling a vacancy. (a) Unless otherwise provided by ordinance, a vacancy on the assembly or council shall be filled as provided in (b) of this section.

(b) If a vacancy occurs on the assembly or council, the remaining members shall appoint a qualified person to fill the vacancy within 30 days. The person appointed shall serve until the next regular election, at which time a successor shall be elected to serve the balance of the term. If less than 30 days remain in a term when a vacancy occurs, the vacancy shall not be filled. If, however, at any time the membership is reduced to fewer than a quorum, the remaining members shall, within 7 days appoint a number of qualified persons to constitute a quorum.

[AS 29.23.080, 29.23.220]

## Article 2. Municipal Executive

Section
80. Executive power
85. Election and term of the mayor
90. Qualifications for the office of mayor
95. Duties and responsibilities of the mayor
100. Veto
105. Executive absence
110. Vacancy in the office of mayor

Sec. 29.23.080. Executive power. (a) The executive power within a borough or city is vested in a mayor elected by the voters or the governing body as provided in this article.

(b) The mayor, as executive shall act as ceremonial head of government, ~~execute official documents upon authorization from the governing body~~ and is responsible for those additional duties and functions prescribed by ~~law or charter~~ ordinance.

[AS 29.23.130, 29.23.140]

Sec. 29.23.085. Election and term of the mayor. (a) The mayor of a ~~home rule municipality~~, borough ~~of any class~~, and first class city is elected at large by the voters. The mayor of a second class city is elected by and from the council.

(b) A mayor shall serve a term of 3 years unless by ordinance a different term ~~not to exceed 4 years~~ is provided, except that the current term of an incumbent mayor may not be altered. The mayor's regular term commences on the first Monday following certification of his election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately.

[AS 29.23.130, 29.23.250]

Sec. 29.23.090. Qualifications for office of mayor. (a) A voter of a ~~home rule municipality~~, borough ~~of any class~~, or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor for that city.

(b) Residency requirements for the office of mayor not exceeding ~~one~~ years may be prescribed by ordinance.

[AS 29.23.130, 29.23.250]

Sec. 29.23.095. Duties and responsibilities of the mayor. (a) If a city or borough has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same functions as those of manager under Sec. .155 of this chapter.

(b) The mayor shall preside over meetings of the council or assembly of a municipality which has adopted the manager form of government.

(c) The mayor may take part in the discussion of all matters before the assembly or council.

(b) The mayor may not vote in any matter before the Assembly or council, except that the mayor of a first class city may vote in the case of a tie, and the mayor of a second class city, as a council member, may vote on all matters.

[AS 29.23.130, 29.23.260, 29.23.160]

Sec. 29.23.100. Veto. (a) Except as provided by (b) and (c) below, the mayor may veto any ordinance, resolution, motion, or other action of the governing body of the borough or city, and reduce appropriation items.

(b) The mayor of a second class city has no veto power.

(c) The veto does not extend to:

(1) appropriation items in school budget ordinances;

(2) actions of the Board of Equalization and the Board of Adjustment;

(3) adoption or repeal of the manager form of government under Sec. 29.23.115 - .150 of this chapter; or

(4) motions relating solely to the internal ~~legislative~~ procedural functions of the assembly or council.

(d) The veto must be submitted to the assembly or council before its next regular meeting and must be accompanied by a written explanation of

the reasons for that action. A veto may be overridden only by vote of two thirds of the authorized membership of the assembly or council, taken within 21 days following exercise of the veto.

[AS 29.23.170, 29.23.260, 29.23.270]

leave as is 29.23.150

Sec. 29.23.105. Executive absence. In the temporary absence or disability of the mayor, the governing body of a borough or city shall by resolution, designate a person to serve as acting mayor.

[AS 29.23.150]

Sec. 29.23.110. Vacancy in the office of mayor. (a) The office of mayor may become vacant as provided in .070 of this chapter.

(b) Except as provided in (c) below, a vacancy in the office of mayor occurring ~~within six months~~ of a regular election shall be filled by the assembly or council. The person appointed shall, serve until the next regular election and until a successor is elected and has qualified. If a member of the assembly or council is chosen, he shall resign his seat. If a vacancy occurs more than six months before a regular election, the assembly shall call a special election to fill the expired term.

(c) In a second class city, the office of mayor is filled by and from the council.

[AS 29.23.180, 29.23.280]

## Article 3. Chief Administrative Officers

Section
115. Application
120. Petition
125. Election
130. Adoption
135. Appointment
140. Term
145. Appointment of temporary or new manager
150. Repeal
155. Powers and duties of the manager
160. Intergovernmental appointments

Sec. 29.23.115. Application. A municipality may adopt a manager plan of government.

[AS 29.23.410]

Sec. 29.23.120. Petition. Adoption of a manager plan may be initiated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council. The petition must be signed by a number of municipal voters equal to the following per cent of the votes cast at the preceding regular municipal election:

(1) 25 per cent when the municipality has fewer than 7,500 persons;

(2) 15 per cent when the municipality has 7,500 persons or more.

[AS 29.23.420]

Sec. 29.23.125. Election. Upon receipt of the petition or upon its motion, the assembly or council shall provide by ordinance or resolution for a vote on the question at the next regular or special election. Notice of the election shall be published at least 30 days before the election.

[AS 29.23.430]

**Sec. 29.23.130. Adoption. (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.**

**(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.**

**[AS 29.23.440]**

Sec. 29.23.135. Appointment. The assembly or council shall appoint a manager by a majority vote of its membership. He is chosen solely on the basis of his executive and administrative qualifications and receives the compensation set by the assembly or council. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the assembly or council may at any time appoint one of its members or other elected municipal officials as manager.

[AS 29.23.450]

Sec. 29.23.140. Term. Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council.

[AS 29.23.460]

Sec. 29.23.145. Appointment of temporary or new manager. In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office become vacant, the assembly or council shall appoint a new manager.

[AS 29.23.470]

Sec. 29.23.150. Repeal. A municipality may repeal the manager plan in the same manner used for its adoption. At its first meeting after repeal, the assembly or council shall enact provisions for the reorganization of the municipal executive and chief administrator.

[AS 29.23.480]

Sec. 29.23.155. Powers and duties of the manager. As chief administrative officer the manager shall:

(1) appoint, supervise, and discipline all municipal employees except those who are appointed and supervised directly by the governing body;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program as adopted;

(4) make such monthly financial reports and such other periodic reports on municipal finances and operations as the governing body may direct;

(5) exercise care and custody over all real and personal property of the borough except as provided otherwise in AS 29.33.050; and

(6) perform other powers and duties provided by law or by action of the governing body.

[AS 29.23.140, 29.23.290]

Sec. 29.23.160. Intergovernment appointments. A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough

within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in §§ 115-155 of this chapter. Nothing in this subsection affects the authority of the assembly or council to provide for other dual office-holding if the dual offices held are compatible or otherwise to appoint officers and employees in accordance with law.

[AS 29.23.130(e)]

## Article 4. Municipal Departments and Employees

Section
165. Appointment of Officers
170. Municipal Attorney
175. Municipal Clerk
180. Municipal Treasurer
185. Departments
190. Personnel system

Sec. 29.33.165. Appointment of Officers. The municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative officer unless otherwise provided by ordinance. Officers described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative officer must be confirmed by the governing body.

[AS 29.23.360]

Sec. 29.23.170. Municipal attorney. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

[AS 29.23.370]

Sec. 29.23.175. Municipal clerk. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

[AS 29.23.380]

Sec. 29.23.180. Municipal treasurer. (a) The treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the assembly or council directs.

[AS 29.23.390]

Sec. 29.23.185. Departments. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

[AS 29.23.070]

Sec. 29.23.190. Personnel system. (a) Except as provided by (b) below, all appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system.

(b) By ordinance the governing body may designate executive positions filled by persons who serve at the pleasure of their appointing authority and which are wholly or partially exempt from the classified service.

[AS 29.23.550]

## Article 5. Municipal Boards and Commissions

Section
195. School Boards
200. Other Boards and Commissions

Sec. 29.23.195. School boards. Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished as provided by § 100 of this chapter.

[AS 29.23.310]

Sec. 29.23.200. Other boards and commissions. (a) The assembly or council of a municipality may, by ordinance, establish such advisory, administrative, technical, or quasi judicial boards and commissions it deems necessary.

(b) Members of boards and commissions, except for the Board of Adjustment and assembly members serving on the Board of Equalization are appointed by the mayor and confirmed by the assembly or council.

[new]

## Article 6. Miscellaneous Provisions

Section
205. Salaries of elected officials
210. Prohibitions
215. Conflict of Interest
220. Reports

Sec. 29.23.205. Salaries of elected officers. The assembly or council shall fix by ordinance the salaries of elected officers. The salary of the mayor may not be reduced during his term of office. An elected officer may not receive any other compensation for service to the municipality. Per diem payments or reibursements for expenses are not compensation under this section.

[AS 29.23.530]

Sec. 29.23.210. Prohibitions. (a) No person may be appointed to or removed from municipal office or in any way favored or discriminated against with respect to a municipal position because of his race, color, sex, creed, national origin or, unless otherwise contrary to law, because of his political opinions or affiliations.

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

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed. Provisions of this section do not apply to term of office in effect on August 24, 1976.

(d) For purposes of this section a school district employee is not a municipal employee.

[AS 29.23.540]

Sec. 29.23.215. Conflict of interests. Eaxh home rule and general law municipality shall adopt a conflict-of-interests ordinance which, other provisions of this chapter notwithstanding, includes provison that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest. If a home rule or general law municipality fails to adopt such a conflict-of-interests ordinance within 90 days from September 10, 1972, the conflict-of-interests provision of this section is automatically applicable to and binding upon that municipality.

[AS 29.23.555]

Sec. 29.23.220. Reports. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) reports relating to long-term debt as provided in AS 44.19 .205.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, together with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.88 and state aid for miscellaneous municipal services under AS 29.89 The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

[AS 29.23.555]

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
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November 4, 1980

John Messenger, Esq.
Preston, Thorgrimson, Ellis
and Holman
420 L Street, Suite 404
Anchorage, Alaska 99501

Re: Title 29 Review - Proposed Revisions to Chapter 53 "Municipal Assessment and Taxation"

Dear John.

In furtherance of our discussion this date, please find enclosed herewith the following:

(1) Draft of proposed revisions to existing chapter 53 (Assessments). Comments to each section indicate the purpose of each proposed change.

(2) Copy of mark-up of chapter 53 prepared by the Alaska Association of Assessing Officers.

(3) Tamara Cook's rewrite under date October 2, 1980, of the required exemptions provisions of existing section 29.53.020.

I would appreciate any observations or comments you may have regarding these proposed or other amendments to chapter 53.

As we also discussed, the major remaining area which I intend to address is the area relating to corrections, cancellations and refund of taxes which I believe will solve many problems currently confronting assessors and administrators of the tax provisions.

Yours very truly,

Russell W. Walker
Municipal Attorney

Enclosures

Sec. 29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a household [not exceeding $500 in value];

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(7) real property to the extent and subject to the conditions provided in (j) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization.

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or educational groups [for classroom space]. <u>If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space</u>.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560-44.62.570.

(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under sec. 25(a) of this chapter.

(h) Except as provided in (g) of this section, nothing in (e)-(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in sec. 25 of this chapter.

(i) In (e)-(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Formerly: AS 29.53.020

Comments: Based on Alaska Association of Assessing Officers (AAAO) recommendation:

(1) Para. (a)(2): deletes $500 limit on exemption of household furniture;

(2) Para. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

(3) Para. (f): clarifies filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section.

Sec. 29.45.050. Optional exemptions and exclusions.

(a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) All or any portion of the household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use. "Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles, and the like [the household furniture over $500 in value and the effects of the head of a family or a householder]; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

Formerly: AS 29.53.025

Comments: modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects. Based upon recommendation of AAAO since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.060. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is exempt [fixed at $200 for each 20 acres or fraction of 20 acres]. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.

Formerly: AS 29.53.030

Comments: Deletes $200 valuation figure. AAAO recommends deletion since administrative costs exceed taxes to be realized in carrying property at $200 figure on roll.

Sec. 29.45.100. Tax limitations.

(a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaires or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner or community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Formerly: AS 29.53.050

Comments: Technical change requested by AAAO to conform with provisions of AS 29.53.045 (SLA 80)

Sec. 29.45.120. Full and true value.

(a) The assessor shall value [assess] property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections 60 [30], 70 [35] and 240 [160] of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Formerly: AS 29.53.060

Comments: Requested by AAAO

Sec. 29.45.180. Assessment notice.

(a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest. [and the dates when the board of equalization will sit.]

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Formerly: AS 29.53.110

Deletes requirement that assessor include in the assessment notice the date the board of equalization will meet since many times assessors at that time do not know the dates at the time the notices are mailed. Based on the recommendation of AAAO.

Sec. 29.45.210. Board of Equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, however, may delegate this authority to one or more boards appointed by it for that purpose. An appointed board may be composed of not less than three (3) persons, who may be members of the assembly, private individuals, or a combination thereof. [The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business.] The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance establish the qualifications for membership and adopt rules of conduct of the board.

Formerly: AS 29.53.135

Comments: Change would clarify authority to establish boards of equalization composed of other than assembly members and by ordinance to establish qualifications. Deletion required to allow appointment of boards of three members or more which number may be less than number required for quorum of assembly.

Sec. 29.45.220. Hearing.

(a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed and [or] proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1 except as to supplementary assessments.

(f) [an] The appellant and the assessor may appeal the board's action to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on and limited to the record established at the hearing before the board of equalization. [for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial].

Formerly: AS 29.53.140

Comments:

(1) Para. (c): Based on recommendation of AAAO, substitutes and for or to assure must set forth factual grounds in written appeal and prove at hearing;

(2) para. (e): Based on recommendation of AAAO, clarifies that there may be further proceedings after June 1 in event there are supplementary assessments per former section 29.53.150;

(3) para. (f): deletes provisions regarding trial de novo and jury trial and limits scope of review to substantial evidence rule and clarifies confusion created by Winegardner v. Greater Anchorage Area Borough (534 P.2d 541)

Sec. 29.45.230. Supplementary assessment rolls. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. Any supplementary roll must be finalized and certified on or before September 1 of the assessment year.

Formerly: AS 29.53.150

Comments: Recommended by AAAO. State assessor requires for his purposes all proceedings to be completed not later than September 1, including any supplemental assessments.

Sec. 29.45.440. Expiration.

(a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000 [$10,000], to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Formerly: AS 29.53.350

Comments: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgment of foreclosure.

AS 29.28 ELECTIONS (NEW CHAPTER 30)

## Article 1. Regular and Special Elections

| New Sec. No. | Old Sec. No. | Sec. Title |
|---|---|---|
| 29.30.010 | 29.28.010 | Administration |
| 29.30.020 | 29.28.015 | Nominations |
| 29.30.030 | 29.28.020 | Election dates |
| 29.30.040 | 29.28.030 | Voter qualifications |
| 29.30.050 | 29.28.040 | Majority elections |
| 29.30.060 | 29.28.050 | Election contest and appeal |

## Article 2. Initiative and Referendum

| | | |
|---|---|---|
| 29.30.090 | 29.28.060 | Reservation of powers |
| 29.30.100 | 29.28.062 | Petition filing |
| 29.30.110 | 29.28.062 | Contents of petition |
| 29.30.120 | 29.28.070 | Required signatures |
| 29.30.130 | NEW SEC. | Petition circulation and certification |
| 29.30.140 | 29.28.073 | Petition--Sufficient, Insufficient, Supplemental |
| 29.30.150 | 29.28.075 | Protest |
| 29.30.160 | 29.28.077 | New petition |
| 29.30.170 | 29.28.080 | Presentation of initiative |
| 29.30.180 | 29.28.090 | Presentation of referendum |
| | 29.28.110 | Effect (reworded and moved to 30.180) |
| 29.30.190 | 29.28.110(b) | Unsuccessful initiatives or referendums |
| 29.30.200 | 29.28.090(c) | Municipal charter amendment |

## Article 3. Recall

| | | |
|---|---|---|
| 29.30.210 | 29.28.130 | Scope of Recall |
| 29.30.220 | 29.28.140 | Grounds for recall |
| 29.30.230 | 29.28.150 | Contents of petition |
| 29.30.240 | NEW SEC. | Petition circulation and certification |
| 29.30.250 | 29.28.160 | Petition--Sufficient, Insufficient, Supplemental |
| | 29.28.170 | |
| 29.30.260 | NEW SEC. | Protest |
| 29.30.270 | 29.28.180 | New petition |
| 29.30.280 | 29.28.190 | Submission |
| 29.30.290 | 29.28.200 | Recall election |
| 29.30.300 | 29.28.210 | Form of recall ballots |
| 29.30.310 | 29.28.220 | Election procedure |
| 29.30.320 | 29.28.230 | Majority required |
| 29.30.330 | 29.28.240 | Effect |
| 29.30.340 | NEW SEC. | Certification of election results |
| 29.30.350 | 29.28.250 | Election or appointment of successor |

29.30.010

29.28 ELECTIONS

Article 1. Regular and Special Elections

Sec. 29.28.010. Administration.

ok

(a) The borough assembly or city council shall prescribe the general rules for conducting municipal elections and [APPOINT AT LEAST THREE JUDGES FOR EACH POLLING PLACE.] shall appoint election boards, composed of at least three judges, for each precinct. The judges shall, to the extent possible, be appointed from among the qualified voters of each of the precincts for which they are appointed. [See AK 15.10.120] [The municipality may not alter voter qualification requirements of this title.]

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

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Attempted to clarify election board appointment and referenced '80 revised AK 15.10.120 for consistency. Deleted "The municipality may not alter . . ." because issue is addressed at Sec. 29.28.030.

DRAFT

29.30.020

29.28 ELECTIONS

Sec. 29.28.015. Nominations.

(a) The assembly or council shall provide by ordinance the procedure for the nomination of elected officers by [PROVIDING FOR] declaration of candidacy, or petition requiring the signatures of not more than 10 [VOTERS] ~~qualified electors~~ voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

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Lee Sharp suggests that it should be left to local option as to whether the mayor in a manager-type municipality should be permitted to be a member of the legislative body so long as he does not have the veto power. If the Committee supports this suggestion, (b) should be amended.

DRAFT

29.30.030

29.28 ELECTIONS

rewrite but no change

Sec. 29.28.020. Election dates.

(a) [THE DATE OF A] Regular municipal elections [IS THE] shall be held on the first Tuesday of October annually [, OR ON A DATE OF ELECTION] or at an interval of years as provided by ordinance.

(b) The assembly or council may call a special election upon at least 20 days' notice.

29.30.040

29.28 ELECTIONS

Sec. 29.28.030 Voter qualification.

(a) A person may vote at any election who meets the requirements of AS 15.05.010 - .040, who is registered to vote in State elections and is not disqualified under Article V of the State Constitution, who has been registered to vote in the a ~~resident of~~ the municipality for 30 days immediately preceding the ~~who is registered in the precinct in which he presents~~ himself to vote election, and ~~whose name appears on the official registration list for the~~ precinct in which he presents himself to vote. (See AS 15.07.010 - '80)

(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements. except that a municipality may require by ordinance ~~that a voter vote in the precinct in which he is registered.~~ require a person to be a resident of the ~~precinct~~ election district or service area in which he votes.

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

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Incorporates Municipal League recommendation.

Does apply to Home Rule

29.30.050

29.28 ELECTIONS

Alternate A

Sec. 29.28.040 Majority elections

(a) An assembly or council may by ordinance provide the requirement for a runoff election if no one candidate receives in excess of 40 percent of the votes cast for a respective office.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

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This amendment would require municipalities to enact an ordinance providing for runoffs; otherwise, all municipalities would be exempt from this present requirement

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Alternate B

Sec. 29.28.040 Majority elections

(a) If in a municipal election no candidate receives in excess of 40 percent of the votes cast for his respective office, the assembly or council shall hold a runoff election between the two candidates receiving the greatest number of votes for the office. The runoff election shall be held within three weeks from the date of certification of the election for which the runoff is required and notice of the runoff election shall be published at least five days prior to the election date. An assembly or council may by ordinance exempt its elections from the requirements of this section.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

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Sec. 29.28.040 cont'd
Alternate B

This amendment would allow municipalities to enact an ordinance which would exempt them from the runoff requirement. The change to three weeks (from two weeks) for the date of the runoff allows the additional time necessary so cities within boroughs can coordinate their runoffs and hold them at the same time.

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Sec. 29.28.040 Majority elections Alternate C

(a) If in a municipal election no candidate receives in excess of 40 percent of the votes cast for his respective office, the assembly or council shall hold a runoff election between the two candidates receiving the greatest number of votes for the office. The runoff election shall be held within three weeks from the date of certification of the election for which the runoff is required and notice of the runoff election shall be published at least five days prior to the election date. A municipality may exempt itself from the requirement of this section if a majority of the voters voting on the question at any regular election or a special municipality-wide election called for that purpose, vote to exempt its municipal elections from the requirements of this section.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

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This amendment would allow municipalities to exempt itself from the runoff requirement by means of voter ratification. Incorporates Municipal League recommendation.

29.30.060

AS 29.28 ELECTIONS

Sec. 29.28.050 Election contest and appeal.

UNCHANGED



**Sec. 29.28.050. Election contest and appeal.** (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the assembly or council, by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two per cent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects. (§ 2 ch 118 SLA 1972)

'80 addition

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.23.060 (c), of a member of a city council under AS 29.23.210(b), of a borough mayor under AS 29.23.130(f), or of a city mayor under AS 29.23.255 is final and is not subject to judicial review.

## Article 2. Initiative and Referendum.

Sec. 29.28.060. Reservation of powers.

Unchanged

**Sec. 29.28.060. Reservation of powers.** The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by § 7, art. XI, of the state constitution. (§ 2 ch 118 SLA 1972)

**Borough voters may use an initiative to acquire an areawide power for a borough which cities refuse to transfer. 1965 Op. Att'y Gen., No. 6.**

Sec. 29.28.062 Petition filing.

Unchanged

**Sec. 29.28.062. Petition.** A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election. (§ 2 ch 118 SLA 1972)

Sec. 29.28.065 Contents of petition.

Unchanged

**Sec. 29.28.065. Contents of petition.** A petition for an initiative or referendum shall

(1) embrace only a single comprehensive subject;

(2) set out fully the ordinance or resolution sought by the petition;

(3) state upon the petition, when circulated, the date of first circulation of the petition;

(4) contain the statement, when circulated, that the signatures on the petition must be secured within 90 days from the date of the first circulation;

(5) have the required signatures, dates of signatures and resident addresses of the signers. (§ 2 ch 118 SLA 1972)

29.30.120

29.28 ELECTIONS

Sec. 29.28.070. Required signatures.

(a) The necessary signatures on a petition shall be secured within 90 days from the date of the first circulation of the petition. The petition shall be signed in ink or indelible pencil.

(b) Every municipal initiative or referendum petition [FOR EITHER THE INITIATIVE OR REFERENDUM IN THE GOVERNMENT OF A MUNICIPALITY] shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities, to a service area, or to a district, by a number of qualified voters residing within the respective area [OUTSIDE CITIES OR WITHIN THE SERVICE AREA, AS THE CASE MAY BE, EQUAL TO THE FOLLOWING] equal to *25/30 percent of the total number of votes cast at the last [GENERAL] regular election preceding the date of first circulation of the petition[IN THE CITY OR BOROUGH OR BOROUGH AREA CONCERNED OR SPECIAL ELECTION CALLED FOR THE PURPOSE OF ELECTING CITY OR BOROUGH OFFICERS:] in the respective area concerned.

[(1) 25 PERCENT, WHEN A CITY OR BOROUGH HAS FEWER THAN 7,500 PERSONS, OR

(2) 15 PERCENT, WHEN A CITY OR BOROUGH AS 7,500 PERSONS OR MORE.]

(c) When signing a petition each voter shall write or print after his signature the date of signing the petition and his resident and mailing address.

(d) Illegible signatures unless accompanied by a legible printed name may be rejected by the municipal clerk.

(e) A petition signer may withdraw his signature upon written application to the clerk within seven days after the petition has been filed with the clerk.

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Amendment does not address Richard Garnett III's concern regarding service area petitions. *In (b) Municipal League supports 30 percent, Clerks support 25 percent.

29.30.125
(new Section)

29.28 ELECTIONS

NEW SECTION

Sec. 29.28.071 Petition circulation and certification.

(a) Petitions shall be circulated only by a sponsor and only in person. If more than one sponsor is circulating copies of a petition, one spokesman shall be appointed by the sponsors for purposes of receiving notification of petition sufficiency, and the clerk shall receive written notice of the spokesman's name and mailing address.

(b) Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state:

(1) the person signing the affidavit was the only circulator of the petition;

(2) the signatures were made in his actual presence; and

(3) to the best of his knowledge, the signatures are those of the persons whose names they purport to be.

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Has the effect of requiring a witness to the signatures on a petition; conforms to State law.

Sec. 29.28.073. Petition--Sufficient, Insufficient, Supplemental.

(a) Within 10 days from the date of filing, the municipal clerk shall certify the petition as to its sufficiency and shall so notify the sponsor or spokesman.

(b) The clerk shall notify the sponsor or spokesman that the petition is insufficient if he determines that the petition does not meet the requirements as set forth in this article.

(c) Upon receipt of notice that the filing of the petition was improper, the sponsor/s may amend and correct the petition by circulating and filing a corrected or supplementary petition within 10 days of the date that notice was given if 90 days from the petition's first circulation have not yet expired.

(d) Within 10 days from the date of filing of a corrected or supplementary petition, the municipal clerk shall recertify the petition. If the petition is still insufficient, the petition shall be rejected and filed as a public record and the sponsor or spokesman shall be so notified.

(e) For the purposes of this article, all notices required of the clerk to be given to the sponsor or spokesman shall be by certified mail.

29.30.140→.150



Sec. 29.28.075. Protest

Unchanged

**Sec. 29.28.075. Protest.** If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting of the assembly or council which shall hear and decide the protest. (§ 2 ch 118 SLA 1972)

SEc. 29.28.077. New petition

Unchanged

**Sec. 29.28.077. New petition.** Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

29.30.160

## 29.28 ELECTIONS

Sec. 29.28.080. Presentation of initiative.

(a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council, excepting powers of an administrative nature and not otherwise restricted by §60 of this chapter, the clerk shall present it to the assembly or council at its next regular meeting following [AFTER] certification. The assembly or council may reject the petition if the subject matter of the initiative [OR REFERENDUM] is within the restrictions of §60 of this chapter or is determined to be of an administrative nature.

(b) Unless the petition is granted within 30 days of its submission to the assembly or council, the clerk shall, with the assistance of the municipal attorney, prepare an ordinance or resolution to implement the petition and shall submit it to the voters at the next regular election. The ordinance or resolution shall be published in full in the notice of election but may be summarized on the ballot to indicate clearly the proposal submitted.

(c) If a majority of those qualified electors voting favor the proposal, it becomes effective [WHEN THE ELECTION RESULTS ARE OFFICIALLY DECLARED] 30 days following certification of the election results, is not subject to veto, and may not be repealed within two years of its effective date. It may be amended at any time.

(d) The assembly or council may at any time not less than 10 days from the date of election adopt an ordinance or resolution to implement the petition. In that event an election shall not be held. The adopted resolution or ordinance is not subject to veto(?) may not be repealed within two years of its effective date. It may be amended at any time.

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Rewrite attempts to incorporate recommendations of Lee Sharp, Richard Garnett III, and follows provisions of Article XI §6 of the Constitution.

DRAFT

29.30.170

29.28 ELECTIONS

Sec. 29.28.090 Presentation of referendum.

(a) When a petition seeks a referendum vote on an ordinance or resolution, excepting legislation determined to be of an administrative nature, the clerk shall submit the ordinance or resolution to the voters of the municipality at the next regular or special election. If no regular or special election [OCCURS] is scheduled to occur within 75 days of the filing of a sufficient petition with the clerk, the assembly or council shall schedule and hold a special election within 75 days of filing. If the clerk determines that the subject of the petition is of an administrative nature, he shall present the petition to the assembly or council at its next regular meeting following certification of the petition. The assembly or council may reject the petition if the subject matter is determined to be of an administrative nature.

(b) If a sufficient petition for referendum is filed within 30 days after final passage of the ordinance, or before the effective date of the ordinance, [THE ORDINANCE AGAINST WHICH THE PETITION IS FILED SHALL BE SUSPENDED PENDING THE REFERENDUM ON THE ORDINANCE. DURING THE PERIOD OF SUSPENSION] the assembly or council may [NOT ENACT AN ORDINANCE SUBSTANTIALLY SIMILAR TO THE SUSPENDED ORDINANCE BUT MAY] repeal the [SUSPENDED] ordinance. If an ordinance against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum, the council or assembly may not enact substantially similar legislation for a period of [ONE YEAR] two years after repeal.

(c) If a majority of those voting favor the referendum legislation, it remains in effect. If a majority rejects the legislation, it is repealed and becomes void 30 days after certification of the election results, and the assembly or council may not, within two years, act in any way to modify or negate the effect of a successful [INTIATIVE OR] referendum.

29.30.170
(explanatory notes)



Sec. 29.28.090 cont'd

(a) incorporates recommendations of Lee Sharp and Richard Garnett III and Wolf v. Alaska State Housing Authority re: legislation of an administrative nature

(b) reflects ruling in Walters v. Cease (referred to in State Constitution XI § 6) re: suspension of legislation

(c) conforms to State Constitution XI § 6 re: when legislation becomes void

DRAFT

29.30.180 → .18
(new title) (renumbered)

29.28 ELECTIONS

Sec. 29.28.110 Effect

Deleted - (a) reworded and moved to 29.28.090

Sec. 29.28.110 Unsuccessful initiatives or referendums (NEW TITLE)

(a) An unsuccessful initiative or referendum precludes the filing of a new petition for the same purpose sooner than six months after voter disapproval of the initiative or referendum.

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this is previous Sec. 29.28.110 (b)

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Sec. 29.28.120 Municipal charter amendment (NEW SECTION)

(a) A municipal charter may be amended as provided in the charter or by initiative and referendum as provided in Article 2 of this chapter.

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this is a portion of previous SEc. 29.28.090 (c)

29.30.210 → .220

**29.28 ELECTIONS**

Article 3. Recall.

Sec. 29.28.130 Scope of Recall (NEW TITLE)

(a) All [AN] elected officials [OF A HOME RULE OR GENERAL LAW MUNICIPALITY MAY BE RECALLED] are subject to recall [BY THE VOTERS] after [HE HAS SERVED] having served six months in office.

Sec. 29.28.140 Grounds for recall (NEW TITLE)

The grounds for recall are misconduct in office, incompetence, failure to perform prescribed duties and to uphold the laws and ordinances of the municipality, and corruption.

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Alternate B: Delete 29.28.140, 29.28.150 (2) + 29.28.210 (1)
No grounds

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Alternate C: Leave in 29.28.140 but provide for more stringent petition requirements if official is subject to recall w/out grounds being specified.

Sec. 29.28.150 Contents of Petition.

(a) A petition seeking the recall of [ONE OR MORE] an elected municipal official[S] is filed with the municipal clerk. The petition shall contain:

(1) the name and office of the person to be recalled;

(2) a statement of the grounds for recall stated with particularity as to specific instances, limited to 200 words;

(3) the signatures, [AND] resident addresses and mailing addresses and date of signing of [A NUMBER OF VOTERS AS PRESCRIBED IN §70(b) OF THIS CHAPTER FOR INITIATIVE AND REFERENDUM] a number of qualified voters residing within the territorial limits of the area from which the elected official was elected equal to 25/30? percent of the total number of votes cast at the last regular election preceding the date of first circulation of the petition.

(4) a statement of the date of first circulation of the petition and a statement that the signatures on the petition must be secured within 60 days from the date of the first circulation.

(b) If more than one elected municipal officer is being considered for recall simultaneously, a separate petition shall be filed for each official.

(c) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition.

(d) No recall petition shall be filed within ~~90 days~~ 6 mo. of the termination of the term of office of the public official who is the subject of the recall petition.

29.30.255 (new section) +.240

29.28 ELECTIONS

Sec. 29.28.155 Petition circulation and certification (NEW SECTION)

(a) Recall petitions are subject to the requirements for initiative and referendum petition circulation and certification as prescribed in AS 29.28.071.

Sec. 29.28.160 Petition--Sufficient, Insufficient, Supplemental (NEW TITLE)

Revise & renum. .170

(a) Within 10 days from the date of filing, the municipal clerk shall certify the petition as to its sufficiency and shall so no ify the sponsor or spokesman. Until the petition is accepted as sufficient, a petition signer may withdraw his signature upon written application to the clerk.

(b) The clerk shall notify the sponsor or spokesman that the petition is insufficient if he determines that the petition does not meet the requirements as set forth in this article.

(c) If a petition is rejected because of insufficient signatures, it may be supplemented by additional signatures within 10 days after the date of rejection if 60 days from the petit'on's first circulation have not yet expired. Within 10 days after the supplementary filing, the clerk shall recertify the petition as to its sufficiency and so notify the sponsor or spokesman. If the petition is still insufficient it shall be rejected and filed as a public record.

(d) A petition found insufficient for any reason other than the lack of sufficient signatures shall be rejected and filed as a public record.

(e) For the purposes of this article, all notices required of the clerk to be given to the sponsor or spokesman shall be by certified mail.

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(Also include provisions of previously numbered Sec. 29.28.170 - Supplemental Petition.)

29.30.255 (new section) + .260 → .280

Sec. 29.28.170 Protest. (NEW SECTION)

(same as protest provisions for initiative and referendum)

If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting of the assembly or council, which shall hear and decide the protest.

SEc. 29.28.180 New Petition

Unchanged.

**Sec. 29.28.180. New petition.** Failure to secure sufficient signatures does not preclude the filing of a new recall petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

Sec. 29.28.190 Submission.

If a recall petition is sufficient, the clerk shall [IMMEDIATELY] submit it to the assembly or council at its next regular meeting.

Sec. 29.28.200 Recall election

(a) If a regular election occurs within 75 days of submission of a sufficient petition, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days of submission.

(c) If a vacancy occurs in the office after a recall petition is filed, the petition shall not be submitted to the voters and such vacancy is filled as a vacancy caused by any other reason is filled. The resigning official who was the subject of the recall petition shall not be eligible for appointment to the vacant position.

29.30.290 - .320

29.28 ELECTIONS

Sec. 29.28.210 Form of recall ballots

Unchanged

**Sec. 29.28.210. Form of recall ballots.** A recall ballot contains:

**(1) the grounds as stated in the recall petition;**

**(2) the officer's statement of 200 words or less, if the statement is filed with the clerk for publication and public inspection within 20 days before the election;**

**(3) the following question: "Shall (name of person) be recalled from the office of (office)? Yes [ ] No [ ]". (§ 2 ch 118 SLA 1972)**

Sec. 29.28.220 Election procedure

Unchanged

**Sec. 29.28.220. Election procedure.** Procedures for conducting a recall election are those of a regular election. (§ 2 ch 118 SLA 1972)

Sec. 29.28.230. Majority ~~election~~ required

Unchanged

**Sec. 29.28.230. Majority required.** A majority vote on the question is required to recall an officer. (§ 2 ch 118 SLA 1972)

Sec. 29.28.240. Effect

Unchanged

**Sec. 29.28.240. Effect.** If an incumbent is not recalled at the recall election, a petition to recall the same incumbent may not be filed sooner than six months after the recall election. (§ 2 ch 118 SLA 1972)

29.30.325 (new section)
+.330

29.28 ELECTIONS

Sec. 29.28.245 Certification of election results (NEW SECTION)

If a majority of the votes cast on the question of recall favor the removal of the official, the assembly or council shall so certify and the office becomes vacant the day following certification.

Sec. 29.28.250 Election or appointment of Successor

(a) If the voters recall an officer, the remaining council or assembly members shall appoint a successor to serve until an election shall be held. The clerk shall conduct an election for a successor to fill the unexpired term of the recalled official, which election shall be held at least 10 but not more than 45 days from the date of the recall election. However, if a regular or special election occurs within 75 days of the recall election, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section.

(b) If the voters recall a number of officials which has the effect of leaving the legislative body with less than a quorum, the remaining council or assembly members shall have the emergency power to appoint successors to serve until an election shall be held.

(c) If the voters recall an entire legislative body, the executive officer? shall have the power to appoint successors to serve until an election shall be held.

(d) If no candidates file to have their names placed on the ballot to replace the recalled officer, the remaining council or assembly members shall appoint a successor to serve for the unexpired term of the recalled official. If an entire legislative body has been recalled and no candidates

29.28.250 cont'd

file for the vacancies, the executive officer shall have the power to appoint successors to serve for the unexpired terms of the recalled officials.

(e) All appointed successors shall have the qualifications and meet the requirements established for election to the position to which appointed and shall not be one of the officials recalled.

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It's difficult to address all the "what ifs"; I'm sure I missed some!

## Article 1. Special Assessments


| Section | | Section | |
|---|---|---|---|
| 10. | Assessment and proposal | 60. | Payment |
| 15. | Procedure | 65. | Exemption |
| 20. | Decision and notice | 70. | Reassessment |
| 25. | Record owner | 75. | Allowable costs |
| 30. | Objections and revision | 80. | Objection and appeal |
| 40. | Assessment roll | 83. | Interim financing |
| 50. | Hearing and settlement | 85. | Special assessment bonds |


SEC. 29.63.010. ASSESSMENT AND PROPOSAL. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of acquiring, installing, making or constructing (OR IMPROVING) capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under § 15(a)(8) of this chapter. If a governmental unit other than the state benefited by an improvement (ASSESSMENT) refuses to pay the assessment, it shall be denied the benfit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited or

(2) the assembly or council.

SEC. 29.63.015. PROCEDURE. (a) The assembly or council may prescribe by ordinance the complete procedure relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements (SPECIAL ASSESSMENT PROCEDURE FOR LOCAL IMPROVEMENTS), including and subject to the following:

(1) a (THE) procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

(4) a resolution or ordinance of the assembly or council determing to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

(6) published notice of each public hearing required by this section and mailing notice to each (LEGAL OWNER OF) record owner of real property within the special assessment district;

(7) a resolution or ordinance confirming the special assessment roll for the local improvement;

(8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 per cent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 per cent, except upon approval of not fewer than three-fourth of the assembly or council.

(b) To the extent that (IF) the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in §§ 20-70 of this chapter.

SEC. 29.63.020. Creation of District (DECISION AND NOTICE). (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution or ordinance whether (1) the improvement requested (REQUEST) is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council approves (PASSES A RESOLUTION APPROVING) an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on and the period for filing objections to the improvement plan. The assembly or council shall publish a notice of

the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

SEC. 29.63.025. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate (BE MADE AGAINST) "unknown owner."

SEC. 29.63.030. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of not less than 30 (NOR MORE THAN 60) days (AFTER PUBLICATION OF NOTICE ON A DATE) specified by the assembly or council. The assembly or council may by resolution or ordinance approve the plan and order (PROCEED WITH) the improvement subject to the limitation of (b) of this section (IF THE OWNERS OF ONE-HALF IN VALUE OF THE PROPERTY TO BE BENEFITED DO NOT OBJECT IN WRITING).

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half of the extimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan in accordance with 020(b) and (c) of this chapter.

SEC. 29.63.040. ASSESSMENT ROLL. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against property within the district (TRACTS) in proportion to benefit received. (ASSESSMENTS MAY NOT EXCEED ACTUAL COSTS.)

(b) The special assessment roll shall contain (CONTAINS) property descriptions, names of record owners (OF RECORD) and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days befcre the hearing.

SEC. 29.63.050. HEARING AND SETTLEMENT. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll, provided that, if any assessment is raised, a new hearing shall be set and notice mailed as for the original assessment roll and further provided that objections shall be limited to record owners of property on which the assessment was raised. When the roll is corrected, it shall be confirmed by resolution or ordinance of the assembly or council. (THE CLERK SHALL SO CERTIFY.)

SEC. 29.63.060. PAYMENT. (a) The assembly or council shall fix times of payment, rate of interest on the unpaid balance of the assessment, and if possible in installments penalties and interest on (DELINQUENCY OF) delinquent payments. PAYMENT MAY NOT BE REQUIRED SOONER THAN 60 DAYS AFTER ASSESSMENT. Payment may be in one sum or by installments, but the total assessment (A SUM OR INSTALLMENT) may not exceed 25 per cent of the assessed value of the property affected. If payment is to be in one sum, payment may not be required sooner than 60 days after mailing of the assessment statement. If payment is to be by installment, the entire assessment may be prepaid without interest or penalty within 30 days after mailing of the assessment statement; and thereafter may be prepaid in whole or in part with interest to the next installment payment date. Penalty and interest on delinquent payments are the same as for real property taxes and are in addition to interest on the unpaid balance of the assessment if payable in installments.

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property,

the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment if payable in installments, the time of delinquency, and penalties on delinquent payments.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.200 - 29.53.390 for enforcement of property tax liens.

SEC. 29.63.065. EXEMPTION. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single-family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benfit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560 - 44.62.570.

(b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed (CERTIFIED) and the time of payment fixed by the assembly

or council. Within one year of the date the assessment roll is confirmed (CERTIFIED) the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the department by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070 - 34.10.220. The lien becomes immediately due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property

is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

SEC. 29.63.070. REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property not-withstanding failure to comply with any provision of the assessment procedure.

SEC. 29.63.075. ALLOWABLE COSTS. Whenever special assessment district is created, there shall be included in the cost and expense of the district.

(1) all of the cost of making the local improvement;

(2) the costs and expenses of all engineering and surveying necessary to be done in connection with creating the district or with the improvement;

(3) the cost of all advertising, mailing, and publishing of all notices;

(4) interest on interim financing;

(5) the cost of legal services and any other expenses incurred for district or in the formation of the district, or in connection with making the improvement and in the financing the improvement, including the issuance of any bonds;

(6) the total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

SEC. 29.63.080. OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

SEC. 29.63.083. INTERIM FINANCING. (a) The assembly or council may provide by resolution or ordinance for the issuance of warrants in payment of the costs and expenses of any local improvement project, payable out of the special assessments for such improvement. The warrants shall bear interest at a rate or rates as authorized by the resolution or ordinance and shall be redeemed either in cash or by bonds for the same project.

(b) All warrants issued against any assessments shall be claims and liens against those assessments prior and superior to any right, lien or claim of any surety upon the bond given to the borough or city by or for the contract to secure the performance of its contract or to secure the payment of persons

who have performed work thereon, furnished materials therefor, or furnished provisions and supplies for the carrying on of the work.

(c) The municipal treasurer may accept warrants against special assessments upon conditions as the assembly or council may prescribe in payment of

(1) assessments against which the warrants were issued in due order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of such assessments; and

(3) certificates of purchase in cases where property of delinquents has been sold under execution or at tax sale for failure to pay the assessments.

SEC. 29.63.085. SPECIAL ASSESSMENT BONDS. (a) The assembly or council may be ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received

from actions taken against property for nonpayment of asses ments shall be credited to the guarantee fund. (INTEREST ON THE GUARANTEE FUNDS SHALL BE A COST OF THE IMPROVEMENT DISTRICT.)

# CHAPTER 58. MUNICIPAL DEBT.

ARTICLE

1. Revenue Anticipation Notes (§§ 29.58.010--29.58.060)
2. Bond Anticipation Notes (§§ 29.58.070--29.58.140)
3. General Obligation Bonds (§§ 29.58.150--29.58.180)
4. Revenue Bonds (§§ 29.58.200--29.58.230)
5. Refunding Bonds (§§ 29.58.240--29.58.280)
6. Miscellaneous Provisions (§§ 29.58.300--29.58.350)

## ARTICLE 1. REVENUE ANTICIPATION NOTES.

SECTION

10. Borrowing in anticipation of revenue
20. Issuance of notes
30. [REPEALED]
40. Issuance of notes in anticipation of state, federal grants
50. Priority of repayment
60. Sale of notes

SEC. 29.58.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

SEC. 29.58.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

SEC. 29.58.030. LIMITATION ON ISSUANCE OF NOTES. The aggregate amount of revenue anticipation notes at any time outstanding may not exceed 50 percent of the amount of revenues estimated to be collected in the fiscal year in which the notes are issued, less the amount of estimated revenues actually collected in the fiscal year before the issuance of the notes.

**SEC. 29.58.040. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS.** (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

SEC. 29.58.050. PRIORITY OF REPAYMENT. The payment of the principal and interest on the revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

SEC. 29.58.060. SALE OF NOTES. The municipality may sell revenue anticipation notes in the manner and at the price it determines, at either public or private sale.

ARTICLE 2. BOND ANTICIPATION NOTES.

SECTION


70. Bond anticipation borrowing
80. Issuance of notes
90. Issuance of new notes
100. Repayment of notes
110. Security
120. Limitation
130. Use of proceeds
140. Sale of notes

**SEC. 29.58.070. BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if**

**(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;**

**(2) the revenue bonds to be sold have been authorized by ordinance.**

SEC. 29.58.080. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued unless the bonds have not been sold by the maturity date of the notes.

SEC. 29.58.090. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue. Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

SEC. 29.58.100. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

SEC. 29.58.110. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

SEC. 29.58.120. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

SEC. 29.58.130. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

SEC. 29.58.140. SALE OF NOTES. Notes issued under this chapter shall be sold by the municipality in the manner and at a price it determines, at either public or private sale, but no note may be sold for less than par and accrued interest.

ARTICLE 3. GENERAL OBLIGATION BONDS.


| SECTION | | SECTION | |
|---|---|---|---|
| 150. | General obligation bonds | 170. | Form and terms of sale |
| 160. | Vote and notice of existing indebtedness required | 180. | Payment |


SEC. 29.58.150. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

**SEC. 29.58.160. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED.** (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

SEC. 29.58.170. FORM AND TERMS OF SALE. The assembly or council shall fix the date of the bonds, denominations, maturities, rate of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, and signatures required. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

SEC. 29.58.180. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other

revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

SECTION

200. Revenue bonds
210. Forms and terms
220. Payment
230. Operation of AS 37.10.085

SEC. 29.58.200. REVENUE BONDS. (a) A municipality may acquire, construct, improve and equip capital improvements to be operated upon a revenue-producing basis, and bonds for these purposes are payable solely from [UNPLEDGED] revenue of the public facilities for which the bonds are issued or from revenue of other public revenue-producing facilities Revenue bonds shall not be payable from taxes or from the general funds of the municipality.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

(c) A municipality may also issue revenue bonds for any lawful purpose. The bonds are payable from any amounts pledged by the municipality except taxes and do not constitute general obligations of the municipality.

SEC. 29.58.210. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before

delivery of the bonds, his signature is valid as if he had remained in office until delivery.

SEC. 29.58.220. PAYMENT. Bonds issued under AS 29.58.200--29.58.220 or the proceedings of the assembly or council authorizing their issuance may contain the covenants which the assembly or council considers advisable concerning

(1) the rates or fees to be charged for services rendered by the public facilities, the revenue of which is pledged to the payment of the bonds, or the terms and conditions of any other amounts collected which are pledged to the payment of the bonds;

(2) the deposit and use of the revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(3) the issuance of additional bonds payable from revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(4) the rights of the bondholders in case of default in the payment of the principal or interest on the bonds, including the appointment of a receiver to operate the public facilities;

(5) other covenants as the assembly or council determines.

SEC. 29.58.230. OPERATION OF AS 37.10.085. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

ARTICLE 5. REFUNDING BONDS.


| SECTION | | SECTION | |
|---|---|---|---|
| 240. | Authorization | 270. | Payment of refunding bonds |
| 250. | Effect of bonds | 280. | Sale |
| 260. | No election required | | |


SEC. 29.58.240. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance

for the issuance of general obligation or revenue refunding bonds.

SEC. 29.58.250. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

SEC. 29.58.260. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

SEC. 29.58.270. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to § 180 of this chapter. Revenue refunding bonds are payable according to § 220 of this chapter.

SEC. 29.58.280. SALE. General obligation or revenue refunding bonds may, in the discretion of the assembly or council, be exchanged at par for the bonds being refunded, or may be sold at public or private sale for an amount not less than par and accrued interest. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

ARTICLE 6. MISCELLANEOUS PROVISIONS.


| SECTION | | SECTION | |
|---|---|---|---|
| 300. | Public sale | 320. | Redemption before maturity |
| 310. | Interest rate | 340. | Borough indebtedness |
| 315. | Bond attorneys, bond and financial consultants | 345. | Bonded indebtedness |
| | | 350. | Bond Guaranty Fund |

SEC. 29.58.300. PUBLIC SALE. The municipality shall sell all bonds at a public or private sale as provided by ordinance. No general obligation bonds may be sold at less than par value.

ALTERNATE SEC. 29.58.300. PUBLIC SALE. The municipality shall sell all bonds at a public or private sale as provided by ordinance (NO BONDS MAY BE SOLD AT LESS THAN PAR VALUE).

SEC. 29.58.310. INTEREST RATE. No municipal bond or note may bear an interest rate exceeding the contract usury rate of interest provided by law.

SEC. 29.58.315. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. The governing body or its designee of a home rule or general law municipality shall be the sole contracting authority for bond attorneys, bond consultants and financial consultants engaged in long-range financial planning of the municipality which leads to sale of bonds.

SEC. 29.58.320. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

SEC. 29.58.340. BOROUGH INDEBTEDNESS. (a) Boroughs may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a noncity basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be limited to the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

SEC. 29.58.345. BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. A home rule city levying property taxes for schools, upon furnishing proof satisfactory to the Department of Education and the Department of Community and Regional Affairs of the needs for school facilities which, if provided, will require the city to exceed limits on authorizing or issuing bonds which may be established by charter, may exceed the limits to the extent necessary to pay costs of school construction. In this section "costs of school construction" means costs as defined in AS 43.18.100(g)(2).

SEC. 29.58.350. BOND GUARANTEE FUND. (a) To guarantee payment by the state of the principal and interest of bonds issued under the enabling authority of § 345 of this chapter, there is in the Department of Community and Regional Affairs a special fund called the local school bond guarantee fund in which there shall be deposited all money appropriated by the legislature for the purpose of the fund and other money which may be made available for the purpose of the fund from any other source. Money in the

fund shall be held and applied solely to further guarantee and provide an additional pledge of payment of all bonds issued under the provisions of § 345 of this chapter. Money shall not be withdrawn from the fund if a withdrawal would reduce the amount in the fund to an amount equal to less than the "maximum debt service reserve" (as defined in this section), except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and for the retirement of bonds in accordance with the terms of a contract between the municipality and its bondholders and for the payments on account of which interest or principal or retirement of bonds other money is not then available in accordance with the terms of the contract. In this section "maximum debt service reserve" means, as of any date of computation, the largest amount of money required by the terms of all contracts between municipalities and their bondholders as to bonds issued under § 345 of this chapter to be raised in any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds and payments required by the terms of the contracts to sinking funds established for the payment or redemption of the bonds, all calculated on the assumption that bonds will cease to be outstanding after the date of the computation by reason of the payment of bonds at their respective maturities and the payments of the required money to sinking funds and the application of the money in accordance with the terms of the contracts to the retirement of bonds.

(b) Money in the guarantee fund at any time in excess of the maximum debt service reserve, whether by reason of investment or otherwise, may be withdrawn by the department and transferred to the general fund.

(c) Money at any time in the guarantee fund may be invested in any direct obligation of, or obligations as to which principal and interest is guaranteed by, the United States, the state or a political subdivision.

(d) For purposes of valuation, investments in the guarantee fund shall be valued at the lowest of the par value, cost to the authority, or market value of the investments. Valuation on any particular date shall include the amount of interest then earned or accrued to that date on any money or investments in the fund.

(e) Other provisions of this section notwithstanding, no bonds may be issued carrying the guarantee provided in this section unless there is in the guarantee fund the maximum debt service reserve for all bonds then issued and outstanding and the bonds about to be issued, but nothing prevents or precludes a municipality from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds about to be issued, upon their issuance, as is needed to achieve the maximum debt service reserve.

(f) In order to assure the maintenance of the maximum debt service reserve in the guarantee fund, there is authorized to be appropriated annually and paid to the authority for deposit in the fund, the sum, if any, that is certified by the commissioner of community and regional affairs to the governor as necessary to restore the fund to an amount equal to the maximum debt service reserve. The chairman shall annually, before December 2, deliver to the governor his certificate stating the sum, if any, required to restore the fund to that amount, and the sum so certified is authorized to be appropriated and paid to the fund during the then current state fiscal year.

(g) Nothing in this section may be considered to cause bonds, payment of which is guaranteed from money in the fund established under this section, to be in any way a debt or liability of the state or any political subdivision of the state other than the political subdivision issuing the bonds, and the bonds, whether or not payable from the maximum debt service reserve created and established under this section, shall not create or constitute an indebtedness, liability or obligation of the state or be or constitute a pledge of the faith and credit of the state.

**Agenda Suggestions**
**from the Title 29 Working Group**
**to the Title 29 Policy Group**

1. Are unified municipalities home rule or general law? This needs to be clarified. They are boroughs - probably should not be spelled out of course they are home rule (29.68.240

2. We recommend that AS 29.08.050 Transition be repealed as out of date. yes -

3. We recommend that the statute concerning REAAs be expanded to include procedures for integrating REAAs into newly organized boroughs.

4. AS 29.18.180. Organization Grants. The dollar amounts of the organizational grants are inadequate. We recommend the amount be tripled.

5. AS 29.68.290 Nomination of charter commission candidates. Should a legislative body be authorized to make appointements to the charter commission in case of vacancies on the commission because of a failure to elect enough people?

6. AS 29.68.440. Powers of a unified municipality. What is a unified municipality? a borough

7. Should the percentage requirements for signatures on petitions be lowered?

8. AS 29.68.500 Methods of dissolution. The section regarding the methods of dissolution are confusing, in that the two methods outlined involve substantially the same processes. No - 29.68.500 recognizes case law interpreting sec 12 of Art X which overrides if Constitution chooses - see Fairview PUD v Anchorage 368 P2 540 and Odegaard v Fellingham

9. AS 29.13.050 Initiative and Referendum. This section should be clarified so that Home Rule municipalities are not bound by the procedures set out in the statute. why not - appears this should be by charter not ordinance. Charter could incorporate general law by reference

10. We need a more precise way of dealing with inconsistencies between Home Rule and state enactments. No

11. AS 29.13.100 Limitation of home rule powers. This "laundry list" of limitations on Home Rule needs to be reviewed. Should there be cross-referencing to the home rule provisions in other statutes? No - the question of the event of home rules other than in Title 29 could be very restrictive or too expansive to be allowable. Detail search and decision of entire statutes not practicable.

12. Chapter 18. Development cities. The chapter on development cities should either be reviewed and improved or deleted.

13. Chapter 23. Municipal Officers and Employees. This chapter should have provisions for dealing with the public records of municipalities. Municipalities should have a public records policy such as "except as provided by ordinance, all records shall be public." Freedom of Information Act for municipalities?

14. Should municipalities be allowed to set residency requirements for voters? Should the three year residency requirement for elected officials which municipalities are permitted to set be lowered to one year in view of Castner v. City of Homer, specifically upholding one year requirements? Yes

15. We feel there should be alternate methods for majority requirements of the votes of municipal assemblies. Sounds like nonsense

16. AS 29.23.021 Assembly composition and apportionment. We feel there should be a greater delineation between composition and reapportionment. Don't understand

17. There should be provisions for emergency situations arising when there is a lack of a quorum.

18. AS 29.48.130 (a) This should be amended to make possible budget transfers and supplemental appropriations by resolution instead ordinance. Budget transfers possibly. Appropriation by ordinance is long standing practice and cutting in by allowing supplementals by resolution can make budget process meaningless. Any municip should be able to handle problems.

19. What should mayoral veto powers encompass? Ordinances

20. How are planning responsibilities to be divided between cities and boroughs? Leave alone

21. We recommend that the sections of chapter 23 dealing with the involvement of young people in local government be repealed.

OK but will elect unnecessary fees

# TITLE 29 REVISION COMMISSION
## Policy Advisory Group Meeting

## Minutes of September 29 & 30, 1980

The second meeting of the Policy Advisory Group of the Title 29 Revision Commission was held September 29, 1980 in Courtroom K of the Alaska Court System Building, 303 K Street, Anchorage, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Group were: Senator Arliss Sturgulewski, Representative Charles H. Parr, Ronald Larson, Russell W. Walker, Marilyn Dimmick, Donna Sherby, Jonathan Solomon, James Kohler, Ted Berns, and Dennis Sheldon representing Terry Cook. Ex-Officio members present were Ginny Chitwood and Phil Smith. Richard Garnett, III was there as a member of the Technical Committee. Ted Berns and Russell Walker are members of both the Policy Group and the Technical Group. Present from the staff of Legal Services were Jack Chenowith and Tamara Cook.

There to make presentations to the Policy Group were C. Demming Cowles, Deputy Commissioner of the Department of Environmental Conservation; David Dye, Planner for the Department of Community and Regional Affairs; Dr. Fred McGinnis, Deputy Commissioner of the Department of Health and Social Services; Stephanie Scott, representing the Haines Borough Assembly; and Mike Walleri representing Tanana Chiefs, Inc.

Guests and members of the public attending were: Stuart Bowdoin, Bristol Bay Borough; Gary Bradford, Bristol Bay Borough, Glen Svendsen, Administrative Assistant, Senate Community and Regional Affairs Committee; Cris Fowler, AOGA Regulatory Reform Committee; Ray Menninger from Haines; Jim Bennett, researcher for AVCP (Calista Corporation); Ellen Greenburg, and Emily Larson.

After the meeting was called to order and guests introduced themselves, Commissioner Cowles began the presentations. He spoke regarding the functions of the Department of Environmental Conservation which could be locally done and raised policy questions about whether state or local government should be in charge of the following functions:

1. Water system and sewage disposal inspections.
2. Subdivision review of on-site sanitation capabilities.
3. Basic sanitation inspections of restaurants, hotels, etc.

4. Clean up of small oil spills.

5. The issuing of oily waste burn permits and surface oiling permits.

6. Litter control.

7. Vehicular emmissions control.

Changes to Title 29 would have to be made to allow for delegation of these powers. Commissioner Cowles suggested that the statutes could make it optional for small communities to assume these powers and provide for state reimbursement, because money for communities to perform these services is a problem.

Stephanie Scott representing the Haines Borough Assembly spoke next. The borough of Haines would like a clarification of the powers of third class boroughs. She reported that the Borough Chairman had the following recommendations to make:

1. Rewrite 29.48.260(e) to relieve procedural requirements under Libby vs. Dillingham.

2. Include inventories as optional exemptions from personal property taxation.

Ms. Scott stated there would be teleconference facilities available in Haines December 1, and there was a great deal of local interest in participating in a teleconference with the Policy Group.

David Dye, Planner III for the Department of Community and Regional Affairs made these recommendations from his division:

1. The law should be amended to allow municipal land exchanges with individuals. Municipal expansion land in some cases is located too far from the community to be used for municipal expansion. The definition of "municipal purpose" should be clarifed.

2. Subsection (c) of 29.48.260 sets out two procedural requirements for land disposal. Mr. Dye reccommends that lottery be added as an equitable way of disposing of land which is not based on wealth.

3. The provision for voter ratification of disposal of land valued at more than $25,000.00 should be changed to reflect current land values. A more realistic figure would be 50,000.00 to 100,000.00 dollars.

4. Subsection (d) of 29.48.260 exempts lands derived from the state from procedural requirements. C&RA suggests that exemption turn on the purpose of disposal, not the source of the land.

5. Under ANCSA, people who have occupied land after December 18, 1971 do not receive title to that land. C&RA would like a preference right for occupiers of land after that date to allow them to purchase land without having to bid.

6. Mr. Dye would like a definition of "official map".

7. The wording of AS 29.23.090 should be changed to substitute "land use regulation" for "zoning".

8. C&RA suggests that rather than a platting waiver provision, the section include a "short plat" provision to allow for additional platting requirements if the land were subsequently re-subdivided.

9. AS 29.33.070(b)(2) allows boroughs to delegate planning and zoning to cities. The Department of Community and Regional Affairs believes in consistent area-wide planning and wants only the delegation of enforcement and administration of planning.

10. The sections regarding Development Cities should be deleted.

Mike Walleri of Tanana Chiefs, Inc. spoke regarding municipal lands disposal and the need for preference to occupiers of land regarding purchasing rights. This should, however, be subject to the municipality's sanction of the use of the land. Mr. Walleri recommends a waiver of the requirements for land payments to the municipality, or that the state assist buyers in paying for the land. Tanana Chiefs would support a lottery system if the preference rights and waiver of payments to municipalities were included. Mr. Walleri spoke in favor of integrating traditional native governments into the municipal system, possibly through recognition by the state of the status of native governments as local state governments.

Dr. Fred McGinnis of the Department of Health and Social services told us that his department recommends the delegation of health powers to municipalities. If municipalities were to take over the providing of services, the DHSS would still receive federal funding, would disburse the funds, would audit programs, supervise, and be responsible to the federal government for the administration of the programs. He emphasized that these powers should be optional rather than mandatory, and that in the absence of local government being able to take over the function of health services, a local contractor could provide them.

After the presentations, the committee considered Old Business. Phil Smith gave a report on the conclusions of the Information Dissemination Committee. Their recommendations are: take advantage of scheduled meetings and conventions being held by interested groups; put inserts in newsletters; buy space in newspapers; and use the teleconference network. Mr. Smith reported that the Alaska Federation of Natives Convention will be making a room available for us at the Sheraton. Chairman Sturgulewski said a member of each group should be available to attend the AFN Convention. She also directed the Department of Community and Regional Affairs to prepare an article on the Title 29 revision project for newsletters.

Ted Berns gave a report from the Technical Committee. He explained the draft index of Title 29, saying the reorganization had been done by subject matter. Mr. Berns told the Policy Group that the Technical Group was now ready to start drafting and the group had broken up into smaller groups to work on specific changes.

Chairman Sturgulewski said the Policy Group would like justification of all drafted changes in the form of memos pointing out the pluses and minuses of each change.

Ted Berns suggested that the Policy Group go through the index section by section and determine policy questions.

The Policy Group reviewed the index until recessing at 4:30.

The meeting was called to order 30 September 1980 at 9:00 a.m. by Chairman Sturgulewski. With the exception of Bob Lohr sitting in for Phil Smith, the same members were present. Guests were: Bob Walker of Exxon; Cris Fowler of the AOGA Regulatory Reform Committee; David Dye from the Department of Community and Regional Affairs; Stephanie Scott, Ray Menninger, and Vivian Menniger from the Haines Borough; Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee; and Mike Walleri, Tanana Chiefs, Inc.

The Policy Group continued their review of the Title 29 index and the Technical Group was directed to make recommendations regarding the following:

1. AS 29.13.100. Review and make recommendations as to the limitations of home rule powers. Careful - this is probably the reason the court dropped the local activity rule

2. Edit the whole of Title 29 so that definitions are consistent. Yes

3. List those procedures which can be handled by ordinances. What does this mean?

4. Prepare drafts to change prohibitions on powers.

5. Draft changes to the statute regarding initiative and referendum. which way - pure popular (don't like them - out) or established charges. If so who judges

6. Draft provisions for emergency situations arising from the lack of a quorum.

7. Redraft statute enabling budget actions to take place other than by ordinance. (Enable an individual municipality to set it's own limits.) Don't understand

8. Make recommendations regarding whether first class boroughs should be eliminated and consider the impact of this step. I feel this option should remain open.

9. Find out whether second class boroughs would still be able to implement a similar program if the statute about the Involvement of Young People in Local Government were to be deleted.

Chairman Sturgulewski directed that the Local Boundary Commission and Alan Tesche be invited to make a presentation in defense of retaining the statutes regarding Development Cities.

Probably not constitutional but not certain

Ron Larson moved the Policy Group retain the 3-year residency requirement for candidates for municipal office. The motion was seconded, Jim Kohler raised a point of order. The motion carried.

Marilyn Dimmick moved that the wording of the grounds for recall be deleted. The motion was seconded. Ron Larson moved to table the motion. Larson's motion failed. Ted Berns moved to postpone the motion until the next meeting. The motion for postponement passed.

Bob Lohr of RuralCAP was directed to come back with specific recommendations for the Technical Group regarding small communities and their problems.

The meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary

## CHAPTER 15. BOUNDARY CHANGES BY LOCAL ACTION

Article

1. Annexation to Municipalities
2. Detachment from Municipalities

## ARTICLE 1. ANNEXATION TO MUNICIPALITIES

Section

10. Initiation of request for boundary change
20. Form and contents of petition
30. Exhibits
40. Annexation of territory of another municipality
50. Filing of petition
60. Sufficiency
70. Review by Local Boundary Commission
80. Election
90. Notice of election
100. Conduct of election
110. Form of ballot
120. Canvassing of election
130. Effective date of annexation
140. Annexation without election
150. Annexation of municipally-owned property
160. Timeliness

**19 AAC 15.010. INITIATION OF REQUEST FOR BOUNDARY CHANGE.** (a) A request for an annexation under secs. 10–160 of this chapter may be initiated by a petition signed by at least ten percent of the currently registered voters residing within the territory proposed to be annexed, or by a petition of the municipality seeking annexation.

(b) The person or entity initiating the petiton shall be designated petitioner. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.020. FORM AND CONTENTS OF PETITION.** (a) The petition shall be addressed to the Department of Community and Regional Affairs and shall bear a caption which clearly identifies the nature of the boundary change and the municipality whose boundary is to be changed.

(b) The petition shall contain

(1) the name, residence address, and mailing address of each peititoner;

(2) the name and mailing address of the attorney or other representative designated by the petitioner(s) to receive service, notice and all other correspondence relating to the proceedings in behalf of the petitioner(s);

(3) a legal description of the territory affected by the proposed boundary change;

(4) the estimated number of residents within the territory proposed to be annexed;

(5) the quantity of land contained within the territory proposed to be annexed;

(6) the assessed or estimated value of all real and personal property within the territory proposed to be annexed;

(7) the rate or rates at which real and personal property are taxed within the municipality to which annexation is proposed;

(8) the rate or rates of any sales or use tax levied by and/or collected within the municipality to which annexation is proposed;

(9) the amount of and a full explanation of any outstanding bonded indebtedness for which the territory proposed to be annexed is wholly or partially responsible;

(10) the population and area of the annexing municipality. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.05.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.030. EXHIBITS.** There shall be appended to the petition the following exhibits:

(1) a map or maps showing the boundaries of the territory proposed for annexation; and

(2) an affidavit indicating the source from which the information contained in the petition and exhibits was acquired, and stating that an estimation of the population was made, specifying the dates when the estimate was made and circumstances indicating its accuracy. If an official census has been made of the territory by the federal, state or municipal government within two years of the petition, a copy of that census may be appended to the petition in lieu of the census affidavit. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.040. ANNEXATION OF TERRITORY OF ANOTHER MUNICIPALITY.** (a) If a petition seeks annexation to a borough, of territory that is part of another city, the assembly or council of the municipality to which annexation is sought shall transmit, together with those documents required in secs. 20 and 30 of this chapter, a description of all municipally-owned improvements or assets relating to services that will be undertaken by it, and an enumeration of all debts or obligations relating to said improvements or assets. Before undertaking review, the department shall require the following to be filed:

(1) a petition for detachment from the municipality from which the subject territory is to be excluded;

(2) an agreement between the municipalities apportioning and distributing between them the debt attributable to those improvements and assets within the territory proposed to be annexed, which method of apportionment or distribution shall be in a form acceptable to the department.

(b) If a petition seeks annexation to a city of territory that is part of an organized borough, the council of the city to which annexation is sought shall transmit, together with those documents required in secs. 20 and 30 of this chapter, a description of all improvements and assets of the borough relating to services that will be undertaken by it, and an enumeration of all debts or obligations relating to said improvements or assets. Before undertaking review, the department shall require to be filed an agreement between the city and borough apportioning and distributing between them the assets and debts attributable to the territory to be annexed. If such agreement is not forthcoming, the city council may submit in lieu thereof a proposal governing such distribution. Unless the distribution is governed by an agreement between the municipalities, the Local Boundary Commission shall specify the method of distribution. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.050. FILING OF PETITION.** A petition initiated by 10 percent of the registered voters in the area to be annexed shall be filed with the assembly or council of the municipality. If the assembly or council desires to proceed with the annexation of the territory that is the subject of the petition, it shall adopt a resolution of intention to annex which shall specifically incorporate the terms and provisions of the petition. One copy of the resolution, together with the petition, exhibits, and all related materials, shall be served upon the Department of Community and Regional Affairs. A petition initiated by the municipality shall be forwarded, along with other required material, directly to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.060. SUFFICIENCY.** Within 30 days of receipt of the petition, exhibits, and all supporting data required by secs. 20–40 of this chapter, the department shall determined whether the documents are sufficient, the department shall refer the file to the Local Boundary Commission, together with such report or recommendations as it desires. A deficient petition shall be returned to the petitioners for correction, and notice of return transmitted to the assemblyor council of the municipality. (Eff 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.070. REVIEW BY LOCAL BOUNDARY COMMISSION.** (a) The Local Boundary Commission shall review the petition, all exhibits thereto, the resolution, and other pertinent data. Such review shall be limited to the following factors:

(1) whether the annexation would be inimical to the interests of the State or any municipality other than the municipality to which annexation of the territory is sought;

(2) whether the territory proposed for annexation is grossly disproportionate in size to the population residing therein, provided, however, that this provision shall not prohibit an annexation merely because the area to be annexed consists of or contains uninhabited territory.

(b) If the Local Boundary Commission determines that the petition is defective under the provisions of subsection (a) (1) or (2), it shall return the petition to the petitioner(s) together with such comments or observations as may be appropriate and conducive to resubmission of the proposal.

(c) If the Local Boundary Commission accepts the petition, resolution, and related material, it may so notify the assembly or council of the municipality, and direct that an election be conducted on the proposal.

(d) A decision of the Local Boundary Commission shall be rendered within 30 days of report of the petition by the department. The commission may act by telephone or mail. In no event shall non-compliance with the time limit established herein for commission action affect the validity of an election or annexation.

(e) Notwithstanding any other provision of this chapter, if the Local Boundary Commission prior to a decision to submit the annexation to an election under sec. 80 of this chapter determines that a proposed annexation is of compelling public importance it may require that the petition be acted upon pursuant to chapters .05 and .10 of this title. If such determination is made, the Local Boundary Commission shall schedule public hearings within 45 days, and shall notify the municipality of its determination. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.080. ELECTION.** The assembly or council shall submit the proposition to the voters in the area proposed to be annexed in accordance with applicable provisions of the election code of the municipality, but in any event, the election shall be held not less than 60 or more than 90 days after notification by the Local Boundary Commission that the petition has been accepted. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.090. NOTICE OF ELECTION.** The assembly or council shall give notice of the election by publication of notice in a newspaper of general circulation in the territory proposed to be annexed once each week for a period of three successive weeks before the election, and by posting notice in three public places in the municipality within the territory proposed to be annexed during the same period. Posting of the notices and initial publication of the notice in the newspaper shall be at least four weeks before the date of the election. The notice shall state:

(1) the proposition to be submitted;

(2) the boundaries of the territory to be annexed; nd

(3) any provision or agreement governing distribution of debt or assets required under 19 AAC 15.040. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.100. CONDUCT OF ELECTION.** Except as otherwise provided in this chapter, the assembly or council of the municipality to which annexation of the territory is sought shall conduct the election in the manner prescribed by its election code. The municipality seeking

annexation shall pay all election costs. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.110. FORM OF BALLOT. The assembly or council shall place upon the ballot the following proposition: "Shall the following described territory be annexed to the City/Borough of .....? Yes or No." If the proposal is subject to 19 AAC 15.040, the ballot shall also disclose the method of distributing debt and assets in a form acceptable to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.120. CANVASSING OF ELECTION. The assembly or council shall meet within 10 days of the election and canvass the vote cast. The assembly or council shall issue a certificate showing the number of votes cast in favor of annexation and the number of votes cast against annexation. The certificate, together with all ballots cast, shall immediately be filed with the clerk of the municipality and a copy forwarded to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.130. EFFECTIVE DATE OF ANNEXATION. An annexation shall be effective upon the filing of the certificate required by 19 AAC 15.120 to the effect that a majority of the votes cast were in favor of the annexation. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.140. ANNEXATION WITHOUT ELECTION. (a) Notwithstanding the provisions of secs. 80–120 of this chapter, an area adjoining the municipality may be annexed by ordinance if all property owners and registered voters within the area petition the assembly or council for annexation.

(b) The assembly or council seeking to annex territory under this section shall forward to the department a certified statement of the municipal clerk that the petition received has been signed by all current registered voters and property owners.

(c) In its review, the department shall determine from information available to it whether the requisite signatures have been obtained. The department shall notify the assembly or council whether the petition is in accordance with this section, and if it is in accordance with this section, the annexation is effective upon such notification.

(d) For the purposes of this section the term "property owners" means all persons or entities necessary to convey fee title to the property in question but does not include mortgagees or trustees or beneficiaries under deeds of trust. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.150. ANNEXATION OF MUNICIPALLY OWNED PROPERTY. (a) Notwithstanding other provisions of this chapter, municipally owned property adjoining the municipality may be annexed by ordinance without voter approval.

(b) Within five days of adoption of an ordinance annexing territory pursuant to (a) of this section, one certified copy of the ordinance, giving the date of adoption, shall be filed with the Department of Community and Regional Affairs. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

19 AAC 15.160. TIMELINESS. No area subject to a petition under this chapter which was defeated in an election may be included in the area covered by a subsequent petition under

this chapter filed within one year after the original petition. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

## ARTICLE 2. DETACHMENT FROM MUNICIPALITIES

Section
170. Initiation of request for boundary change
180. Form and contents of petition
190. Exhibits
200. Detachment of territory from a city within an organized borough
210 Filing of petition
220. Sufficiency
230. Review by Local Boundary Commission
240. Election
260. Conduct of election
270. Form of ballot
280. Canvassing of election
290. Effective date of detachment
300. Timeliness

**19 AAC 15.170. INITIATION OF REQUEST FOR BOUNDARY CHANGE.** (a) A request for a detachment under secs. 170–300 of this chapter may be initiated by a petition signed by at least 10 percent of the currently registered voters residing within the territory proposed to be detached, or by petition of the municipality seeking detachment.

(b) The person or entity initiating the petition shall be designated petitioner. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.180. FORM AND CONTENTS OF PETITION.** (a) The petition shall be addressed to the Department of Community and Regional Affairs and shall bear a caption which clearly identifies the nature of the boundary change and the municipality whose boundary is to be changed.

(b) The petition shall contain

(1) the name, residence address, and mailing address of each petitioner;

(2) the name and mailing address of the attorney or other representative designated by the petitioner(s) to receive service, notice and all other correspondence relating to the proceedings in behalf of the petitioner(s);

(3) a legal description of the territory affected by the proposed boundary change;

(4) the estimated number of residents within the territory proposed to be detached,

(5) the quantity of land contained within the territory proposed to be detached;

(6) the assessed or estimated value of all real and personal property within the territory proposed to be detached;

(7) the rate or rates at which real and personal property are taxed within the municipality from which detachment is proposed;

(8) the rate or rates of any sales or use tax levied by and/or collected within the municipality from which detachment is proposed;

(9) the amount of and a full explanation of any outstanding bonded indebtedness for which the territory proposed to be detached is wholly or partially responsible;

(10) the population and area of the detaching municipality. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.190. EXHIBITS.** There shall be appended to the petition the following exhibits:

(1) a map or maps showing the boundaries of the territory proposed for detachment; and

(2) an affidavit indicating the source from which the information contained in the petition and exhibits was acquired, and stating that an estimation of the population was made, specifying the dates when the estimate was made

and circumstances indicating its accuracy. If an official census has been made of the territory by the federal, state or municipal government within two years of the petition, a copy of that census may be appended to the petition in lieu of the census affidavit. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.200. DETACHMENT OF TERRITORY FROM A CITY WITHIN AN ORGANIZED BOROUGH.** If a petition seeks detachment from a city of territory that is part of an organized borough, the council of the city from which detachment is sought shall transmit, together with those documents required in secs. 180–190 of this chapter, a description of all improvements and assets of the city relating to services that are being furnished by it within the territory proposed for detachment, and an enumeration of all debts or obligations relating to said improvements or assets. Before undertaking review, the department shall require to be filed an agreement between the city and organized borough apportioning and distributing between them the assets and debts attributable to the territory to be detached. If such agreement is not forthcoming, the city council may submit in lieu thereof a proposal governing such distribution. Unless the distribution is governed by an agreement between the municipalities, the Local Boundary Commission shall specify the method of distribution. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.210. FILING OF PETITION.** A petition initiated by 10 percent of the registered voters in the area to be detached shall be filed with the assembly or council of the municipality. If the assembly or council desires to proceed with the detachment of the territory that is the subject of the petition, it shall adopt a resolution of intention to detach which shall specifically incorporate the terms and provisions of the petition. One copy of the resolution, together with the petition, exhibits, and all related materials, shall be served upon the Department of Community and Regional Affairs. A petition initiated by the municipality shall be forwarded, along with the other required materials, directly to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.220. SUFFICIENCY.** Within 30 days of receipt of the petition, exhibits, and all supporting data required by secs. 180–210 of this chapter, the department shall determine whether the documents are sufficient as to form and contain the required information. If the documents are found to be sufficient, the department shall refer the file to the Local Boundary Commission, together with such report or recommendation as it desires. A deficient petition shall be returned to the petitioners for corrections, and notice of return transmitted to the assembly or council of the municipality. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.230. REVIEW BY LOCAL BOUNDARY COMMISSION.** (a) The Local Boundary Commission shall review the petition, all exhibits thereto, the resolution and other pertinent data. Such review shall be limited to the following factors:

(1) whether the detachment would be inimical to the interests of the state or any municipality other than the municipality from which detachment of the territory is sought;

(2) whether the territory proposed for detachment is grossly disproportionate in size to the population residing therein, provided, however, that this provision shall not prohibit a detachment merely because the area to be detached consists of or contains uninhabited territory.

(b) If the Local Boundary Commission determines that the petition is defective under the provisions of subsections (a) (1) or (2), it shall return the petition to the petitioner(s) together with such comments or observations as

may be appropriate and conducive to resubmission of the proposal.

(c) If the Local Boundary Commission accepts the petition, ordinance, and related material, it may so notify the assembly or council of the municipality, and direct that an election be conducted on the proposal.

(d) A decision of the Local Boundary Commission shall be rendered within 30 days of report of the petition by the department. The commission may act by telephone or mail. In no event shall non-compliance with the time limit established herein for commission action affect the validity of an election or detachment.

(e) Notwithstanding any other provision of this chapter, if the Local Boundary Commission determines that a proposed detachment is of substantial public importance, it may require that the petition be acted upon pursuant to Chapters .05 and .10 of this title. If such determination is made, the Local Boundary Commission shall schedule public hearings within 45 days, and shall notify the municipality of its determination. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.240. ELECTION.** The assembly or council shall submit the proposition to the voters in the area proposed to be detached in accordance with applicable provisions of the election code of the municipality, but in any event, the election shall be held not less than 60 nor more than 90 days after notification by the Local Boundary Commission that the petition has been accepted. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.260. CONDUCT OF ELECTION.** Except as otherwise provided in this chapter, the assembly or council of the municipality from which detachment of the territory is sought shall conduct the election in the manner prescribed by its election code. The municipality seeking detachment shall pay all election costs. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.270. FORM OF BALLOT.** The assembly or council shall place upon the ballot the following proposition: "Shall the following described territory be detached from the City/Borough of .....? Yes or No." If the proposal is subject to 19 AAC 15.200, the ballot shall also disclose the method of distributing debt and assets in a form acceptable to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.280. CANVASSING OF ELECTION.** The assembly or council shall meet within 10 days of the election and canvass the vote cast. The assembly or council shall issue a certificate showing the number of votes cast in favor of detachment and the number of votes cast against detachment. The certificate, together with all ballots cast, shall immediately be filed with the clerk of the municipality and a copy forwarded to the department. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.290. EFFECTIVE DATE OF DETACHMENT.** A detachment shall be effective upon the filing of the certificate required by 19 AAC 15.120 to the effect that a majority of the votes cast were in favor of detachment. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

**19 AAC 15.300. TIMELINESS.** No area subject to a petition under this chapter which was defeated in an election may be included in the area covered by a subsequent petition under

this chapter filed within one year after the original petition. (Eff. 4/1/73, Reg. 45)

Authority: Art. X, Sec. 12
State Constitution
AS 29.68.010(b)
AS 44.19.260(a)(2)

## CHAPTER 20. MISCELLANEOUS PROVISIONS

Section
10. Severability of parts of regulations
20. General provisions
30. Definitions

**19 AAC 20.010. SEVERABILITY OF PARTS OF REGULATIONS.** The sections, paragraphs, sentences, clauses and phrases of these regulations are severable, and if any phrase, clause, sentence, paragraph, or section of these regulations shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect the remaining phrases, clauses, sentences, paragraphs, and sections of these regulations. (Eff. 10/13/72, Reg. 43)

Authority: Art. X, Sec. 12
State Constitution
AS 44.19.260(a)(2)

**19 AAC 20.020. GENERAL PROVISIONS.** (a) Nothing in this chapter may be construed to require the commission to approve a boundary change which the commission determines not to be in the best interest of sound local government.

(b) The enumeration in this chapter of standards or factors for consideration may not be construed as exclusive of other factors which, in the view of the commission, are relevant to the decision in question.

(c) Before incorporation of a borough located wholly or partially within an existing borough or of a city located wholly or partially within an existing city may become effective, the commission must submit the proposed incorporation to the legislature in the manner provided for in boundary changes. In addition, the commission may condition such an incorporation on approval by a majority of the voters of the existing borough or city. (Eff. 10/13/72, Reg. 43)

Authority: Art. X, Sec. 12
State Constitution
AS 44.19.260(a)(2)

**19 AAC 20.030. DEFINITIONS.**

(1) "annexation" means an alteration of municipal boundaries which adds territory;

(b) Wnen two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160 (29.68.110). ORDINANCES. No change

NOTE: (1) substantive change in eliminating AS 29.68.030. The Local Boundary Commission has not adopted any regulation under (1), so there is only one way to initiate merger or consolidation.

(2) substantive change in AS 29.68.040(a) of the number of signatures required to petition from 25 percent to 15 percent, which matches percentages required for petition for other boundary alterations or for formation of municipality. Why should this be different? Residents are protected because they vote on the question.

(3) technical change in AS 29.68.090(d) to add procedural requirements and eliminate cross-reference to AS 29.1[illegible]120 for ease of use of this section.

## ARTICLE 3. MERGER AND CONSOLIDATION

Sec. 29.12.090 (29.68.040). PETITION. Merger or consolidation of two or more municipalities is proposed by filing with the department a petition containing

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information required by the department;

(5) the signature and resident address of 15 per cent of the permanent resident voters in each municipality based on the number who voted in the last regular election.

Sec. 29.12.100 (29.68.050, 070). REVIEW AND INVESTIGATION. (a) The department shall review a petition for merger or consolidation and return a deficient petition for correction.

(b) If a petition contains the required information and number of signatures, the department shall investigate the proposal.

(c) After investigation of a proposal, the department shall report its findings and recommendations to the Local Boundary Commission.

Sec. 29.12.110 (29.68.070, 080). HEARING AND DECISION. (a) Prior to making a decision regarding a petition for merger or consolidation, the Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the petition, unless officials of the municipalities agree to a single hearing.

(b) If the Local Boundary Commission determines that a proposed merger or consolidation fails to meet the standards for municipal incorporation, it shall reject the petition. If the commission determines that the proposed merger or consolidation meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition.

(c) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition.

(d) A decision by the Local Boundary Commission under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140 (29.68.090). ELECTION. (a) Within 30 days after notification of acceptance of a merger or consolidation petition, the lieutenant governor shall order an election within the area to be included in the proposed municipality to be held not less the 30 nor more than 90 days after the order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within ten days, order an election for officers of the new municipality to be held not less than 30 nor more than 90 days after the order. The election order must specify the dates during which nomination petitions for election of officers may be filed. The merger or consolidation becomes effective upon election of municipal officers.

Sec. 29.12.150 (29.68.100). ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities as specified in the merger petition.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160 (29.68.110). ORDINANCES. No change

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NOTE: (1) substantive change in eliminating AS 29.68.030. The Local Boundary Commission has not adopted any regulation under (1), so there is only one way to initiate merger or consolidation.

(2) substantive change in AS 29.68.040(a) of the number of signatures required to petition from 25 per cent to 15 per cent, which matches percentages required for petition for other boundary alterations or for formation of

municipality. Why should this be different? Residents are protected because they vote on the question.

(3) technical change in AS 29.68.090(d) to add procedural requirements and eliminate cross-reference to AS 29.18.120 for ~~each~~ case of use of this section.

## ARTICLE 3. MERGER AND CONSOLIDATION

Sec. 29.12.090 (29.68.040). PETITION. (a) Merger or consolidation of two or more municipalities is proposed by filing with the department a petition containing

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information required by the department;

(5) the signature and resident address of 15 percent of the permanent resident voters in each municipality based on the number who voted in the last regular election.

AS 29.12..100 (29.68.050, .070). REVIEW AND INVESTIGATION. (a) The department shall review a petition for merger or consolidation and return a deficient petition for correction.

(b) If a petition contains the required information and number of signatures, the department shall investigate the proposal.

(c) After investigation of a proposal, the department shall report its findings and recommendations to the Local Boundary Commission.

Sec. AS 29. ~~HEARING AND DECISION~~ 12.110 (29.68.070, .080). HEARING AND DECISION. (a) Prior to making a decision regarding a petition for merger or consolidation, the Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the petition, unless officials of the municipalities agree to a single hearing.

(b) If the Local Boundary Commission determines that a proposed merger or consolidation fails to meet the standards for municipal incorporation, it shall reject the petition. If the commission determines that the proposed merger or consolidation meets the standards, it shall accept the petition. If the commission determines that the proposed

boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition.

(c) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition.

(d) A decision by the Local Boundary Commission under this section may be appealed under the Administrative Procedure Act (aAS 14.62).

Sec. 29.12.140 (29.68.090). ELECTION. (a) Within 30 days after notification of acceptance of a merger or consolidation petition, the lieutenant governor shall order an election within the area to be included in the ~~new~~ proposed municipality to be held not less than 30 nor more than 90 days after the order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, ~~he shall, within 10 days, set a date for election of officers of the new municipality under AS 29.09.120 (29.18.120)~~ he shall, within 10 days, order an election for officers of the new municipality to be held not less than 30 nor more than 90 days after the order. The election order must specify the dates during which nomination petitions for election of officers may be filed. The merger or consolidation becomes effective upon election of municipal officers.

Sec. 29.12.150 (29.68.100). ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities as specified in the merger petition.

(b) When two or more municipalities consolidate, the newly

incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160 (29.68.110). ORDINANCES. No change.

Note: (1) substantive change in eliminating AS 29.68.030. The Local Boundary Commission has not adopted any regulation under (1), so there is only one way to initiate merger or consolidation.

(2) substantive change in AS 29.68.040(a) of the number of signatures required to petition from 25% to 15%, which matches percentages required for other boundary alterations or for formation of a municipality. Why should this be different? (Residents are protected because they vote on the question) petition for ↑

(3) ~~substantive~~ technical change in AS 29.68.090(d) to ~~add "The election order must specify the dates during which nomination petitions for election of officers may be filed." This fills a procedural gap and conforms to procedure set out for the election of initial officers in a newly formed municipality.~~ add procedural requirements and eliminate cross-reference to 29.18.120 for ease of use of this section

ARTICLE 2. ANNEXATION AND EXCLUSION.

Sec. 29.12.040 (29.68.010). MUNICIPAL BOUNDARY CHANGE. (a) The Local Boundary Commission may consider and adopt by regulation a change of municipal boundary. A decision to alter a municipal boundary may be appealed under the Administrative Procedure Act (AS 44.62).

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall establish procedures for annexation and exclusion of territory by a municipality by local action. The regulations shall include a requirement that

(1) a proposed annexation or exclusion be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) an area adjoining a municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a change initiated by local action, without regard to priority in time.

Sec. 29.12.040 (29.68.020). ANNEXATION OF A MILITARY RESERVATION. A military reservation may be annexed to a municipality in the manner prescribed by AS 29.12.040 (29.68.010). If a city within a borough annexes a military reservation, the area encompassing the reservation is automatically annexed to the borough.

NOTE: substantive revision of 29.68.010(a) in view of the suggestion by City of St. Mary's and to avoid possible difficulties presented by the A.L.I.V.E. decision regarding the use of resolution to overturn agency action.

## ARTICLE 2. ANNEXATION AND EXCLUSION.

Sec. 29.12.040 (29.68.010). MUNICIPAL BOUNDARY CHANGE. (a) The Local Boundary Commission may consider and adopt by regulation a change of municipal boundary. A decision to alter a municipal boundary may be appealed under the Administrative Procedure Act (AS 44.62).

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall establish procedures for annexation and exclusion of territory by a municipality by local action. The regulations shall include a requirement that

(1) a proposed annexation or exclusion be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) an area adjoining a municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a change initiated by local action, without regard to priority in time.

Sec. 29.12.040 (29.68.020). ANNEXATION OF A MILITARY RESERVATION. A military reservation may be annexed to a municipality in the manner prescribed by AS 29.12.040

(29.68.010). If a city within a borough annexes a military reservation, the area encompassing the reservation is automatically annexed to the borough.

NOTE: substantive revision of 29.68.010(a) in view of the suggestion by City of St. Mary's and to avoid possible difficulties presented by the A.L.I.V.E. decision regarding the use of resolution to overturn agency action.

DRAFTING CHANGES, Cook, 10/9/80

ARTICLE 2. ANNEXATION AND EXCLUSION.

29.12.040
Sec. (29.68.010). MUNICIPAL BOUNDARY CHANGE. (a) The Local Boundary Commission may consider and adopt by regulation any ~~local government~~ change of municipal boundaries. A decision to alter a municipal boundary may be appealed under the Administrative Procedure Act (AS 44.62).

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall establish procedures for annexation and exclusion of territory by a ~~city~~ municipality by local action. The ~~procedures established under this subsection~~ regulations shall include a requirement that

(1) ~~a regulation requiring that~~ a proposed annexation or exclusion be approved by a majority ~~vote~~ of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) ~~a requirement that~~ municipally - owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) ~~a requirement that~~ an area adjoining a municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a change initiated by local action, without regard to priority in time.

29.12.050
Sec. (29.68.020). ANNEXATION OF A MILITARY RESERVATION. A military reservation may be annexed to a municipality in the manner prescribed by
29.12.040
AS (29.68.010). If a city within a borough annexes a military reservation, the area encompassing the reservation is automatically annexed to the borough.

Note: substantive revision of 29.65.N.(a) in view of suggestion by Stay of St. Mary's and to avoid possible difficulties presented by the A.I.D.E. decision regarding use of resolution to overturn agency action.

# CHAPTER 12. ALTERATION OF A MUNICIPALITY

## Article 1. Change of Municipal Name

Sec. 29.12.010 (29.73.050). CHANGE OF NAME. (a) The name of a municipality may be changed by ordinance which is ratified by majority vote at a regular or special election and filed with the lieutenant governor. Upon receipt of a ratified ordinance, the lieutenant governor shall issue an order to the municipality changing its name in compliance with the ordinance. A name change shall become effective within 45 days of receipt of the ordinance on a date fixed in the order. A copy of the order shall be sent to the department.

(b) An ordinance changing the name of a municipality which is ratified by the voters may not be repealed, except by adopting a different name as provided in (a) of this section.

(c) Suits, applications, petitions, hearings and other proceedings to which a municipality is a party which are pending or brought after a change of municipal name shall proceed in the name of the municipality as changed by order.

add an extra line

NOTE: substantive change in (b). I cannot see any reason to allow repeal of an ordinance which has been ratified by the voters, unless the voters will ratify the change.

DRAFTING CHANGES, Cook, 10/9/80

CHAPTER 12. ALTERATION OF A MUNICIPALITY

ARTICLE 1. CHANGE OF MUNICIPAL NAME

Sec. 29.12.010 (29.73.050) CHANGE OF NAME. (a) The name of a municipality may be changed by ordinance which is ratified by a majority of voters at a regular or special election and filed with the lieutenant governor. Upon receipt of a ratified ordinance, the lieutenant governor shall issue an order to the municipality changing its name in compliance with the ordinance. A name change shall become effective within 45 days of receipt of the ordinance on a date fixed in the order. A copy of the order shall be sent to the department.

(b) An ordinance changing the name of a municipality which is ratified by the voters may not be repealed, except by adopting a different name as provided in (a) of this section.

(c) Suits, applications, petitions, hearings and other proceedings to which a municipality is a party which are pending or brought after a change of municipal name shall proceed in the name of the municipality as changed by order.

Note: substantive change in (b). I cannot see any reason to allow repeal of an ordinance which has been ratified by the voters, unless the voters will ratify the change.

## ARTICLE 2. PROCEDURES

Sec. 29.09.060 (29.18.050). PETITION. (a) Municipal incorporation is proposed by filing with the department a petition containing the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

(4) maps, documents, and other information required by the department;

(5) a proposed municipal budget projecting sources of income and items of expenditure through the first full fiscal year of operation;

(6) composition and apportionment of the assembly or council;

(b) In addition to requirements set out in (a) of this section, a petition proposing incorporation of a borough shall contain the following:

(1) based on the number who voted in the last general election, the signature and resident address of 15 percent of the permanent resident voters in each first class city located within the area of the proposed borough and of 15 percent of the permanent resident voters within the area of the proposed borough but outside of a first class city;

(2) for a first class borough, a designation of areawide powers to be exercised;

(3) for a second class borough, a designation of areawide and nonareawide powers to be exercised.

(c) In addition to requirements set out in (a) of this section, a petition proposing incorporation of a city shall contain

(1) a designation of the powers to be exercised by the city;

(2) for a first class city, the signature and resident address of 50 permanent resident voters in the area of the proposed city or of 15 percent of the permanent resident voters in the area of the proposed city, whichever is greater based on the number who voted in the last general election;

(3) for a second class city, the signature and resident address of 25 permanent resident voters in the area of the proposed city or of 15 percent of the permanent resident voters in the area of the proposed city, whichever is greater, based on the number who voted in the last general election.

Sec. 29.09.070 (29.18.060, 070). REVIEW AND INVESTIGATION. (a) The department shall review a petition for municipal incorporation and return a deficient petition for correction.

(b) If a petition contains the required information and number of signatures, the department shall investigate the proposal.

(c) After investigation of a proposal, the department shall report its findings and recommendations to the Local Boundary Commission.

(d) The department may combine petitions received from the same general area and treat them as one petition.

Sec. 29.09.080 (29.18.080, 090). HEARING AND DECISION. (a) Prior to making a decision regarding an incorporation petition, the Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated.

(b) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards for incorporation, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards for incorporation, it may alter the boundaries and accept the petition.

(c) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an ~~incporation~~ inconporation petition.

(d) A decision by the Local Boundary Commission under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110 (29.18.110). INCORPORATION ELECTION. (a) Within 30 days after notification of acceptance of an ~~incporation~~ inconporation petition, the lieutenant governor shall order an election in the proposed municipality to be held not less than 30 nor more than 90 days after the order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed. If the voters

approve incorporation, initial officers are elected in the same election.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) In an election for incorporation of a first or second class borough, areawide powers included in the incorporation petition are considered part of the incorporation question.

(d) In an election for incorporation of a second class borough, each proposed nonareawide power shall be placed separately on the ballot. A majority vote limited to voters residing outside a city is required for adoption of a nonareawide power.

(d) The lieutenant governor shall supervise the election in the manner prescribed by the Alaska Election Code (AS 15.05x - 15.60). The state shall pay all election costs under this section.

Sec. 29.09.120 (29.18.120). ELECTION OF INITIAL OFFICERS. (a) A nomination for an initial officer is made by petition in the form prescribed by the lieutenant governor and containing:

(1) the name and address of the nominee;

(2) a statement by the nominee that he is qualified for the office he seeks;

(3) to nominate an elected officer, the signature and resident address of 50 voters in the area of the proposed municipality or in the area from which the

officer is to be elected under the composition and apportionment set out in the incorporation petition;

(4) to nominate an officer of a second class city, the signature and resident address of ten voters in the area of the proposed city.

(b) A person may file for and occupy more than one office, but may not serve simultaneously as

(1) borough mayor and as a member of the assembly;

(2) city mayor and a member of the council of a home rule city;

(3) city mayor and a member of the council of a first class city.

(c) An initial elected municipal officer takes office on the first Monday following certification of his election, unless provided otherwise by the incorporation petition.

(d) Initial elected assembly and council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130 (29.18.130). INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. (Consider addressing the integration of REAA's under this section, per Lee Sharp's suggestion.)

Sec. 29.09.140 (29.18.140). TRANSITION. (a) A power or duty exercised by a city or service area which is succeeded

to by a newly incorporated borough continues to be exercised by the city or service area until assumed by the borough. A power or duty exercised by a service area which is succeeded to by a newly incorporated city continues to be exercised by the service area until assumed by the city. A newly incorporated municipality shall assume all authorized powers and duties within two years of incorporation. An ordinance, rule, resolution, procedure, and order in effect before assumption of a power or duty by a newly incorporated municipality remains in effect until superseded by the municipality.

(b) Before assuming a power or duty, a newly incorporated municipality shall give written notice of the assumption to the city or service area exercising the power or duty. Officials of the newly incorporated municipality shall consult with officials of the city or service area concerned to arrange an orderly transfer of a power or duty.

(c) After incorporation of a new municipality, no service area within it may assume additional bonded indebtedness, make a contract, or transfer an asset without the consent of the assembly or council.

Sec. 29.09.150 (29.18.150). CHALLENGE OF LEGALITY. A challenge to the formation of a municipality must be made within six months of the date of its incorporation.

Give extra line

NOTE: (1) substantive change in 29.18.070 to eliminate public hearing by department since one is held by Local Boundary Commission and issue decided by election.

) substantive change in 20.18.120(c) to provide for local flexibility "unless provided otherwise by the incorporation petition."

(5) add a definition of "department" and of "nonareawide powers" to the definition section.

(add to last page)

(3) substantive change in 29.18.140 intended to address confusion over whether a newly created municipality may succeed a previously incorporated municipality.

(4) 29.17.130 needs to be re-drafted.

**SUGGESTED DRAFTING CHANGES, Cook, 10/7/80**

## ARTICLE 2. PROCEDURES

Sec. 29.18.050. PETITION. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs which includes

29.04.060

Sec. (29.18.050) PETITION. /Municipal incorporation is proposed by filing with the ~~Department of Community and Regional Affairs~~ department a petition containing the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries

(4) maps, documments, and other information required by the ~~Department of Community and Regional Affairs~~ department;

(5) a proposed municipal budget projecting sources of income and items of expenditure through the first full fiscal year of operation;

(6) ~~[EFFECTIVE UNTIL JANUARY 1, 1981]~~ composition and apportionment of the assembly or council;

~~(7) [EFFECTIVE JANUARY 1, 1981] composition and apportionment of the assembly or council, but the number of members of a borough assembly may not exceed 11~~.

(b) In addition to requirements set out in ~~subsection~~ (a) of this section, a petition proposing incorporation of a borough shall contain the following:

(1) the signature and resident address of 15 percent of the permanent resident voters ~~within the~~/ each first class city located within in the area of the proposed borough and 15 percent of the voters ~~in the area outside first class cities~~/ ~~located~~ in the area of the proposed borough but outside of a first class city; based on the number who voted in the last general election.

(2) for a first class borough, a designation of areawide powers to be exercised;

(3) for a second class borough, a designation of areawide and nonareawide powers to be exercised.

(c) In addition to requirements set out in ~~subsection~~ (a) of this section, a petition proposing incorporation of a city shall contain ~~the following~~

(1) a designation of the powers ~~proposed~~ to be exercised by the city;

(2) for a first class city, the signature and resident address of 50 permanent resident voters in the area of the proposed city or of 15 percent of the permanent resident voters in the area of the proposed city, whichever is greater, based on the number who voted ~~in the area~~ in the last general election;

(3) for a second class city, the signature and resident address of 25 permanent resident voters in the area of the proposed city or of 15 percent of the permanent resident voters in the area of the proposed city, whichever is greater, based on the number who voted in the last general election.

Sec. 29.18.060. REVIEW AND INVESTIGATION. (a) The department shall review ~~each~~ a petition for municipal incorporation and return a deficient petition for correction. ~~and completion~~

~~Sec. 29.18.070. INVESTIGATION.~~ (b) If a petition ~~for municipal incorporation~~ contains the required information and number of signatures, the department shall investigate the proposal. ~~At least one public hearing shall be held in the area proposed for incorporation.~~

(c) The department may combine petitions received from the same general area and treat them as one petition.

Sec. 29.18.080. HEARING AND DECISION. (a) After investigation of a proposal ~~for municipal incorporation~~, the department shall report its findings and recommendations to the Local Boundary Commission. Prior to making a decision regarding ~~the proposal~~ an incorporation petition, the Local Boundary Commission shall

hold at least one public hearing in the area proposed to be incorporated.

(b) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards for incorporation, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards for incorporation, it may alter the boundaries and accept the petition. of an incorporation petition. lieutenant governor of its acceptance

(c) The Local Boundary Commission shall immediately notify the

(d) A decision by the Local Boundary Commission under this section may be appealed under the Administrative Procedure Act (AS 14.62).

Sec. 29.09.110 (29.18.110) INCORPORATION ELECTION. (a) Within 30 days after notification ~~by the Local Boundary Commission~~ of acceptance of an incorporation petition, the lieutenant governor shall order an election in the proposed municipality to be held not less than 30 nor more than 90 days after the order. If the voters approve incorporation, initial officers are elected in the same election. The election order must specify the dates during which nomination petitions for election of initial officers may be filed. If incorporation is rejected ~~by the voters~~, no officers are elected.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) In an election for incorporation of a first or second class borough, areawide powers included in the incorporation petition are considered part of the incorporation question.

(d) In an election for incorporation of a second class borough, each (proposed nonareawide) power ~~to be exercised outside cities only~~ shall be placed separately on the ballot. ~~Adoption of a nonareawide power requires a~~ majority vote ~~and the vote is~~ limited to voters residing outside a city is required for adoption of a nonareawide power.

(e) The lieutenant governor shall supervise the election in the manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs under this section.

29.09.120

Sec. (29.18.120). ELECTION OF INITIAL OFFICERS. (a) A /nomination for an initial officer is made by petition in the form prescribed by the lieutenant governor and containing:

(1) the name and address of the nominee;

(2) a statement by the nominee that he is qualified for the office he seeks;

(3) to nominate an elected officer, the signature and resident address of 50 voters in the area of the proposed municipality or in the area from which the officer is to be elected under the composition and apportionment set out in the incorporation petition;

(4) to nominate an officer of a second class city, the signature and resident address of 10 voters in the area of the proposed city.

(b) A person may file for and occupy more than one office, but may not serve simultaneously as (1) borough mayor and ~~as~~ a member of the assembly; ~~or as~~ (2) city mayor and ~~as~~ a member of the council of a home rule city; ~~or first class city~~, (3) city mayor and a member of the council of a first class city.

(c) An initial elected municipal officer takes office on the first Monday following certification of his election, unless provided otherwise by the incorporation petition.

~~(c) The~~

(d) ~~The~~ Initial elected assembly and council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

29.09.130

Sec. (29.18.130). INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. (Consider addressing the integration of REAA's under this section, per Lee Sharp's suggestion.)

29.09.140

Sec. (29.18.140). TRANSITION. (a) ~~The~~ A power~~s~~ ~~and~~ or duti~~es~~ exercised by

a city or service area which ~~are~~ 15 succeeded to by a newly incoporated borough continues to be exercised by the city or service area until assumed by the borough. A powers ~~and~~ 25 duties exercised by a service area which ~~are~~ is succeeded to by a newly incorporated city continues to be exercised by the service area until assumed by the city. A newly incorporated municipality shall assume all authorized powers and duties within two years of incorporation. An ordinances, rules, resolutions, procedures, and orders in effect before assumption of a power or duty by a newly incorporated municipality remains in effect until superseded by the municipality.

(b) Before assuming a power or duty, a newly incorporated municipality shall give written notice of ~~its~~ the assumption ~~of a power or duty~~ to the city or service area exercising the power or duty. Officials of the newly incorporated municipality shall consult with officials of the city or service area concerned, ~~and~~ to arrange an orderly transfer of a power or duty.

(c) After incorporation of a new municipality, no service area within it may assume additional bonded indebtedness, make any contract, or transfer an asset without the consent of the assumbly or council.

Sec. 29.09.150 (29.18.150). CHALLENGE OF LEGALITY. A challenge to the formation of a municipality must be made within six months of the date of its incorporation.

(1) Substantive change in 29.18.070 to eliminate public hearing by department since one is held by local Boundary Commission and will be held by election.

Note: (2) Substantive change in 29.18.120(c) "unless provided otherwise by the incorporation petition." (to provide for local flexibility)

(3) Substantive change in 29.18.140 intended to address confusion over whether a newly created municipality may succeed a previously incorporated municipality.

(4) 29.18.130 needs to be re-drafted.

## ARTICLE 2. RECLASSIFICATION OF A SECOND CLASS CITY, A SECOND CLASS BOROUGH, A THIRD CLASS BOROUGH

Sec. 29.06.040 (29.08.040). RECLASSIFICATION OF A SECOND CLASS CITY. (a) If the department determines that the population of a second class city has reached 400 permanent residents, the city may be reclassified as a first class city by holding an election on the question initiated by

(1) petition filed with the council and signed by a number of voters equal to at least 15 per cent of the votes cast in the city at the preceding regular election; or

(2) proposal of the council.

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

(c) Within 30 days after its findings have been made public, the council shall order an election on the question of reclassification. The election shall be held at least 30 days after the order, but not later than the next regular election which occurs 30 days after the order. If more than one question is to be voted on, each shall appear separately on the ballot.

(d) The council shall certify the election results to the department. If the majority vote is favorable, the city is reclassified to a first class status 30 days after certification of the results.

Sec. 29.06.050 (New). RECLASSIFICATION OF A SECOND CLASS BOROUGH. (a) A second class borough may be reclassified as a first or third class borough in the manner provided by AS 29.36.110 - 29.36.130 (29.33.270 - 29.33.290) for the addition of a power, except the petition or proposal shall request reclassification.

(b) During an election on reclassification of a second class borough to third class status, voters shall elect an assembly to serve as the combined assembly and school board if reclassification is approved. The effective date of reclassification to third class status is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification has been approved by the voters.

Sec. 29.06.060 (New). RECLASSIFICATION OF A THRID CLASS BOROUGH. (a) A third class borough may be reclassified as a first or second class borough in the manner provided by AS 29.36.110 - 29.36.130 (29.33.270 - 29.33.290) for the addition of a power by a first or second class borough, except the petition or proposal shall request reclassification.

(b) During an election on reclassification of a third class borough, voters shall vote also on whether the borough upon reclassification shall retain a combined assembly and school board or adopt a separate assembly and board. Upon voter approval of reclassification, if a majority vote favors retention of the combined assembly and school board, the assembly serving at the time of the election shall continue to serve as the assembly and board as provided before reclassification. If a majority vote favors a separate assembly and school board, a board shall be elected in accordance with AS 14.12 at the next regular election which occurs within 90 days of the reclassification election or at

a special election held within 90 days of the re-classification election. Expiration of the ter of a member of the board elected at a special election shall coincide with the date of the regular election. Until a school board is elected and qualified, the assembly continues to serve as the board.

Sec. 29.08.050. TRANSITION. (Repeal)

**SUGGESTED DRAFTING CHANGE, Cook, 10/7/80**

~~Sec. 29.08.040. RECLASSIFICATION OF A SECOND CLASS CITY.~~ ~~(a) A second class city may be reclassified as a first class city by holding an election on the question if the Department of Community and Regional Affairs determines that he population of the city has reached 400 permanent residents.~~

ARTICLE 2. RECLASSIFICATION OF A SECOND CLASS CITY, A SECOND CLASS BOROUGH, A THIRD CLASS BOROUGH

Sec. (29.08.040) RECLASSIFICATION OF A SECOND CLASS CITY. (a) If the ~~Department of Community and Regional Affairs~~ department determines that the population of a second class city has reached 400 permanent residents, the city may be reclassified as a first class city by holding an election on the question initiated by

(1) petition filed with the council and signed by a number of voters equal to at least 15 per cent of the votes cast in the city at the preceding regular election; or

(2) proposal of the council.

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

(c) Within 30 days after its findings have been made public, the council shall order an election on the question of reclassification. The election shall be held at least 30 days after the order, but not later than the next regular election which occurs 30 days after the order. If more than one question is to be voted on, each shall appear separately on the ballot.

(d) The council shall certify the election results to the ~~Department~~ department of Community and Regional Affairs. If the majority vote is favorable, the city is reclassified to first class status 30 days after certification of the results.

Sec. (New) RECLASSIFICATION OF A SECOND CLASS BOROUGH. (a) A second class borough may be reclassified as a first or third class borough in the manner provided by AS (29.33.270 - 29.33.290) for the addition of a power, ~~by a borough~~

except the petition or proposal shall request reclassification, ~~rather than the addition of a power.~~

(b) During an election on reclassification of a second class borough to third class status, voters shall elect an assembly to serve as the combined assembly and school board if reclassification is approved. The effective date of reclassification to third class status is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification has been approved by the voters.

Sec. 29.06.060 (New). RECLASSIFICATION OF A THIRD CLASS BOROUGH. (a) A third class borough may be reclassified as a first or second class borough in the manner provided by AS (29.33.270-29.33.290) 29.36.110 - 29.36.130 for the addition of a power by a first or second class borough, except the petition or proposal shall request reclassification, ~~rather than~~ the addition of a power.

(b) During an election on reclassification of a third class borough, voters shall vote also on whether the borough ~~shall~~ will retain a combined assembly and school board or adopt a separate assembly and board. upon voter approval of reclassification, If a majority vote favors retention of the combined assembly and school board, the assembly serving at the time of the election shall continue to serve as the assembly and board upon voter approval of reclassification (as provided before reclassification). If a majority vote favors a separate assembly and school board, a board shall be elected in accordance with AS 14.12 at the next regular election which occurs within 90 days of the reclassification election or at a special election held within 90 days of the reclassification election. Expiration of the term of a member of the board elected at a special election shall coincide with the date of the regular election. Until a school board is elected and qualified, the assembly continues to serve as the board.

Sec. 29.08.050. TRANSITION. (Repeal)

SUGGESTED DRAFTING CHANGES TO TITLE 29 - Cook, 17 Sep 80

Article New. Eminent Domain (in II)

Sec. New. Eminent Domain and Declaration of Taking. A home rule or general law municipality may exercise the [POWERS] power of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250 - 09.55.460. Before exercising the power, a second class city must comply with additional requirements under AS 29.73.020.

Sec. 29./3.020. (in III) Eminent domain in a second class city. (IN THE CASE OF A SECOND CLASS CITY, BEFORE] Before exercising the power of eminent domain and declaration of taking, the council of a second class city shall request the Department of Community and Regional Affairs for permission to exercise the power[.] and the council may not exercise the power [OF EMINENT DOMAIN OR DECLARATION OF TAKING] without [THE] formal approval. [OF THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS.] The exercise of the power of eminent domain or declaration of taking shall be by ordinance which shall be submitted to the [QUALIFIED] voters at the next [REGULARLY SCHEDULED GENERAL] regular election or special election called for that purpose. A majority [OF THE QUALIFIED VOTERS VOTING ON THE QUESTION] vote is required for approval of the ordinance.

SUGGESTED DRAFTING C[illegible]GES TO TITLE 29 - Cook, 16 Sep 80

Chapter New School Boards
[ARTICLE 5. SCHOOL BOARDS]

Sec. New. School Boards. Each borough and city school district has a school board.

Sec. 29.23.310. Election in cities, first and second class boroughs. [EACH BOROUGH AND CITY SCHOOL DISTRICT HAS A SCHOOL BOARD.] Members of the school board in city, first and second class borough school districts are elected at the regular election [HELD ANNUALLY ON THE FIRST TUESDAY OF OCTOBER, UNLESS A DIFFERENT ELECTION DATE OR INTERVAL OF YEARS IS PROVIDED BY ORDINANCE,] for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished [AS PROVIDED BY SEC. 100 OF THIS CHAPTER].

Sec. 29.41.020 Assembly to serve as school board for third class boroughs. The borough assembly is the school board for third class boroughs. The borough mayor executive is the [PRESIDING OFFICER OF THE BOROUGH ASSEMBLY AND] president of the school board. While acting as president of the school board he [THE BOROUGH EXECUTIVE] has all the powers of a borough executive except for the veto power.

Not submitted to Policy group based upon re-organization draft #1 [illegible] which has [illegible] by Working Group

SUGGESTED DRAFTING CHANGES TO TITLE 29 - Cook, 17 Sep 80

Sec. 29.53.020. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

(1) municipal, state, or federal property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(2) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes including the following property owned by a religious organization:

INDENT → (A) a structure, its fixtures and furniture used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(B) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(C) a lot supporting and adjacent to a structure set out in (A) or (B) of this paragraph which is necessary to use of the structure;

(D) a lot required by ordinance for parking near a structure set in (A) of this paragraph;

(3) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of the organization;

(4) household furniture of the head of a family or householder not exceeding $500 in value;

(5) money on deposit;

(6) inventories located within a foreign trade zone established under AS 45.77.010, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce.

(7) subject to (e) of this section, real property owned and occupied as a permanent place of abode by a resident 65 years of age or older, including a mobile home whether classified as real or personal property for municipal tax purposes;

(8) subject to (f) of this section, a structure containing a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure.

(b) Property described in (a) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from taxes levied and collected by municipalities.

(d) An exemption may not be granted except upon written application on a form prescribed by the state assessor for use by local assessors. A claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause may waive the claimant's failure to make timely application for the exemption and authorize the assessor to accept the application. If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If failure to file by January 15 of the assessment year is waived and the application is approved, the amount of tax which a claimant may have already paid for the assessment year for property exempted shall be refunded. The assessor may require proof at any time of the right to and amount of an exemption claimed. A claimant must file a separate application for each assessment year in which an exemption is sought.

(e) Real property which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption under (a)(7) of this section may not be exempted. The determination of the assessor is appealable under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or city for the

real property tax revenues lost to it by the operation of (a)(7) of this section. However, the reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city or which, upon application, would have been granted under AS 29.53.025(a).

(f) The exemption granted by (a)(8) of this section is limited to:

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Not sent

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM September 25, 1980

SUBJECT: Proposed drafting change

TO: Advisory Policy Committee -
Title 29 Revision

FROM: Tamara Brandt Cook
Legislative Counsel

This is a proposed technical revision of AS 29.53.020 dealing with exemptions from property taxation but containing no important substantive legal changes. However, I wish to alert you to two changes which may have some substantative impact.

AS 29.53.020(e) currently contains the language

> Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall between or among themselves which shall receive the benefit of the exemption.

This sentence has been in subsection (e) since 1972, but its meaning is unclear. I checked with Mr. Lee Sharp, Municipal Attorney for Juneau, and Mr. Terry Early, State Assessor regarding the meaning of this provision. Both of them agreed with me that the section is unclear and Mr. Early advised me to check with an assessor to see how it has been applied in the field. I contacted Mr. Bob Howe, Juneau assessor, and he informed me that the sentence in question has been ignored as a practical matter. I also checked with the Department of Revenue and was informed that they rely upon information supplied by the boroughs in determining the amount of the state rebate, and therefore have not been interpreting this sentence themselves. Consequently, I have deleted this sentence from this draft.

In addition, I have deleted the subsection currently appearing as (h).

> Except as provided in (g) of this section, nothing in (e) - (i) of this section effect similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinances as provided section 25 of this chapter.

I have omitted this subsection because it appears to be superfluous.

Lastly, I would like to draw your attention to the current subsection (c)

> Property described (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or education groups for classroom space. (Emphasis added).

If the policy behind allowing a tax exemption for property used by nonprofit organizations is to encourage people to rent their property to those organizations, why limit the use which can be made of the property by the nonprofit organizations? I would recommend that the Committee consider either (1) not allowing an exemption for property from which income is derived at all; or (2) eliminating the language "for classroom space".

Please let me know of any changes which you would like me to make in this draft.

TBC:ljb

Enclosure

Sec. 29.53.020. REQUIRED EXEMPTIONS. (a) The following property is exempt from the property tax:

(1) municipal, state, or federal property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(2) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes including the following property owned by a religious organization:

(A) a structure, its fixtures and furniture used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(B) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(C) a lot supporting and adjacent to a structure set out in (A) or (B) of this paragraph which is necessary to use of the structure;

(D) a lot required by ordinance for parking near a structure set in (A) of this paragraph;

(3) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of the organization;

(4) household furniture of the head of a family or householder not exceeding $500 in value;

(5) money on deposit;

(6) inventories located within a foreign trade zone established under AS 45.77.010, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce;

(7) the real property owned and occupied as a permanent place of abode by a resident 65 years of age or older, including a mobile home whether classified as real or personal property for municipal tax purposes; and

(8) a structure containing a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure.

(b) Property described in (a) of this section from which income is derived is exempt only if that income is

solely from use of the property by a nonprofit religious, charitable, hospital, or educational group for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from municipal taxes.

(d) An exemption may not be granted except upon written application on a form prescribed by the state assessor for use by local assessors. A claimant must file the application no later than January 15th of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause may waive the claimant's failure to make timely application for the exemption and authorize the assessor to accept the application. If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If failure to file by January 15th of the assessment year is waived and the application is approved, the amount of tax which a claimant may have already paid for the assessment year for property exempted shall be refunded. The assessor may require proof at any time of the right to and amount of an exemption claimed. A claimant must file a separate application for each assessment year in which an exemption is sought.

(e) Real property which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption under (a)(7) of this section may not be exempted.

The determination of the assessor is appealable under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or city for the real property tax revenues lost to it by the operation of (a)(7) of this section. However, reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city or which, upon application, would have been granted under AS 29.53.025(a).

(f) The exemption granted by (a)(8) of this section is limited to:

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1st of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Donna

SUGGESTED DRAFTING CHANGES TO TITLE 29 - Cook, 17 Sep 80

Sec. 29.53.020. REQUIRED EXEMPTIONS. (a) The following property is exempt from ~~general taxation~~ the property tax:

(1) municipal, state, or federal property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(2) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes including the following property owned by a religious organization:

INTENT ⟶ (A) a structure, its fixtures and furniture used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(B) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(C) a lot supporting and adjacent to a structure set out in (A) or (B) of this paragraph which is necessary to use of the structure;

(D) a lot required by ordinance for parking near a structure set in (A) of this paragraph;

(3) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of the organization;

(4) household furniture of the head of a family or householder not exceeding $500 in value;

(5) money on deposit;

(6) inventories located within a foreign trade zone established under AS 45.77.010, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce.

(7) ~~subject to (e) of this section~~, real property owned and occupied as a permanent place of abode by a resident 65 years of age or older, including a mobile home whether classified as real or personal property for municipal tax purposes;

(8) subject to (f) of this section, a structure containing a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure.

(b) Property described in (a) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from taxes levied and collected by municipalities.

(d) An exemption may not be granted except upon written application on a form prescribed by the state assessor for use by local assessors. A claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause may waive the claimant's failure to make timely application for the exemption and authorize the assessor to accept the application. If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If failure to file by January 15 of the assessment year is waived and the application is approved, the amount of tax which a claimant may have already paid for the assessment year for property exempted shall be refunded. The assessor may require proof at any time of the right to and amount of an exemption claimed. A claimant must file a separate application for each assessment year in which an exemption is sought.

(e) Real property which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption under (a)(7) of this section may not be exempted. The determination of the assessor is appealable under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or city for the

real property tax revenues lost to it by the operation of (a)(7) of this section. However, ~~the~~ reimbursement will be ~~made~~ only to the extent that revenue lost exceeds an exemption which was granted by the borough or city or which, upon application, would have been granted under AS 29.53.025(a).

(f) The exemption granted by (a)(8) of this section is limited to:

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Note: Suggest [illegible] to delete the Delivery Language in (a); to set a date of [illegible] exemptions for [illegible] [illegible] [illegible]

Tam

(1) I'm not sure how much you can change present law -

but I substituted "property tax" for "general taxation" at beginning of this section - to tie back to AS 29.53.010. I do not feel too strongly about this.

(2)

~~29.53.050 (b) is a direct copy from present law. But it doesn't make sense. It needs as~~

(2) Do you read (b) as applying only to Classroom space? I do.

I like your reorganization.

I don't think you need the intro to (7). But I don't feel strongly about this. Its simply a matter of opinion

Don
9/23

Tam –

On p. 1, lines 23-24 "to convenient use" - I'm not sure what that means

---

In (e), I deleted the paragraphs because they didn't refer back to a lead-in of some kind. (1) & (2) seemed more like subsections but then (3) didn't fit.

Please review the attached draft of your bill and return it to the revisor's basket. Remember to indicate the date of return either in the status book or on the CS card, as appropriate.

due Monday

12-0065
Cook
9/17/80

Proofed

IN THE HOUSE BY MILLER

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LECISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to property exempted from taxation."

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

* Section 1. AS 29.53.020 is repealed and re-enacted to read:

Sec. 29.53.020. REQUIRED EXEMPTIONS. (a) The following property is exempt ~~or partly exempt~~ from general taxation:

(1) municipal, state, or federal property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(2) property used exclusively for nonprofit religious, charitable, cemetery, hospital, or educational purposes including the following property owned by a religious organization:

(A) a structure, its fixtures and furniture used solely for public worship, charitable purposes, religious administrative offices, religious education, or a nonprofit hospital;

(B) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(C) a lot supporting and adjacent to a structure set out in (A) or (B) of this paragraph which is necessary to convenient use;

(D) a lot required by ordinance for parking near a structure set out in (A) of this paragraph;

(3) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other

than dishonorable, or the property of the auxiliary of the organization;

(4) household furniture of the head of a family or householder not exceeding $500 in value;

(5) money on deposit;

(6) real property owned and occupied as a permanent place of abode under (e) of this section;

(7) a structure containing a fire protection system under (f) of this section;

(8) inventories located within a foreign trade zone established under AS 45.77.010, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce.

(b) Property described in (a) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from taxes levied and collected by municipalities.

(d) An exemption may not be granted except upon written application on a form prescribed by the state assessor for use by local assessors. A claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause may waive the claimant's failure to make timely application for the exemption and authorize the assessor to accept the application. If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If failure to file by January 15 of the assessment year is waived and the application is approved, the amount of tax which a claimant may have already paid for

the assessment year for property exempted shall be refunded. The assessor may require proof at any time of the right to and amount of an exemption claimed. A claimant must file a separate application for each assessment year in which an exemption is sought.

(e) The real property owned and occupied as a permanent place of abode by a resident is exempt from taxation of the assessed value of the property. Real property which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption may not be exempted under this subsection. The determination of the assessor is appealable under AS 44.62.560 - 44.62.570. The state shall reimburse a borough or city for the real property tax revenues lost to it by the operation of this subsection. However, the reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city, or which, upon application, would have been granted under AS 29.53.025(a). In this subsection, "real property" includes a mobile home, whether classified as real or personal property for municipal tax purposes.

(f) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire

protection system becomes a fixture of the structure after January 1, 1981.

Original sponsor:
(((must be on all CS's)))

Funding Information (((appropriation bills only)))
General Fund $
Other Funds $

BY MILLER

IN THE HOUSE / ~~SENATE~~

HOUSE ___ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH / ~~ELEVENTH~~ LEGISLATURE - FIRST / ~~SECOND~~ SESSION

A BILL

For an Act entitled: "An Act relating to property exempted from taxation.

"

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

* Section 1. AS 29.53.020 is repealed and reenacted to read:

Sec. 29.53.020 REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

(1) municipal, state or federal property, except that a private leasehold, contract or other interest in the property ~~shall be~~ is taxable to the extent of the interest;

(2) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes including the following property owned by a religious organization;

(A) a structure, its fixtures and furniture used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

(B) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(C) ~~real property~~ a lot supporting and adjacent to a structure set out in (A) or (B) of this ~~sub~~paragraph which is necessary to convenient use;

(D) ~~real property~~ a lot required by ordinance for parking near a structure set out in (A) of this ~~sub~~paragraph;

(3) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of the organization;

(4) household furniture of the head of a family or of householder not exceeding $500 in value;

(5) money on deposit;

(6) real property ~~together with improvements~~ owned and occupied as a permanent place of abode under (e) of this section;

(7) a structure containing a fire protection system under (f) of this section;

(8) inventories located within a foreign trade zone established under AS 45.77.010, before those inventories are cleared by the United States Customs Service and admitted into domestic commerce.

(b) Property described in (a) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(c) Property exempted from execution under the Code of Civil Procedure (AS 09) is not exempt from taxes levied and collected by municipalities.

INSERT #1

(e) The real property ~~together with improvements~~ owned and occupied as a permanent place of abode by a resident is exempt from taxation of the assessed value of the property. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 - 44.62 570. In this subsection ~~the term~~ "real property" includes a mobile home, whether classified as real or personal property for munic pal tax purposes.

INSERT #2

INSERT #1

(d) No exemption may be granted except upon written application on a form prescribed by the state assessor for use by local assessors. ~~The~~ A claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during that year the governing body of the municipality for good cause ~~shown~~ may waive the claimant's failure to make timely application for the exemption and authorize the assessor to accept the application. ~~The claimant must file a separate application for each assessment year in which the exemption is sought.~~ If an application is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. ~~If a claimant whose~~ If failure to file by January 15 of the assessment year ~~has been~~ is waived and ~~the~~ a application is approved, ~~the~~ amount of tax which ~~the~~ claimant may have already paid for the assessment year for property exempted shall be refunded. The assessor may require proof at any time, in the form he considers necessary of the right and amount of an exemption claimed. ~~The~~ A claimant must file a separate application for each assessment year in which an exemption is sought.

INSERT #2

~~(e)~~ (d) The state shall reimburse a borough or city for the real property tax revenues lost to it by the operation ~~of this~~ of this subsection. However, the reimbursement will be made only to the extent that revenue lost exceeds an exemption which was granted by the borough or city, or which, upon application, would have been granted ~~by the borough or city~~ under AS 29.53.025(a)

~~(f)~~

(f) ~~(g)~~ Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 18.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

## Chapter 53. Municipal Assessment and Taxation.

### Article 1. Municipal Property Tax.

**Sec. 29.53.010. General property tax.** Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter. (§ 2 ch 118 SLA 1972)

**Taxation of personal property of resident located outside city. — See** Town of Fairbanks v. Independent Meat Mkt., 4 Alaska 147 (1910).

**The North Slope Borough is a viable legal entity with powers to tax as provided to boroughs by this section.** Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-836 and C.A. Nos. 73-294 to 73-306 (1973).

**Sec. 29.53.020. Required exemptions.** (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a householder not exceeding $500 in value;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (c) of this section.

**(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:**

**(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;**

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 — 44.62.570.

(f) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under § 25(a) of this chapter.

(h) Except as provided in (g) of this section, nothing in (e)—(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in § 25 of this chapter.

(am §§ 1, 2 ch 60 SLA 1973; am § 1 ch 65 SLA 1975; am § 1 ch 191 SLA 1976; am § 1 ch 217 SLA 1976; am §§ 1, 2 ch 229 SLA 1976; am § 1 ch 97 SLA 1977)

(i) In (e)—(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes. (§ 2 ch 118 SLA 1972)

**History of section.** — See City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

**This section was enacted pursuant to Alaska Const., art. IX, § 4.** Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists, Sup. Ct. Op. No. 591 (File No. 1060), 462 P.2d 432 (1969).

**Intent of constitutional convention.** —The constitutional convention intended that only so much of the property used for religious purposes as was being used to produce income should be taxable, that such other parts should be exempt, and that a proration between taxable and nontaxable parts should be made. 1962 Op. Att'y Gen., No. 16.

**Purpose.** —The purpose of this section is to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment is largely irrelevant. McKee v. Evans, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

It should be noted that, in addition to favoring a simplified organization for Title 29, there seemed to be considerable initial support for increasing local government autonomy. One of the Policy Group's next tasks will probably be a section-by-section analysis of the present statutes to determine which laws might either be eliminated or placed in a "directory" category to be used at the option of municipalities.

The Policy Group is tentatively looking at a second meeting on or about September 22nd. At this time, it is hoped that the technical group, together with staff, will have prepared an outline of a proposed new organization showing all of the present statutes organized into the three or four categories described above. Additionally, I know many of you submitted specific written comments on the present statutes, and I suggest that we explore a division of labor to begin preparing specific recommended statutory changes for consideration by the Policy Group.

Since time is uncomfortably short, I would like to propose an initial meeting for 9:00 a.m., Monday, September 8, 1980, at the Legislative Information Office, 1024 W. 6th Avenue, Anchorage. At this meeting, the committee would attempt to respond to the requests of the Policy Group and to discuss its future role in the review of Title 29. Hopefully, everyone will be able to consider in advance of September 8, a proposed reorganization along the lines described above and begin our individual grouping of present statutes. Recognizing all of our busy schedules, I am hopeful that a one day meeting on the 8th will be sufficient. However, if necessary, you may wish to allow for some time on your calendar for the morning of the 9th.

It is my understanding that travel and per diem expenses will be reimbursed. Please contact Ms. Tamara Cook, Legislative Counsel, 465-4996 for details. I look forward to seeing you in Anchorage. Please feel free to contact my office at 264-4236 with any questions.

Sincerely,

DEPARTMENT OF LAW

Theodore D. Berns
Municipal Attorney

TDB:gml
cc: Ms. Tamara Cook
Bill Berrier

**Municipality of Anchorage**

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

*GEORGE M. SULLIVAN, MAYOR*

OFFICE OF THE MUNICIPAL ATTORNEY

September 2, 1980

Title 29 - Technical Review Committee

Re: Organizational Meeting

It is my understanding that you have agreed to serve on a technical review committee to assist in a comprehensive review of AS Title 29. (Municipal Government). A Policy Review Group has been appointed by the Legislature to review Title 29 and report on any recommended revisions. The Technical Committee has been asked to assist the Policy Group in recommending changes and reorganizing the present body of statutes. As a member of the Policy Group, I have been asked to act as liason with the Technical Committee. I would therefore like to propose an organizational meeting and to pass along some preliminary requests made by the Policy Group at its initial meeting on August 27th and 28th in Anchorage.

One of the first points of consensus reached by the Policy Group was a feeling that the present Title 29 is confusing and badly organized. The Policy Group therefore requested the Technical Committee to explore the feasibility of a new organization for Title 29. Under the proposed organization, the present statute would be organized into roughly three or four categories according to their applicability. Category I would be those provisions applicable to and binding upon all municipal governments, including home rule municipalities. Category II would then contain statutory material constituting additional limitations or prescriptions for various classes of cities or boroughs. Category III would seek to address the needs of many smaller communities by containing directory administrative and legislative provisions. Such provisions would apply to local governments unless a municipality, by ordinance, rejected coverage in order to adopt its own local procedures. Probably, a Category IV containing miscellaneous and general matter would also be necessary.

MEMORANDUM STATE OF ALASKA

TO: Debbie Behr, Special Assistant
Office of the Commissioner

DATE: August 15, 1980

FILE NO:

TELEPHONE NO: 465-3082

SUBJECT: Comments on Amendments to State Statutes re: Local Government

FROM: V. L. Iverson, Director
Division of Administrative Services

The subject of local control by political subdivisions over selected DHSS programs does appear to be proper for consideration by the special legislative committee on revision of the State Municipal Code.

I'm sure you are aware that it is essential to distinctly separate statutorily delegated local government control of DHSS programs from contractual arrangements with private, non-profit entities to implement DHSS programs. The latter system presents numerous legal problems with respect to at least those programs that are partially Federally funded. As we all know, on the other hand, many States for many years have successfully operated their health and social services programs through statutory delegation of powers to local political subdivisions.

per call Debbie Behr.

would like issue raised of giving local control of health programs to local gov. by allowing DESS to have statutory authority to delegate implementation of programs to the local gov.

Alan Korhonen
29. 9:00

Ben Iverson

02-001A(Rev.10/79)

of ALASKA MEMORANDUM

TO: The Honorable Lee McAnerney
Commissioner
Department of Community
& Regional Affairs

DATE: August 14, 1980

FILE NO:

TELEPHONE NO:

FROM: Ernst W. Mueller
Commissioner
Department of Environmental
Conservation

SUBJECT: Designation of "Village"

Thank you for your letter of August 13 concerning the use of the term "City" rather than "Village" for small rural incorporated communities. A term I find even more offensive is the word "bush" as a substitute for "rural."

I fear, however, that "village" may be with us a long time. AS 46.07.080(2) reads:

> "'village' means an unincorporated community which has between 25 and 600 people residing within a two-mile radius, or a second class city." (Emphasis added)

We have tried to encourage the Legislature to revise this language; perhaps we can ask them to replace "village" with a term such as "eligible rural community."

cc: Tim Bergin

RECEIVED
AUG 15 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

SCOMM

#23:3

CHAPTER 03. THE UNORGANIZED BOROUGH.

Sec. 29.03.010. ESTABLISHMENT. Areas of the state which are not within the boundaries of an organized borough constitute a single unorganized borough.

Sec. 29.03.020. SERVICE AREAS. Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to schools, utilities, land use regulations and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES.

****Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city of the first class or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

Sec. 29.06.020. GENERAL LAW. A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.

Sec 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of five classes:

(1) first class boroughs;

(2) second class boroughs;

(3) third class boroughs;

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. (a) A second class city may be reclassified as a first class city by holding an election on the question as provided in this subsection, if the Department of Community and Regional Affairs determines from the best figures available that the population of the city has reached 400 permanent residents.

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

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

(2) the council may propose reclassification.

(c) The council shall hold at least one public hearing within the

city on the question. The council shall then evaluate the ability of the city to assume first class status and make its findings public.

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

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

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

(g) A second class borough may reclassify as a first class or third class borough, and a third class borough may reclassify as a first class or second class borough, in the manner provided by AS 29.36.110 -29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers.

(h) At the time of voting on reclassification of a second class borough to third class status, borough voters in conformity with AS 29.36. shall elect an assembly to serve as the combined assembly and school board of the third class borough if reclassification is approved.

(i) At the time of voting on reclassification of a third class borough to second class or first class status, borough voters shall vote also on the question whether the borough shall upon reclassification retain a combined assembly and school board or a separate assembly and board as otherwise provided for first and second class boroughs. If the majority of votes cast on the question favors retention of the combined assembly and board, the assembly serving at the time of the relassification election

continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board.

(j) The effective date of reclassification of a borough for which reclassification is approved under (h) of this section is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification proposition has been approved by the voters.

****Sec. 29.06.050. TRANSITION. Repeal.

CHAPTER 09. INCORPORATION.

ARTICLE 1. REQUIREMENTS.

Sec. 29.09.010. INCORPORATION OF CITIES. (a) A community which meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community which meets all the standards established in (a) of this section except (a)(1) may incorporate as a second class city.

Sec. 29.09.020. LIMITATIONS ON INCORPORATION OF CITIES. (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.

(b) A community within an organized borough may not incorporate as a city if the services could be provided on an areawide or nonareawide basis by the borough in which it is located or by annexation to an existing city.

Sec. 29.09.030. ORGANIZED BOROUGHS. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

ARTICLE 2. PROCEDURES.

Sec. 29.09.060. PETITION. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs. The petition shall include the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

*(4) [Effective January 1, 1981] composition and apportionment of the assembly or council;

(5) for a first class borough, a designation of areawide powers to be exercised;

(6) for a second class borough, a designation of areawide and nonareawide powers to be exercised;

(7) maps, documents, and other information required by the Department of Community and Regional Affairs;

(8) for first class city incorporation, the signatures and resident address of 50 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(9) for second class city incorporation, the signature and resident address of 25 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(10) for borough incorporation, the signature and resident address of 15 percent of the permanent resident voters in each first class city and 15 percent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;

(11) for a city, a designation of the powers proposed by the petitioners to be exercised;

(12) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation.

Sec. 29.09.070. REVIEW. The Department of Community and Regional Affairs shall review petitions for content and signatures and shall return deficient petitions for correction and completion.

Sec. 29.09.080. INVESTIGATION. (a) If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

(b) The department may combine petitions for incorporation from the same general area.

(c) The department shall hold at least one public hearing in the area proposed for incorporation.

Sec. 29.09.090. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal.

Sec. 29.09.100. DECISION ON BOROUGH INCORPORATION. (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110. INCORPORATION ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition. Within 30 days after notification, the lieutenant governor shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial officers in the same election. If incorporation is rejected, no officers are elected. The election is held not less than 30 nor more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in the incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each power to be exercised outside cities only is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing outside cities.

(d) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under this section.

Sec.29.09.120. ELECTION OF INITIAL OFFICERS (a) Repealed by Sec. 4 ch. 23 SLA 1976.

(b) Nominations for initial officers are made by petition. The petition is in the form prescribed by the lieutenant governor and includes the name and address of the nominee and a statement of the nominee that he is qualified under the provisions of this title for the office that he seeks. A person may file for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a home rule or first class city. Petitions to nominate officers of a second class city must include the signature and resident address of 10 voters in the area of the proposed city. Petitions to nominate elected municipal officers must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officers are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under (a) - (c) of this section.

(d) The initial elected municipal officials take office on the first Monday following certification of their election.

(e) The initial elected borough assembly and city council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130. INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. Service areas in a newly incorporated borough or city shall be integrated into the borough or city within two years after the date of incorporation. On integration the borough or city succeeds to all the rights, powers, duties, assets and liabilities of the service areas. After integration, the borough assembly or city council may exercise within a former service area all of the rights and powers exercised by the service area at the time of integration, and may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a borough or city as successor to the service area. Upon integration no less than all property in the service area at the time of integration remains subject to taxation to pay the principal of and interest on the bonds. The provisions of this section apply to all organized boroughs whether incorporated or organized before or after September 10, 1972.

Sec. 29.09.140. TRANSITION. (a) The powers and functions exercised by home rule or general law cities and service areas which are succeeded to by a newly incorporated borough or city are exercised by them until the new borough or city assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new borough or city.

(b) The borough or city shall give written notice of its assumption of the powers, duties and other items enumerated in Secs. 130-140 of this chapter, to the city, and service area concerned before the assumption. Borough or city officials shall consult with the officials of the city and service area concerned, and arrange an orderly transfer.

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

Sec. 29.09.150. CHALLENGE OF LEGALITY. No person may challenge the formation of a municipality except within six months of the date of its incorporation.

ARTICLE 03. TRANSITIONAL ASSISTANCE.

Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to borough or city government and in order to provide for development and interim governmental operations, each borough and city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, other than a unified municipality incorporated under the provisions of (AS 29.85), or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to $10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough and each first class city incorporated or established by reclassification outside an organized borough is entitled to at least $25,000.

(b) Within 30 days after the date of incorporation of a borough or city after September 10, 1972, the Department of Community and Regional Affairs shall determine the number of voters in the borough or city who voted in the incorporation election.

(c) Within 30 days after the completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough or city the total amount of money to which the borough or city is entitled.

CHAPTER 12. ALTERATION OF MUNICIPALITIES.

ARTICLE 1. CHANGE OF NAME.

Sec. 29.12.010. CHANGE OF MUNICIPAL NAME. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Department of Community and Regional Affairs.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order.

ARTICLE 2. ANNEXATION AND EXCLUSION.

Sec. 29.12.040. LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presen-

tation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.

Sec. 29.12.050. ANNEXATION OF MILITARY RESERVATIONS. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under Sec. 040 of this chapter. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part.

ARTICLE 3. MERGER AND CONSOLDIATION.

Sec. 29.12.080. METHODS OF MERGER AND CONSOLIDATION. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission, or

(2) the local option method specified in Secs. 090-160 of this chapter .

Sec. 29.12.090. PETITION. (a) Residents of two or more municipalities may file a merger or consolidation petition with the Department of Community and Regional Affairs. The petition must be signed by a number of municipal voters of each municipality equal to at least 25 percent of the number of votes cast in its last regular election.

(b) The petition includes

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information which show that the proposed municipality meets the standards for municipal incorporation .

Sec. 29.12.100. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.110. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.120. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the merger or consolidation.

(b) The Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the merger or consolidation petition, unless officials of the municipalities agree to a single hearing.

Sec. 29.12.130. DECISION. If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets these standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition. The decision may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition. Within 30 days after notification, the lieutenant governor shall order an election within the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election is held not less than 30 nor more than 90 days after the election order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 -15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within 10 days, set a date for election of officers of the new municipality under AS 29.09.120. The election date is not less than 60 nor more than 90 days after the election order. This date is the effective date for the merger or consolidation.

Sec. 29.12.150. ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the others.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160. ORDINANCES. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality.

ARTICLE 4. UNIFICATION OF LOCAL GOVERNMENTS.

Sec. 29.12.190. UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.12.200. UNIFICATION TO BE PROPOSED BY PETITION. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition.

Sec. 29.12.210. PETITION REQUIREMENTS. (a) The petition shall read: "PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law: 'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law? Yes [] No []'

| Signature | Address | Inside First Class or Home Rule City | Outside First Class or Home Rule City |
|---|---|---|---|

(b) The petition shall be signed by at least

(1) that number of qualified voters of the borough living outside all first class and home rule cities in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election; and

(2) that number of qualified voters residing in each first class and home rule city located in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election in each city.

Sec. 29.12.220. REVIEW OF PETITION. Upon receipt of a petition, the borough assembly shall review the petition within 15 days after its receipt to determine whether it complies with Sec. 200 of this chapter. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

Sec. 29.12.230 CALL FOR CHARTER COMMISSION NOMINATIONS. Once it is determined by the borough assembly that a petition meets the requirements of Sec. 200 of this chapter, or the assembly by its resolution proposes an election on formation of a charter commission to propose a unification charter, the assembly shall issue a call for the nomination of charter commission candidates, specifying the filing deadline and outlining the procedure described for making nominations under Sec. 240 of this chapter.

Sec. 29.12.240. NOMINATION OF CHARTER COMMISSION CANDIDATES. (a) Charter commission candidates shall be nominated by petition signed by at least 50 qualified voters of the area from which the candidate seeks election or by a number of qualified voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough.

Sec. 29.12.250. QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least one year immediately preceding the date his nomination petition is filed with the borough clerk.

****Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough; or,

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

Sec. 29.12.270. ELECTION. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution

(b) The ballot on the question of unification shall be worded exactly as in Sec. 210(a) of this chapter.

(c) The election of charter commission members shall take place at the same time as the election on the question of unification.

(d) All costs incurred in conducting an election under this chapter shall be paid by the borough.

Sec. 29.12.280. REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION. (a) The votes on unification shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities of the borough. The other classification shall consist of all votes cast in the remaining areas of the borough. In order for unification to be approved, it is necessary that a majority of the votes in each classification favor unification.

(b) If unification is approved, those charter commission candidates who received the highest number of votes from their respective areas shall serve as members of the commission.

Sec. 29.12.290. CHARTER COMMISSION ORGANIZATION AND PROCEDURE. (a) The charter commission authorized by this chapter shall hold its first meeting within 30 days of the date of certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. No decision of the commission is valid or binding unless approved by that number of members necessary to constitute a quorum.

(c) The charter commission may elect other officers from among its membership, adopt rules governing its procedures and hire and discharge commission employees. Rules adopted must conform with the provisions of this chapter.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and shall be available for public inspection at the borough office.

(e) Except as provided in AS 29.12.340(e), vacancies on the charter commission shall be filled by a majority vote of the commission . The person appointed to fill a vacancy must be a qualified voter of the same area as the person whom he succeeds and must have been a qualified voter of that area for at least one year immediately preceding the date of his appointment.

(f) The borough assembly may grant a per diem allowance to the commission members and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by this chapter.

(g) Costs, fees, and other expenses incurred by the charter commission are a debt of the borough and shall be paid upon proper verification.

Sec. 29.12.300. CHARTER PREPARATION. (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in AS 29.12.380. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to AS 29.12.360;

(2) provisions for

(A) the establishment of service areas; and

(B) the establishment of districts or sections for the election of members of the legislative body of the unified municipality, if election of members of the legislative body is not areawide, and procedures by which to reapportion the election districts or sections;

(C) reapportionment of the sections, if established;

(3) provision for nonpartisan government and provision for the selection, organization, authority and responsibilities of the governing body and its executive and administrator;

(4) the transfer or other disposition of property and other rights, claims, assets and franchises of the local government to be unified under the charter;

(5) provision for exercise of the rights of initiative and referendum as required by AS 29.15.050;

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by AS 29.12.340, is effective;

(8) designation of the new municipality's official name, subject to the provisions of (b) of this section;

(9) other charter provisions which the charter commission elects to include and which may be included in a home rule charter under this chapter and the state constitution.

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law.

Sec. 29.12.310. PUBLIC HEARINGS. Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter commission whenever and wherever it believes necessary and appropriate.

Sec. 29.12.320. FILING OF PROPOSED CHARTER. Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy with signatures affixed shall also be filed with the clerk of each city within the borough.

Sec. 29.12.330. PUBLICATION AND POSTING OF PROPOSED CHARTER. Within 10 days after filing the proposed charter, the borough clerk shall have it published once in at least one newspaper having general circulation distributed within the borough, if there is a newspaper having general circulation distributed within the borough. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places within each city of the borough and each area outside cities. Copies of the proposed charter shall be made available by the borough assembly to the public at both the office of the borough clerk and the office of the clerk of each city within the borough. The clerk shall publish notice by radio and television of the publication, posting, and availability of the proposed charter in a manner intended to apprise the entire borough population of the existence of the proposed charter.

Sec. 29.12.340. ELECTION ON CHARTER. (a) The proposed charter adopted by the charter commission shall be submitted to the voters for ratification or rejection at the borough election specified in AS 29.12.300. The borough clerk shall prepare the ballots for use in the election and shall give published notice of and otherwise conduct the election in the manner in which regular municipal elections are conducted. In addition, the clerk shall publish notice of the election by radio and television in a manner intended to apprise the entire borough population of the election.

(b) A person who is a qualified voter of the borough may vote in the election on the proposed charter.

(c) If a majority of the votes cast in the area of the borough outside all first class and home rule cities and a majority of the votes cast in the remaining area of the borough, composed of all first class and home rule cities, are cast in favor of the proposed charter, the charter is ratified. If the charter is ratified, two copies of the charter shall be filed with each of the following authorities:

(1) lieutenant governor;

(2) commissioner of the Department of Community and Regional Affairs;

(3) district recorder for the area of the borough;

(4) clerk of the borough;

(5) clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a proposed charter to the voters at a general or special borough election called by the borough and held within one year of the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved.

(e) If after the rejection of the first proposed charter, more than one-half of the charter commission members resign from the commission , the borough assembly shall appoint new members to fill the vacancies in accordance with AS 29.12.160(e).

Sec. 29.12.350. EFFECT OF THE CHARTER AFTER RATIFICATION. Upon ratification, the charter of a unified municipality organized under AS 29.12.190 - 390 operates to dissolve all local governments within the area of unification in accordance with the charter.

Sec. 29.12.360. ASSETS AND LIABILITIES. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness or other debt incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by ordinance if the governing body determines that the asset for which the bonded indebtedness or other debt was incurred was used for the benefit of the larger area before unification, or is so used after unification. However, preunification bonded indebtedness or other debt for sewage col-

lection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt.

Sec. 29.12.370. ORDINANCES. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body.

Sec. 29.12.380. RIGHT TO STATE AND FEDERAL FUNDS PRESERVED. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under AS 29.12.190 - 29.12.390.

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all powers

(1) not prohibited it by law or charter;

(2) granted to organized boroughs and first class cities.

ARTICLE 5. DISSOLUTION.

Sec. 29.12.420. METHODS OF DISSOLUTION. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.12.430 - 29.12.500

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the

Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

Sec. 29.12.430. PETITION. (a) Municipal residents may file a dissolution petition with the Department of Community and Regional Affairs in the form prescribed by the department. The petition must be signed by a number of municipal voters equal to at least 25 percent of the number of votes cast in the last regular municipal election.

(b) The petition includes

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution.

Sec. 29.12.440. STANDARDS. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

(1) it is free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by ch. 09 of this title, or it ceases to use each and every one of its mandatory powers.

(b) A home rule or general law city in a borough may petition for dissolution if the borough consents to assume the city's rights, powers, duties, assets and liabilities. The consent must be ratified by a majority of borough voters voting on the question.

Sec. 29.12.450. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.460. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.470. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be dissolved.

Sec. 29.12.480. DECISION. If the Local Boundary Commission determines that the municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

Sec. 29.12.490. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a dissolution petition. Within 30 days after notification, the lieutenant governor shall order an election within the municipality to determine whether the voters desire dissolution. The election is at least 30 and not more than 90 days after the election order.

(b) A person who is a qualified voter of the municipality may vote in the dissolution election.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If dissolution is approved, he shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.12.500. SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities as provided in AS 29.09.130-29.09.140.

CHAPTER 15. HOME RULE MUNICIPALITIES.

ARTICLE 1. CHARTERS.

* Sec. 29.15.010. MUNICIPAL CHARTER ADOPTION. A first or second class municipality may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec 29.15.020. NOMINATION. (a) Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

**** (b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

Sec. 29.15.030. ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission.

Sec. 29.15.040. PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be

signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter.

Sec. 29.15.050 INITIATIVE AND REFERENDUM. ****(a) A municipal charter shall provide procedures for initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 percent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by Sec. 7, art. XI of the state constitution.

Sec. 29.15.060. CHARTER ELECTION. The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter.

Sec. 29.15.070. CHARTER ADOPTION. (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

(1) lieutenant governor - two copies;

(2) Department of Community and Regional Affairs - two copies;

(3) district recorder - one copy;

(4) municipal clerk - one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

* Sec. 29.15.080. CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter except that no amendment shall be effective unless ratified by the voters.

ARTICLE 2. HOME RULE LIMITATIONS.

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 Borough Transition

(2) AS 29.12.010 Municipal Name Change

(3) AS 29.12.040 Annexation and Exclusion

(4) AS 29.12.080 - 29.12.160 Merger and Consolidation

(5) AS 29.12.420 - 29.12.500 Dissolution

(6) AS 29.15.080 Charter Amendment

(7) AS 29.24.010 Conflict of Interest

(8) AS 29.24.020 Meetings Public

* (9) (Effective January 1, 1981) AS 29.24.060; 29.24.080 - 29.24.140 Borough assembly composition and Apportionment; Borough Assembly Members

(10) AS 29.24.150(c) Expulsion of Borough Assemblymen

(11) AS 29.24.200(f) Removal of Borough Mayor from Office

(12) AS 29.24.290(b) Expulsion of City Councilman from Office

**** (13) AS 29.24.340(a) Repeal

(14) AS 29.24.350 Removal of Mayor from Office

(15) AS 29.24.680 Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 Municipal Reports

(17) AS 29.27.010(a)(12) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 Codification

(19) AS 29.30.010, 29.30.030(b) - 29.30.040 Municipal Elections

(20) AS 29.30.060(f) Expulsion, Removal from Office

(21) AS 29.30.210 - 29.30.330 Recall

(22) AS 29.33.020 Extraterritorial Jurisdiction

(23) AS 29.33.030 Eminent Domain

(24) AS 29.33.080 Garbage and Solid Waste Services

(25) AS 29.33.090(b) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090(c) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100 - 29.33.160 Utilities

**** (28) AS 29.33.220 Repeal

(29) AS 29.33.230 Post Audit

(30) AS 29.36.010(b) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020(a) Responsibility for education on Military Reservations

(32) AS 29.36.130(c) Acquisition of Additional Areawide Powers

(33) AS 29.39.020 - 29.39.060 Powers of Cities Outside Boroughs

(34) AS 29.42.040(d) Zoning of State Land for Homesite Entry

(35) AS 29.42.080(b) Applicability of Local Platting Regulations to State Land in a Municipality

(36) AS 29.45.010 - 29.45.530 Borough and City Property Taxes

(37) AS 29.45.020 Taxpayer Notice

(38) AS 29.45.580(d) Interest on Sales Tax

(39) AS 29.48.090 Exemption from Special Assessment

(40) AS 29.51.420 - 29.51.430 Bonded Debt for School Construction

(41) AS 29.51.210(b) Security for Bonds

(42) AS 29.51.390 Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. Municipal Tax Resource Equalization

(44) AS 29.62. State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 Adverse Possession

(46) AS 29.71.020 Taxation of Municipalities

# CHAPTER 18. DEVELOPMENT CITIES

**** Repeal.

CHAPTER 21. CAPITAL CITY.

Sec. 29.21.010. INCORPORATION. There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city.

Sec. 29.21.020. BOUNDARIES. The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state.

Sec. 29.21.030. CITY COUNCIL. (a) Until council members elected by the residents of the capital city take office as provided in AS 29.21.060 the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governor. The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in AS 29.21.160 the successors of the initial appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance.

Sec. 29.21.040. FILLING A VACANCY. If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacement who shall serve for the unexpired portion of the term.

Sec. 29.21.050. APPOINTMENT OF CITY OFFICIALS. Until a mayor is elected in accordance with AS 29.21.060, the council shall appoint a city manager for the capital city to serve at the pleasure of the council. The city manager may not be a council member.

Sec. 29.21.060. TRANSITION. (a) When the capital city attains a population of 400 permanent residents, as certified by the lieutenant governor based on the best information available, the lieutenant governor shall notify the council of this determination. The lieutenant governor shall specify an election date which shall be the first Tuesday of October following the notification, except that if it is less than six months from the date of the certification to the first Tuesday of October then the election date shall be the first Tuesday of October of the year following. The elected members shall take office on the Monday following the election.

(b) After the lieutenant governor has specified the election date, the council shall make arrangements for an election at which five council members and a mayor shall be elected in the manner prescribed by ordinance and law. The expenses of the election shall be borne by the state. The council of the capital city shall have six members. The governor shall designate one council member holding office on the date of the election to remain a member of the council for a single three-year term commencing on the date the elected council members take office. The successors to the appointed council members shall be elected by the residents, except that if the appointed council member leaves office during the three years, the governor may appoint a successor. The terms of all other appointed or designated council members expire when the elected council members take office. The term of elected council members is as provided in AS 29.24.280 except that three of the members are elected for an initial term of one year.

*Sec. 29.21.070. PLANNING AND LAND USE REGULATION AUTHORITY. The general development plan and specific development plans constitute the land use plan for the capital city area. When a parcel of land has been developed in accordance with the applicable specific development plan, that parcel becomes subject to all planning, zoning, subdivision, building code or other similar ordinances of the Matanuska-Susitna Borough.

Sec. 29.21.080. TRANSFER OF UTILITIES TO THE CAPITAL CITY. The development corporation, in cooperation with the capital city, shall arrange for and agree to an orderly schedule for transferring to the capital city ownership of, and financial and operational responsibility for utilities and any other facilities which the development corporation considers to be integral parts of the capital city infrastructure. Before January 1, 1985, the development corporation and the council of the capital city shall jointly retain independent consultants to study and determine an orderly schedule for transfer of these utilities and facilities to the capital city. The study shall consider the capabilities of the capital city and its existing and anticipated residents to finance the cost of these utilities and other facilities and their operating expenses. The consultants shall propose a recommended schedule for and terms of transfer which are commensurate with the capital city's existing and anticipated population, tax base and any other factors relating to its capability to finance and operate these facilities as they consider appropriate. The development corporation shall, after considering the consultants' report, propose a schedule of and terms and conditions of the transfer to the capital city, which shall, upon review and approval by the council, be included in an agreement between the development corporation and the capital city. If the development corporation and the capital city are unable to agree within six months after the development corporation submits its proposal, the development corporation shall submit the proposal to the Legislative Budget and Audit Committee

which shall consider the proposal, and if the committee considers it appropriate to do so, shall recommend to the legislature legislation it considers desirable for the disposition of the utilities and other facilities. If the legislature does not enact legislation regarding the disposition within one year after the proposal is submitted to the Legislative Budget and Audit Committee, the development corporation may at any time thereafter sell or dispose of the utilities and facilities or any of them to a private person or entity or government body, or continue to operate them.

Sec. 29.21.090. DEFINITIONS. In AS 29.21.010 - 29.21.090, unless the context requires otherwise,

(1) "capital city area" means the area described in AS 29.21.020

(2) "capital city " means the municipality incorporated by this chapter;

(3) "development corporation" means the Alaska Capital City Development Corporation;

(4) "general development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to the general development plan;

(5) "specific development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to each specific development plan.

Sec. 29.21.100. SHORT TITLE. AS 29.21.010 - 100 of this chapter may be cited as the Capital City Incorporation Act.

CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES.

ARTICLE 1. CONFLICTS OF INTEREST, PUBLIC MEETINGS.

****Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law municipality shall adopt a conflicts of interest ordinance which provides that a member of a governing body shall declare a substantial financial interest he has in an official action and ask to be excused from a vote on the matter. The presiding officer shall rule on the question. His decision may be overidden by the majority vote of the governing body.

Sec. 29.24.020. MEETINGS PUBLIC. Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

ARTICLE 2. GOVERNING BODIES.

****Sec. 29.24.050. (Sec. 29.23.010.) GENERAL POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

Sec. 29.24.060. ASSEMBLY COMPOSITION AND APPORTIONMENT. [Effective January 1, 1981].

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

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

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

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

Sec.29.24.070. COMPOSITION AND FORM OF REPRESENTATION. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.24.080.

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390;

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

Sec. 29.24.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.24.060. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.24.070(b)(2) or (b)(3) the assembly shall submit with the proposition of a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.24.060 the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060.

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

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(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060.

At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registerd voters who are residents of the borough request the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.24.060, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.24.060 the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.090 APPORTIONMENT APPEALS. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.24.060 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of community and regional affairs

requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.24.060 or whether a decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under AS 29.24.080(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community and regional affairs to review a decision of the borough assembly under AS 29.24.080(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.24.060, or if he determines that the decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is not correct, the commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.24.060 and submit the ordinance to the voters.

(d) When the borough assembly has been directed by the commissioner of community and regional affairs to prepare a reapportionment ordinance under (c) of this section, the borough assembly shall, within two months of its receipt of the commissioner's order, adopt an ordinance providing for reapportionment. The borough assembly shall submit an

ordinance adopted under this subsection to the voters at a regular election or special election held within 60 days of the date of adoption of the reapportionment ordinance.

(e) If at the end of the time period provided under (d) of this seciton an ordinance providing for reapportionment has not been approved by the voters, the commissioner of community and regional affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.100. JUDICIAL REVIEW AND RELIEF. (a) The commissioner of community and regional affairs may request the superior court to enforce a reapportionment order issued under AS 29.24.090(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.24.080(a);

(2) a determination by the borough assembly under AS 29.24.080 that the standards of AS 29.24.060 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.24.080(d);

(4) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(c);

(5) a reapportionment ordinance approved by the voters under AS 29.24.090(d); and

(6) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(e);

Sec. 29.24.110 EFFECTIVE DATE OF APPORTIONMENT. (a) A change in assembly apportionment or composition under AS 29.23.080 or AS 29.24.090 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.24.080(a), AS 29.24.080(e), or AS 29 24.090(d); or

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(d).

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

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

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(e).

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

Sec. 29.24.120. APPLICABLITY OF APPORTIONMENT PROVISIONS. The provisions of AS 29.24.080-29.24.110 do not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390;

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

****Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The

council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

****Sec. 29.24.130. REGULAR TERM OF OFFICE. Repeal.

****Sec. 29.24.140 QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the council. A member of the assembly who ceases to be a qualified voter immediately forfeits his office. A member of the council who ceases to be a qualfied city voter immediately forfeits his office.

(b) A governing body may by ordinance establish a durational residency requirement for its members not to exceed three years.

(c) An assembly or council member who represents an area less than that of the total borough or city and who becomes a resident of another area within the municipality may continue to serve uncil the next regular election unless provided otherwise by ordinance.

(d) A municipality may by ordinance establish district residency requirements for members of its governing body.

****Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three-year terms and until their successors have qualified unless different terms not exceeding four years are prescribed by charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a governing body is changed by charter or ordinance the term of an official holding office at the time the change becomes effective is not affected.

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

****Sec. 29.24.150. PROCEDURES OF GOVERNING BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding

officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) A municipal governing body shall hold at least one regular meeting every month, unless otherwise provided by ordinance. A special meeting may be held at the call of the presiding officer or at least one-third of the members provided a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held. A waiver shall be made a part of the journal for the meeting.

(c) A majority of the total membership of a governing body authorized by law shall constitute a quorum. A member disqualifed by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(d) Actions of a governing body are adopted by a majority of the total membership of the body. All members present shall vote on every question unless they are required to abstain from voting on a question by law. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it is necessary only to so state.

(e) A governing body shall maintain a journal of its official proceedings which shall be a public record.

(f) A governing body may, consistent with law or charter, determine by ordinance its own rules of procedure and order of business.

****Sec. 29.24.160. DEPARTMENTS. Repeal.

****Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor, vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent from the municipality for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office as determined by two-thirds vote of the governing body;

(5) if a member of the governing body, misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 and two-thirds of the members of the governing body concur in expelling him;

(8) no longer physically resides in the municipality and the governing body by two-thirds vote declares the seat vacant.

****Sec. 29.24.175. FILLING A VACANCY. (a) If a vacancy occurs in a governing body, the remaining members shall within 30 days, unless a different period is provided by ordinance, appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to service the balance of the term. If less than 30 days remain in a term, a vacancy shall not be filled.

(b) Notwithstanding subsection (a), if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall within seven days appoint a number of qualified persons to constitute a quorum.

ARTICLE 3. BOROUGH EXECUTIVE AND ADMINISTRATOR.

****Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a municipality is vested in a mayor elected by the voters or by the governing body as provided in this article.

(b) The mayor shall act as ceremonial head of government, execute official documents upon authorization of the governing body, and is responsible for additional duties and powers prescribed by this chapter.

****Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a borough or first class city shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor of a borough or first class city begins on the first Monday following certification of his election.

(b) The mayor of a second class city is elected by and from the council and serves until a successor is elected and has qualified. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately. The mayor of a second class city shall serve a one-year term unless a longer term is provided by ordinance, except that the mayor of a second class city may serve only while he is a member of the council regardless of the term established for the office of mayor.

(c) The governing body may not limit the number of terms a mayor may serve.

****Sec. 29.24.206. QUALFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter of a borough or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor in that city.

(b) Residency requirements for the office of mayor not exceeding three years may be prescribed by ordinance.

****Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same powers and duties as those of the manager.

(b) The mayor may take part in the discussion of all matters before the governing body.

(c) The mayor may not vote on any matter before the governing body, except that the mayor of a first class city may vote in the case of a tie and the mayor of a second class city may vote on all matters as a council member.

Sec. 29.24.220. EXECUTIVE ABSENCE. The borough mayor, subject to assembly approval, shall designate a person to act as mayor during the mayor's temporary absence or disability. If a manager plan has been adopted, the assembly shall designate by resolution a borough administrative officer to act as manager during his absence or disability.

****Sec. 29.24.230. ASSEMBLY PARTICIPATION. Repeal.

****Sec. 29.24.240. VETO. (a) Except as provided in subsections (c) and (d), the mayor may veto any ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items.

(b) A veto must be exercised before the next regular meeting of the governing body and must be accompanied by a written explanation of the reasons for that action. A veto may be overridden by vote of two-thirds of the authorized membership of the governing body within 21 days following exercise of the veto or at the next regular meeting, whichever is later.

(c) The veto does not extend to

(1) appropriation items in a school budget ordinance;

* (2) actions of the governing body sitting as board of equalization or the board of adjustment;

(3) adoption or repeal of the manager form of government.

(d) The mayor of a third class borough and the mayor of a second class city has no veto power.

****Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) The governing body shall, upon two-thirds concurring vote, declare the office of mayor vacant only when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) if, as a member of the assembly or council, he misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office;

(7) is convicted of a felony or misdemeanor described in AS 15.56; or

(8) no longer physically resides in the municipality.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occuring six months before a regular election shall be filled by the governing body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the governing body is chosen, he shall resign his seat on the assembly or

council. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.

(c) Notwithstanding (b) of this section, in a second class city, the office of mayor is filled by and from the council and retains his seat on the council.

ARTICLE 4. CITY COUNCIL.

****Sec. 29.24.280. COMPOSITION, ELIGIBILITY, ELECTION AND TERM. Repeal.

****Sec. 29.24.290. PROCEDURE. Repeal.

****Sec. 29.24.300. FILLING A VACANCY. Repeal.

ARTICLE 5. CITY EXECUTIVE AND ADMINISTRATOR.

****Sec. 29.24.330. Repeal

****Sec. 29.24.340. Repeal.

****Sec. 29.24.350. Repeal

****Sec. 29.24.360. Repeal.

****Sec. 29.24.370. Repeal.

****Sec. 29.24.380. Repeal.

****Sec. 29.24.390. Repeal.

ARTICLE 6. SCHOOL BOARDS.

****Sec. 29.24.240. SCHOOL BOARDS. (a) Each municipal school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large unless a different method of election has been approved by the voters in a regular election.

(b) Nothwithstanding (a) of this section, assembly members in a third class borough serve as the school board and the mayor is president of the school board.

****Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. (a) The governing body may, by ordinance, establish advisory, administrative, technical, or quasi-judicial boards and commissions.

(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the governing body.

ARTICLE 7. UTILITY BOARDS.

* Sec. 29.24.450. UTILITY BOARDS. (a) The governing body of a municipality operating a public utility may provide by ordinance for a managing board of five members and define the board's powers and duties.

(b) As determined by ordinance, members of the board are appointed by the municipal executive and confirmed by the governing body or are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. The term of a utility board member is two years and until a successor is selected and has qualified. However, the governing body may by ordinance provide for a different term not to exceed four years and not altering the current term of an elected incumbent.

(c) Vacancies in the board are filled by the municipal executive. Executive appointments shall be confirmed by the governing body. A person selected to fill a vacancy on a utility board serves until the expiration of the term and until a successor is elected and has qualified.

(d) Unless otherwise provided by ordinance, the board shall

(1) choose its chairman and secretary;

(2) appoint the manager of the public utility for a term not longer than five years and set his salary;

(3) formulate and enforce the general rules and policies of the utility.

ARTICLE 8. OTHER OFFICERS AND EMPLOYEES.

****Sec. 29.24.480. APPOINTMENT OF OFFICERS. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative official. Unless otherwise provided by ordinance, officials described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative official, must be confirmed by the governing body.

Sec. 29.24.490. MUNICIPAL ATTORNEY. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

* Sec. 29.24.500. MUNICIPAL CLERK. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the governing body and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The governing body may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

****Sec. 29.24.510. MUNICIPAL TREASURER. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the governing body directs.

****Sec. 29.24.515. DEPARTMENTS. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

****Sec. 29.24.520. APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS. Repeal.

****Sec. 29.24.530. PERSONNEL SYSTEM. (a) Except as provided by (b) of this section, all appointments and promotions of municipal employees are made on the basis of merit. The governing body may provide for a personnel system and classified service.

(b) By ordinance the governing body may designate confidential or managerial positions which are wholly or partially exempt from the classified service filled by persons who serve at the pleasure of their appointing authority and whose terms of employment are determined by their appointing authority.

ARTICLE 9. ADOPTION OR REPEAL OF MANAGER PLAN.

Sec. 29.24.550. APPLICATION. A municipality may adopt a manager plan of government.

* Sec. 29.24.560. PETITION. Adoption of a manager plan may be initated either by petition or upon motion of the governing body. A petition for the adoption of a manager plan is submitted to the governing body.

The petition must be signed by a number of municipal voters equal to the following percent of the votes cast at the preceding regular election:

(1) 25 percent when the municipality has fewer than 7,500 persons;

(2) 15 percent when the municipality has 7,500 persons or more.

****Sec. 29.24.570. ELECTION. Upon receipt of the petition or upon its own motion, the governing body shall provide by ordinance or resolution for a vote on the question at the next regular or special election.

* Sec. 29.24.580. ADOPTION. (a) If the manager plan is approved, the governing body shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The governing body shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

****Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the governing body may at any time appoint one of its members or other elected municipal official as manager.

* Sec. 29.24.600. TERM. Subject to the contract of employment, the manager holds office at the pleasure of the governing body.

****Sec. 29.24.610. APPOINTMENT OF TEMPORARY OR NEW MANAGER. Repeal.

****Sec. 29.24.620. REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. Within 60 days after repeal, the governing body shall enact provisions for the reorganization of the municipal executive and administrative functions.

****Sec. 29.24.630. POWERS AND DUTIES OF A MANAGER. As chief administrator the manager shall

(1) appoint, suspend, or remove municipal employees and administrative officials, escept as provided otherwise in this title and AS 14.14.065; he may hire necessary administrative assistants and may authorize an administrative official to appoint suspend, or remove subordinates;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program adopted;

(4) make monthly financial reports and other reports on municipal finances and operations as required by the governing body;

(5) exercise care and custody over all real and personal property of the municipality except as provided otherwise in AS 29.36.040;

(6) perform other duties required by law or by action of the governing body; and

(7) serve as personnel officer unless the governing body authorizes him to appoint a personnel officer.

****Sec. 29.24.640. INTERGOVERNMENT APPOINTMENTS. A borough adopting a manager plan, may by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in this chapter. Nothing in this section affects the authority of the governing body to provide for other dual officeholding if the dual offices held are compatible, or otherwise to appoint officials and employees in accordance with law.

ARTICLE 10. MISCELLANEOUS PROVISIONS.

*Sec. 29.24.650. OATHS OF OFFICE. Municipal officials, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk.

*Sec. 29.24.660. BONDING. The administrator and the other municipal officials or employees which the governing body may designate shall give bond in the amount and with the surety prescribed by the governing body. Premiums on bonds are paid by the municipality.

****Sec. 29.24.670. SALARIES OF ELECTED OFFICIALS. The governing body shall by ordinance provide a method of determining the salaries of elected officials. The salary of the mayor may not be reduced during his term of office unless during his term a manager plan is adopted. An elected official may not receive any other compensation for service to the municipality unless otherwise provided by ordinance. Per diem payments or reimbursements for expenses are not compensation under this section.

****Sec. 29.24.680. PROHIBITIONS. (a) Repeal.

(b) Repeal.

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed.

(d) For purposes of this section a school district employee is not a municipal employee.

****Sec. 29.24.690. PERSONNEL SYSTEM. Repeal.

Sec. 29.24.700. REPORTS. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) repealed.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, toegther with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

****Sec. 29.24.710. VACANCIES. Repeal.

CHAPTER 27. MUNICIPAL ENACTMENTS.

* Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCES. (a) In addition to other actions which this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

(1) establish, alter or abolish municipal departments;

**** (2) Repeal.

(3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;

(4) provide for the levying of taxes;

**** (5) make appropriations except supplemental appropriations or transfe- of appropriations;

(6) grant, renew, or extend a franchise;

**** (7) Repeal.

**** (8) adopt, modify or repeal the comprehensive plan, land use and subdivision regilations, building and housing codes, and the official map;

(9) approve the transfer of a power to a borough from a city;

(10) designate the borough seat;

(11) provide for the retention or sale of tax-foreclosed property.

(12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within t imitations set out in AS 36.25.025.

(b) This section grants no authority but requires the governing body to use ordinances in exercising certain of its powers.

Sec. 29.27.020. FORM OF ORDIN.NCES. Repeal.

****Sec. 29.27.030. ORDINANCE PROCEDURE. (a) Ordinances are introduced in writing in the form required by the governing body.

(b) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the governing body or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The governing body shall hear all interested persons wishing to be heard. After the hearing, the governing body shall consider the ordinance and may adopt it with or without amendment. The governing body shall print and make available copies of adopted ordinances.

(c) Ordinances take effect upon adoption or at a later date specified in the ordinance.

* Sec. 29.27.040. EMERGENCY ORDINANCES. (a) To meet a public emergency the governing body may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the assembly or council that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The governing body must print and make available copies of adopted emergency ordinances.

(b) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility for its services.

(c) Emergency ordinances are effective for 60 days.

****Sec. 29.27.050. CODES OF REGULATION. The governing body may in a single ordinance adopt or amend by reference provisions of a standard

published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The governing body shall provide for the adopted code to be sold or available at no charge to the public.

Sec. 29.27.060. CODIFICATION. (a) Each ordinance after adoption shall be codified.

**** (b) Within three years after incorporation of the municipality, the municipal clerk or his designee shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

(c) In (a) of this section, "codified" means

(1) the ordinance has been given a serial number or other permanent identifying number and, bearing a notation of the date of adoption and the designation of the adopting authority, it has been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision which establishes a rule of conduct or behavior and which is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

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

* Sec. 29.27.070. RESOLUTIONS. The govering body shall provide for the maintenance of a permanent file of resolutions that have been adopted.

****Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the governing body may prescribe punishment not to exceed the penalty imposed for a class B misdemeanor. By ordinance mandatory nonsuspendable imprisonment not to exceed five days may be imposed for violation of an ordinance.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy upon application for injunctive relief and a finding of a violation or a threatened violation, the injunction shall be granted. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost, or at no charge.

CHAPTER 30. ELECTIONS.

ARTICLE 1. REGULAR AND SPECIAL ELECTIONS.

****Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Sec. 29.30.030. ELECTION DATES. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

* (b) The governing bdoy may call a special election upon at least 20 days notice.

Sec. 29.30.040. VOTER QUALIFICATION. A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities.

****Sec 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

* Sec. 29.30.060. ELECTION CONTEST AND APPEAL. (a) The governing body may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the governing body by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the governing body shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the governing body and has commenced, within 10 days after the governing body has finally declared the election results, an action in the

superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.24.150(c), of a member of a city council under AS 29.24.290(b) of a borough mayor under AS 29.24.200(f) or of a city mayor under AS 29.24.350 is final and is not subject to judicial review.

ARTICLE 2. INITIATIVE AND REFERENDUM.

Sec. 29.30.090. RESERVATION OF POWERS. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by Sec. 7, art. XI, of the state constitution.

****Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

Sec. 29.30.100. PETITION. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election.

****Sec. 29.30.110. CONTENTS OF PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be;

(7) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition. The statement provided under AS 29.30.110(a)(7) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

* Sec. 29.30.140. PROTEST. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the

municipal executive shall present the protest at the next regular meeting to the governing body which shall hear and decide the protest.

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

****Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the governing body shall hold a special election within 75 days, but not sooner that 45 days after certification.

(b) If the governing body adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

****Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of

certification of a petition, the governing body shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the governing body may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the governing body repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

****Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the governing bdoy after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the governing body for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

ARTICLE 3. RECALL.

****Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

Sec. 29.30.220. GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

****Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signatures and residence addresses of at least ten municipal voters who will sponsor the petition;

(2) The address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularily.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

****Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) The name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be;

(7) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by a number of voters residing within the municipality equal to 35 percent of the number of votes cast at the last regular election for that office held prior to the issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by a number of the voters residing within the district equal to 35 percent of the number of votes cast in the district at the last regular election for that office held prior to the issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficent, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

****Sec. 29.30.260. NEW RECALL PETITION APPLICATION. A new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

* Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall immediately submit it to the governing body.

****Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the governing body, the governing body shall submit the recall at that election.

(b) If no regular election occurs within 75 days the governing body shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the governing body.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The governing body may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

****Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

****Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote on the question is required to recall an officer.

* Sec. 29.30.320. EFFECT. If an incumbent is not recalled at the recall election, an application for a a petition to recall the same incumbent may not be filed sooner than six months after the recall election.

****Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body, the governing body, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the governing body are recalled, the governor shall appoint at least three qualified persons to the governing body. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the governing body are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the governing body may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

CHAPTER 33. POWERS AND DUTIES APPLICABLE TO.
HOME RULE AND GENERAL LAW MUNICIPALITIES.
ARTICLE 1. GENERAL POWERS.

Sec. 29.33.010. GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

**** (7) to levy taxes and special assessments, and impose liens for their enforcement;

(8) to enforce ordinances and to prescribe penalties for violations;

**** (9) to acquire, manage, control, use and dispose of real and personal property, irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under AS 29.36.270(f).

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

Sec. 29.33.010(1) COMBINING OFFICES. The assembly or council may combir two .. more appointive or administrative offices.

* Sec. 29.33.020. EXTRATERRITORIAL JURISIDICTION. ****(a) A municipality may provide, to the extent otherwise authorized by law, parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, transportation facilities, airports, utility services, solid and septic waste disposal, and wharves, harbors and other marine facilities outside its boundaries, subject to AS 29.36.010 and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030. EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250 - 09.55.460.

Sec. 29.33.040. EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.36.100.

(c) AS 29.36.170 - 29.36.200 are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

ARTICLE 2. FACILITIES, SERVICES AND REGULATION.

Sec. 29.33.070. MUNICIPAL FACILITIES AND SERVICES.

****(a) To the extent that a municipality may exercise the powers necessary to provide the service or facility and subject to other provisions of law a municipality may exercise the powers necessary to provide the following:

(1) streets and sidewalks;

(2) sewers and sewage treatment facilities;

(3) harbors, wharves, and other marine facilities;

(4) watercourse and flood control facilities;

(5) health services and hospital facilities;

(6) cemeteries;

(7) police protection and jail facilities;

(8) cold storage plants;

(9) telephone systems;

(10) light, power and heat;

(11) water;

(12) transportation systems;

(13) community centers;

(14) libraries, visual or performing arts centers, or museums;

(15) recreation facilities;

(16) airport and aviation facilities;

(17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 of this chapter;

(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;

(19) parking and parking facilities;

(20) housing and urban renewal, rehabilitation and development;

(21) preservation, maintenance and protection of historic sites, buildings and monuments;

**** (22) Repeal.

(23) emergency medical services and facilities.

**** (24) provide any other facility or service necessary to carry out a public purpose.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec.20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.080. GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance; award contracts for

collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by Sec. 6 ch 76 SLA 1973.

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

Sec. 29.33.090. REGULATORY POWERS. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

**** (4) Repeal.

(5) licensing, impounding and disposition of animals;

**** (6) Repeal.

**** (7) Repeal.

**** (8) Repeal.

**** (9) Repeal.

(10) alcoholic beverages as provided by AS 04.15.070;

(11) recreational devices as provided by AS 05.20.100;

**** (12) Repeal.

**** (13) Repeal.

**** (14) building, housing and related codes, which may be provided by cities within boroughs or, in the manner required in (b) of this section, by first or second class boroughs in the area outside cities or areawide;

(15) condemnation and abatement of public nuisances and hazards;

**** (16) Repeal.

(17) water pollution control;

(18) air pollution control as provided in AS 46.03.140 - 46.03.230;

**** (19) to the extent not otherwise prohibited, any activity affecting the general health, safety, well-being and welfare of its inhabitants;

(20) licensing of day care facilities.

**** (21) municipally owned utilities to the extent not prohibited by AS 42.05.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec. 20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (15), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

****Sec. 29.33.100. MUNICIPALLY-OWNED UTILTIES. Repeal.

Sec. 29.33.110. FRANCHISES AND PERMITS. ****(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, and may permit them the use of streets and other public places under regulations prescribed by ordinance.

**** (b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least a majority of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The

ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.33.120. PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS. 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

****Sec. 29.33.130. HEARING FOR REGULATION OF UTILITIES RATES. Repeal.

****Sec. 29.33.140. RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. Repeal.

****Sec. 29.33.150. FURTHER PROCEEDINGS. Repeal.

****Sec. 29.33.160. APPLICATION. Repeal.

ARTICLE 3. FISCAL DUTIES.

****Sec. 29.33.190. CENTRALIZED PURCHASING. Repeal.

Sec. 29.33.200. MUNICIPAL PROPERTIES. ****(a) Repeal.

**** (b) Repeal.

**** (c) Repeal.

**** (d) The governing body shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality. Each transaction disposing of land or an interest in land which is not subject to a competitive process shall be by ordinance.

**** (e) Repeal.

**** (f) Repeal.

Sec. 29.33.210. BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

**** (b) Repeal.

(c) The governing body may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

**** (d) Repeal.

****Sec. 29.33.220. EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to a unified municipality.

Sec. 29.33.230. POST AUDIT. The governing body shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the governing body

shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

ARTICLE 4. CONSTRUCTION OF POWERS.

Sec. 29.33.260. GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.270. EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.280. ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES.

ARTICLE 1. SCOPE.

Sec. 29.36.010. SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

ARTICLE 2. MANDATORY AREAWIDE POWERS AND DUTIES.

Sec. 29.36.040. EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.050. ASSESSMENT AND COLLECTION OF TAXES. Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 45 of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

****Sec. 29.36.060. PLANNING, PLATTING, AND LAND USE REGULATION.

ARTICLE 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS.

Sec. 29.36.090. ADDITIONAL AREAWIDE POWERS. First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.33.080 and 29.33.090.

Sec. 29.36.100. TRANSFER BY CITY. (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities.

Sec. 29.36.110. PETITION FOR POWER. An election on the question of adding an areawide power may be initiated in two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the borough at the preceding regular election may file a petition with the assembly, or

(2) the assembly may propose the acquisition of the power.

Sec. 29.36.120. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.130. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications.

One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for a long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This section applies to home rule and general law cities.

ARTICLE 4. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES.

Sec. 29.36.160. FIRST CLASS BOROUGH. The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. SECOND CLASS BOROUGH. (a) The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

****(b) A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080;

(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

**** (8) Tax, spend, and regulate for the purpose of promoting economic development.

Sec. 29.36.180. ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the area outside cities at the preceding regular election may file a petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

ARTICLE 5. POWERS OF THIRD CLASS BOROUGHS.

Sec. 29.36.230. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

* (b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and land use regulation in accordance with AS 29.42.010 - 29.42.150 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the

manner provided by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200 - 29.51.510

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

****Sec. 29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD. Repeal.

ARTICLE 6. SERVICE AREAS.

****Sec. 29.36.270. SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the

assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election, or if no voters reside within the area, all owners of real property within the service area must consent in writing to the exercise of the power.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(e) The assembly may exercise or delegate to a service area any powers which may be exercised by a first class borough in the area outside cities. In a second class borough, each exercised or delegated power must be approved by a majority vote at a regular or special election held within the service area. The rate of taxation and the issuance of bonds are subject to assembly approval.

(f) A second class borough may establish a service area by ordinance which may include only vacant, unappropriated and unreserved land owned by the municipality. A second class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second class borough may provide those services in a service area established under this

subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance.

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS.

Sec. 29.39.010. ADDITIONAL POWERS. In addition to the powers granted by ch. 48 of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 of this title for boroughs.

Sec. 29.39.030. DIFFERENTIAL TAX ZONES. Moved to 29.45.535.

Sec. 29.39.040. EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 for boroughs.

****Sec. 29.39.050. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside boroughs shall, and second class cities outside boroughs may, provide for planning, platting and land use regulation within their boundaries as provided by AS 29.42.010 - 29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may provide for planning, platting and land use regulation, as provided by AS 29.42.010 - 29.42.150 for boroughs.

****Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

****Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

****Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

CHAPTER 42. PLANNING, PLATTING, AND LAND USE REGULATION

****Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

Sec. 29.42.020. PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

**** (b) In addition to the responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

Sec. 29.42.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

**** (b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary.

****Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, or for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

****Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

****Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the board of adjustment, hearing officer or other body. A proceeding under this section has preference over all other civil actions and proceedings.

****Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting board necessary for other public uses.

(b) The assembly by ordinance shall establish a platting authority to administer subdivision regulations adopted by the borough and perform other duties. The platting authority may consist of members of the planning commission or of other municipal residents.

****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

****Sec. 29.42.090. PROCEDURE. (a) The platting authority shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the platting authority fails to act, the plat is considered approved and a certificate of approval shall be issued by the platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the platting authority. The platting authority shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting authority shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

****Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

Sec. 29.42.110. INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

****Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Nothwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

****Sec. 29.42.120. PENALTIES. Repeal.

****Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting authority upon petition of the state, the municipality, a public utility, or the owners of a majority

of the land affected by the alteration or replat. No platted street may be vacated, except upon petition of the state, municipality, or a public utility, or owners of the majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

*Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The platting authority shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The platting authority shall also mail a copy of the notice to each affected property owner not signing the petition.

*Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting authority shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

*Sec. 29.42.160. RECORDING. If the alteration or replat is approved, the revised plat must be recorded by the platting authority and is thereafter the lawful plat.

Sec. 29.42.170. TITLE TO VACATED AREA. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

****Sec. 29.42.180. DELEGATIONS. Repeal.

****Sec. 29.42.190. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or with an ordinance adopted under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chpater is guilty of a class B misdemeanor.

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or threatened violation, the superior court shall grant the injunction.

(c) Every day upon which an unlawful act or condition continues shall constitute a separate violation.

CHAPTER 45. MUNICIPAL TAXATION

Article 1. MUNICIPAL PROPERTY TAX

****Sec. 29.45.010. GENERAL PROPERTY TAX. A general law or home rule borough other than a unified municipality, may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A tax if levied on real property, personal property, or both must be assessed, levied and collected as provided in this chapter.

****Sec. 29.45.020. TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, or both, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE (AS 14.17) $

STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100) $

MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE (AS 29.88) $

STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89) $

TOTAL AID $

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

**** (1) municipal, state or federally owned property, except that a private leasehold, contract or other interest in the property shall be taxable to the extent of those interests;

**** (2) household furniture of the head of a family or household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

**** (4) property of a nonbusiness organization or its auxiliary composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

**** (3) Repeal.

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 and 44.62.570.

**** (f) No exemption may be granted under (e) of this section except upon written application

for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 or a date provided by ordinance which is not later than March 31, of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 or a date provided by ordinance which is not later than March 31, of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under (e) of this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under AS 29.53.025(a).

(h) Except as provided in (g) of this section, nothing in (e) - (i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

(i) In (e) - (i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Sec. 29.45.040. PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental

receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

**** (1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage.

(2) classify and exempt from taxation

**** (A) Repeal.

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the

conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

(1) a home rule or first or second class borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or

partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is direcly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later.

****Sec. 29.45.060. MINING CLAIMS. Repeal.

Sec. 29.45.070. FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be

assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file

assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

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for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. TAX LIMITATION. (a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

**** (b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of

residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Sec. 29.45.110. NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. FULL AND TRUE VALUE. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and Secs. 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Sec. 29.45.130. RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

**** (b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the investigation. The assessor may seek a court order to compel entry and production of records.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.

****Sec. 29.45.150. STATEMENT. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a class B misdemeanor.

Sec. 29.45.160. REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to

be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. ASSESSMENT NOTICE. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Sec. 29.45.190. CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

****Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the assembly, municipal residents, or a combination of assembly members and residents. The assembly shall be ordinance establish the qualifications for membership.

(b) The board is governed in its proceedings by rules adopted by ordinance which are consistent with general rules of administrative procedure. The board may alter an assessment of a lot or parcel only pursuant to an appeal filed as the the particular lot or parcel.

(c) Notwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law shall be appealed directly to the superior court.

Sec. 29.45.220. HEARING. (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

**** (c) The only grounds for adjustment are proof of unequal, excessive, improper, or undervaluation based on facts which are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(d) Tne board shall certify its actions to the assessor within seven days.

**** (e) Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

**** (f) An appellant or the assessor may appeal the board's determination to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

Sec. 29.45.230. SUPPLEMENTARY ASSESSMENT ROLLS. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll.

Sec. 29.45.240. TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

**** (e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law, or a disaster declared by the governor under AS 26.23.010 26.23.110.

Sec. 29.45.250. TAX LEVY AND RATE. ****(a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of a general ordinance. The rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Sec. 29.45.260. RATES OF PENALTY AND INTEREST. ****(a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 20 percent may be added to all delinquent taxes, and interest at the rate of 15 percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments penalty and interest on an unpaid installment accrues from the date the installment becomes due.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

**** (c) Repeal.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

**** (b) Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice is given by posting or publication. The siezure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty and interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. If the property is sold for more money than is needed to satisfy the tax, upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

**** (b) If the tax on property described in AS 29.45.080 or on a taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the superior court for judgment;

(2) publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed within the borough or, if there is no newspaper of general circulation distributed within the borough, post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appear on the list a notice advising of the foreclosure proceeding in which a petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspection at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeals as provided in AS 29.33.130(e).

Sec. 29.45.370. ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

**** (b) Repeal.

****Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough releases the judgment obtained under AS 29.45.380. The clerk or his designee shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk or his designee shall collect the recording fee at

the time or redemption and shall file the certificate with the record as part of the judgment roll.

Sec. 29.45.420. ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. EXPIRATION. ****(a) At least 30 days before the expiration of the redemption period the clerk or his designee shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be

sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

**** (b) Conveyance gives the borough or the city clear title except for prior recorded tax liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

**** (d) No deed is invalid for irregularities, omissions or defects in the proceedings under this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person having an interest in the property is forever barred.

Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of

this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist. The ordinance shall contain the information required in (a) of this section.

**** (c) The clerk or his designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the last record owner of the property as his name appears on the assessment rolls of the municipality.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale,

Sec. 29.45.490. PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

****Sec. 29.45.510. REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough or, if in the absence of suit, it becomes obvious to the assembly that judgment for recovery of the taxes would be obtained if legal proceedings were brough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at ~~8~~ eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

(c) The assembly may correct manifest clerical errors at anytime.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter.

The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.535. DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.45.540. LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

**** Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition for second class city incorporation may request that a property tax proposal be placed in the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails.

ARTICLE 4. BOROUGH SALES AND USE TAX

Sec. 29.45.570. SALES AND USE TAX. ****(a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

**** (d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

**** (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION. ****(a) A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question at a regular or special election.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. POWER OF LEVY. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

CHAPTER 48. SPECIAL ASSESSMENTS

****Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The governing body may assess against the property of a state or federal governmental unit and private real property benefited all or a portion of the cost of acquiring, installing or constructing capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an improvement refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the governing body of the owners of one-half in value of the property to be benefited or

(2) the governing body.

Sec. 29.48.020. PROCEDURE. ****(a) The governing body may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvments, including and subject to the following:

**** (1) a procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

**** (4) a resolution or ordinance of the governing body determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

**** (6) published notice of each public hearing required by this section and mailing notice to each record owner of real property within the special assessment district;

**** (7) a resolution or ordinance confirming the special assessment roll for the local improvement;

* (8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 percent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 percent, except upon approval of not fewer than three-fourths of the governing body.

**** (b) To the extent that the governing body does not prescribe a procedure for special assessments as permitted by this section, the governing body shall comply with the special assessment procedures set out in AS 29.48.030 - 29.48.100.

Sec. 29.48.030. CREATION OF DISTRICT. **** (a) When an improvement proposal has been filed with the municipal clerk and presented to the governing body, it shall find by resolution or ordinance whether (1) the improvement requested is necessary and should be made, and (2) if by petition the request has sufficient and proper petitioners. The findings of the governing body are conclusive.

(b) If the governing body approves an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The governing body shall set a time for public hearing on the improvement plan and the period for filing objections to the plan. The governing body shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

****Sec. 29.48.040. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate "unknown owner."

****Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of 60 days after publication of notice. The governing body may by resolution or ordinance approve the plan and order the improvement subject to the limitation of (b) of this section.

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the governing body may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 percent. A revised plan shall be approved and adopted as an original plan in accordance with AS 29.48.030.

Sec. 29.48.060. ASSESSMENT ROLL. ****(a) At any time after project approval, the governing body shall assess the authorized percentage of the cost against property within the district in proportion to benefit received.

**** (b) The special assessment roll shall contain property descriptions, names of record owners and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing.

****Sec. 29.48.070. HEARING AND SETTLEMENT. After the public hearing, the governing body shall correct errors and any inequalities in the roll. If an assessment is increased, a new hearing shall be set and notice mailed, except that a new hearing and notice is not required of all record owners of property subject to the increased assessment consent in writing to the increase. Objections to the increased assessment shall be limited to record

two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560-44.62.570.

**** (b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

**** (1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed and the time of payment fixed by the governing body. Within one year of the date the assessment roll is confirmed the governing body for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the deparment by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest

which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070-34.10.220. The lien becomes immediately due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

Sec. 29.48.100. REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

****Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment district is created, there may be included in the assessments

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs of all engineering and surveying to be done in connection with creating the district or improvement;

(3) the cost of mailing and publishing of notices;

(4) interest on interim financing;

(5) the cost of legal services and other expenses incurred in the formation of the special assessment district;

(6) the cost of completing the improvement and financing the improvement, including the issuance of any bonds.

(b) The total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

Sec. 29.48.110. OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

****Sec. 29.48.115. INTERIM FINANCING. (a) The governing body may provide by resolution or ordinance for the issuance of notes in payment of the costs of any local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance and shall be redeemed either in cash or bonds for the improvement project.

(b) All notes issued against assessments shall be claims against the assessments which are prior and superior to a right, lien or claim of a surety upon the bond given to the municipality to secure the performance of its contract for a local improvement project or to secure the payment of persons who have performed work or furnished materials under the contract.

(c) The municipal treasurer may accept notes against special assessments upon conditions prescribed by the governing body in payment of

(1) assessments against which the notes were issued in order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of assessments; and

(3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

**** (c) Before the governing body may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund.

CHAPTER 51. MUNICIPAL DEBT.

ARTICLE 1. REVENUE ANTICIPATION NOTES.

Sec. 29.51.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

Sec. 29.51.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

Sec. 29.51.030. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New

notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

Sec. 29.51.040. PRIORITY OF REPAYMENT. The payment of the principal and interest on revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

****Sec. 29.51.050. Repeal.

ARTICLE 2. BOND ANTICIPATION NOTES.

Sec. 29.51.080. BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance.

Sec. 29.51.090. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

Sec. 29.51.100. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue.

Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

Sec. 29.51.110. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

Sec. 29.51.120. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

Sec. 29.51.130. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

Sec. 29.51.140. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

****Sec. 29.51.150. Repeal.

ARTICLE 3. GENERAL OBLIGATION BONDS.

Sec. 29.51.180. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

Sec. 29.51.190. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

****Sec. 29.51.200. Repeal.

Sec. 29.51.210. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

Sec. 29.51.240. REVENUE BONDS. ****(a) A municipality may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenue of the public enterprise or corporation.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage

loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

**** (c) Repeal.

Sec. 29.51.250. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance.

Sec. 29.51.260. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.270. Repeal.

****Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

ARTICLE 5. REFUNDING BONDS.

Sec. 29.51.300. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance for the issuance of general obligation or revenue refunding bonds.

Sec. 29.51.310. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

Sec. 29.51.320. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

Sec. 29.51.330. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to Sec. 180 of this chapter. Revenue refunding bonds are payable according to Sec. 220 of this chapter.

****Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation or revenue refunding bonds may, at the discretion of the governing body, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

****Sec. 29.51.350. OTHER MUNICIPAL FINANCING. (a) A municipality may authorize by ordinance or resolution the issuance of revenue bonds to finance any project which serves a public purpose, and the bonds shall be secured and payable solely from the revenue and property of the project.

(b) Bonds issued under this section are not a debt or liability of the municipality and do not create or constitute an indebtedness, liability or obligation of the municipality nor do they constitute a pledge of faith, credit or taxing power of the municipality. Each bond must contain on its face a statement that the principal and interest on the bond are payable solely from the revenues and property of the project being financed, that the municipality is not obligated to pay the principal or the interest on the bonds except from those sources, and that neither the faith and credit nor the taxing power of the municipality is pledged to the payment of principal or interest on the bond.

(c) A municipality may

(1) loan the proceeds of the bonds issued under this section;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the project being financed;

(3) enter into covenants and agreements concerning bonds issued under this section which the municipality determines to be desirable;

(4) provide for any matter which effects the security of the bonds.

(d) In this section

(1) "bonds" means bonds, notes, or other evidence of indebtedness;

(2) "project" includes but is not limited to commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism, and medical projects and programs.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

****Sec. 29.51.370. SALE. Bonds and notes issued under this chapter may be sold at either public or private sale by the municipality in the manner and at the price it determines.

****Sec. 29.51.375. FORMS AND TERMS. The governing body may by ordinance or resolution fix the date, denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and other requirements for issuing bonds or notes. If an official whose signature appears on the bonds or coupons ceases to be an official before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.380. INTEREST RATE. The interest rate payable on a bond or note shall be determined by the governing body and is not subject to the usury rate limitations of AS 45.45.010.

****Sec. 29.51.390. Repeal.

Sec. 29.51.400. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

****Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a nonareawide basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and only the full faith and credit of the area voting on the indebtedness is pledged for the payment of the debt.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

****Sec. 29.51.420. Repeal.

****Sec. 29.51.430. Repeal.

****Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

CHAPTER 62. STATE PROGRAMS

No change.

CHAPTER 65. GENERAL GRANT LAND

No change.

CHAPTER 68. MUNICIPAL PROGRAMS

ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT

Repeal.

ARTICLE 2. HISTORICAL DISTRICTS.

No change.

CHAPTER 71. GENERAL PROVISIONS

No change.

# SCOMM

#23:4

Lee Sharp 12-4-80

COMMENTS FOR CONSIDERATION ON THE PROPOSED CHAPTER 45
ON MUNICIPAL TAXATION

29.45.010. The authority to levy a property tax should be extended to unified municipalities.

29.45.020. The use of the disjunctive in the phrase "real or personal property" implies that a municipality may levy either real or personal property taxes. This conflicts with the requirement set forth in the preceeding section that if a property tax is levied it must be levied on real and personal property.

29.45.020(c). I suggest that an additional clause be added to the last sentence of this subsection which would provide that if DCRA has not notifed a muncipa'ity of the amount it will receive under the equalization and state aid programs at least 30 days prior to the date the municipality gives final approval to its budget, the municipality need not include the mill or tax equivalent attributable to the program and DCRA will not withhold allocations for such failure to provide notice.

29.45.030(a)(3). Shouldn't we add the requirement that property under this section be owned by and used exclusively for the nonprofit religious, charitable, etc?

29.45.030(b)(3). If a lot which is adjacent to the residence of of a pastor is a 10 acre lot and a quarter acre of that lot is used to support the residence, is the entire lot exempt? If not, perhaps the substitution of the word "property" or a similar word for the word "lot" would provide some justification for prorating in such cases. The other alternate would be to make it clear that the entire lot must be used to support the structure in order order to obtain an exemption.

29.45.030(b)(4). Same comment here as above. The exemption probably should not go to any more property then is actually required to meet off-street parking requirements. Either the entire lot should be required and devoted to off-street parking or the language should be changed to indicate that a proration may occur.

29.45.030(c). The reference to section (b) is probably superfluous as the property which is set forth in (b) is merely a definition of property which falls under (a).

29.45.030(j). Although this was just enacted by the Legislature, I would like to see it dropped as personally, I don't think that such tax incentives are significant in causing persons to install fire protection systems. If fire protection systems are needed they should be required by code.

29.45.040. I think we ought to find a different place for this section as it has nothing to do with the levying or collection of taxes.

29.45.050(b)(1). The $5 and $15 tonnage-based tax on vessels should be raised to something that makes it worthwile to administer the tax; that, or the dollar limiation should be deleted to permit municipalities to establish the tax rate per ton.

29.45.060. If patented and unpatented mining claims are to be made exempt then this subject should be dealt with under the exemption section and not a separate section. Also, I do not believe that nonproducing patented mining claims should be exempt from property any more than any other nonproductive, privately owned property is exempt. Also, if mining claims valued at $200 are to much trouble, perhaps raising the value from $200 to $1000 could be considered.

29.45.090(b) and 100(b). Section 90(b) apparently sets a limit from property tax of $1500 per person. Section 100(b) sets a per capita limit in terms of "tax revenues from all sources." The "all sources" phrase is used twice in Section 100(b). The sections should be clarified to indicate whether the limitation is one which looks to all tax revenues or only to property tax revenues.

29.45.110. The references to Sections 45 and 50 in line 19 should be changed to 90 and 100.

29.45.120. The reference to Section 60 should be deleted if mining claims are exempted and moved to the exemption section. Also, would it be worthwhile to attempt to address the method of evaluation of property which is in the jurisdiction for only part of a year and property which is involved in inter-borough and inter-state commerce. CSSB 582 (though not adopted) addressed this matter as to transient aircraft.

29.45.120(b). I suggest this section be rewritten to delete the last sentence and to indicate that a municipality may provide by ordinance for the assessment (valuation) of business inventories based on the average monthly method etc.

29.45.120( ). The method evaluation of a possessory interest in tax exempt property is not addressed in the statutes. While we have a Superior Court case or two which indicate that it is the feeless reversion method, it might not hurt to have this established by statute. Some states go so far as to say that the value of a possessory interest in tax exempt land is the value of the fee. This latter approach is probably much simpler to apply, it might have an equal protection weakness.

29.45.140(b). I suggest dropping the phrase "if refused entry" and adding at the end of the sentence "or production of records."

29.45.150. I suggest we raise the fine to something more in keeping with inflation.

29.45.180(a). I question the wisdom of requiring notice on the assessment notice of a summary of when unlevied taxes are payable delinquent and subject to penalty and interest (all of which is unrelated to the assessment proceedings) but not requiring the inclusion of a date when the Board of Equalization will sit (something very directly related to the assessment proceeding). I think we are asking for more administrative problems by not requiring that the date be set prior to the sending of assessment notices than we would be eliminating to accommodate those assessors and councils or assemblys which can't seem to get their act together well enough to establish a hearing date sometime 45 or so days down road.

29.45.180(b). I suggest that if in the preceding Section 170 we are going to allow any person having an interest in the property to be listed on the records that it be made clear that notice is sufficient if sent to the record owner, the first person listed as grantee on a multiple grantee deed or if sent to a person designated by such first grantee or record owner.

29.45.210. Should we change the first sentence to read "The assembly, or council of a city outside a borough, sits. . . ." or have we dealt elsewhere with the applicability of these procedures to such cities? In the third line we could delete the word "borough" and I believe we should add the word "it" before the word "may". If we are going to include reference to city councils, there are two additional references to assembly in this section which should be modified appropriately.

29.45.220(and 210). Section 210 speaks to appeals from "determinations" of the assessor. Section 220, however, appears to deal with assessment (value) determinations of the assessor. I suggest we clarify whether or not the Board of Equalization will hear appeals on the assessor's determination of the taxability of property.

29.45.220(e). I suggest that if assessors are concerned over the June 1 certification date applying to supplemental roles that Section (e) be rewritten to delete the reference to June 1 and merely require that the assessor enter the changes and certify the final assessment role immediately upon receipt of certification of the board changes.

29.45.230. I suggest that the assessing officer's suggestion not be included. I would hope that merely because the state assessor requires certain assessment information for reports, revenue sharing, etc. a municipality not be foreclosed from establishing a supplementary assessment role for property which comes to its attention during the latter part of the year. The assessing officer's suggestion would effectively preclude supplemental assessment roles for property which is discovered much later than the first of July.

29.45.250. I suggest that the reference to the date of equalization be deleted so that this may be set by motion. This will also provide a little more flexibility in the event a municipality appoints a board as the board should be the one which sets its date of hearing. As to the rate of levy and the date when taxes become delinquent, I suggest that we change the language to indicate that these may be fixed by ordinance or resolution.

29.45.260(a). The penalty and interest should be raised substantially. I just noticed that in the territorial days, as far back as the 1940's when interest rates and inflation were unbelievably low, the penalty limit for property tax delinquencies was 15% and the interest limit was 12% per year. I'd suggest we shoot for 20% penalty and a 15% interest limit. The penalty and interest appear in several places in Section 260.

29.45.300(a). I suggest that the phrase "assessed against" in line 22 should be "levied on" as property is assessed (valued) while taxes are levied.

29.45.300(b). I suggest that we permit the collection of taxes levied on trailers, mobile homes, etc. which are classed as real property to be collected in either or both an action against the property or a personal action against the owner. By the time the municipality gets around to collecting its delinquencies, the trailer may well have been sold and even removed from the taxing jurisdiction.

29.45.310. Would it be appropriate to stick a tactful reminder in the second sentence of this section that the procedure for distraint and sale include a hearing to which the owner is invited?

29.45.320(b). The reference to Section 40 should be changed to 80. Also, I believe the reference to "leasehold interest in tax exempt property" should be changed to "private interest in tax exempt property" as a leasehold is not the only type of taxable interest in tax exempt property.

29.45.350. I would suggest that this section be changed so that it is clear that failure to notify the lienholder does not defeat any of the rights of the municipality to foreclose on and sell the property. I would also suggest the deletion of the requirement that the notice be sent by certified mail.

29.45.400(a). The reference to Section 350(a) should be 440(a).

29.45.400(b). I think this section should be deleted as it appears to attempt to create a situation whereby a lienholder can carve out an interest in foreclosed property by merely paying his prorata share of the amounts due. If we are going to allow a lienholder to establish an interest in foreclosed property which is not extinguished by sale of the property, why aren't we allowing those persons who have a partial interest in the fee to do the same thing? There is no need for this section. A lienholder who redeems the property by paying the amounts due is given a lien for that amount under Section 420. Section 420 could be changed to make such lien paramount to others.

29.45.410 and 400(a). Section 400(a) provides that redeemed property is still subject to all taxes, assessments, liens, etc. as though it had continued in private ownership but that only the amount set forth in the judgment and decree must be paid in order to redeem the property. Section 410 then provides that upon payment of the redemption money all claims of the municipality are released. This is in conflict with the provision that taxes, assessments, liens, etc. accrue as though the property had continued in private ownership. The release language should be limited to claims which are the subject of the judgment and decree.

29.45.460(a). The reference to Section 360 in line 20 should be to 450.

29.45.460 and 470. I think these two sections ought to be dropped. The owner of the property has had ample opportunity to redeem his property and notice at every turn. There is no reason to allow his existence to create a cloud on property which the municipality may wish to use or later dispose of. If we are going to retain these sections, the interest rate in Section 470 ought to be raised to the same as is established for delinquent taxes and the municipality ought also to be able to collect interest on the taxes which would have been levied and paid had the property remained in private ownership. This interest increment does not appear to be authorized under Section 470.

29.45.480(b). I believe the reference in line 11 to Section 350(a) should be to 440(a).

29.45.510. Would it be worthwhile to add a subsection here or a new section relating to the right of a person who has paid taxes on the wrong property.

29.45.570. I believe the word "or" between the word "sales" and "rents" should be a comma.

29.45.570(d). I suggest the 8% limit on delinquent tax payment is a bit low.

29.45.590(a). I suggest the last two sentences of this section be dropped. I also suggest that subsection (b) be dropped. Perhaps the entire section can be written in a single sentence reading "A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question of approval at a regular or a special election called for that purpose." date

use 29.45.590(a)

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November 18, 1980

RECEIVED
NOV 19 1980
Dept. of Law
Administration

Ted Berns, Esq.
Municipal Attorney
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502

Dear Ted:

I have reviewed the draft of Chapter 58 of the Municipal Code regarding Municipal Debt. I have a few suggestions as follows:

1. AS 29.58.030. This section was repealed in 1974. I don't know why it should be reenacted.

2. AS 29.58.160(a). Delete "ordinance." Before the last Title 29 revision most communities put bond questions on the ballot by resolution. Since the public has the final say on bonds at the election the additional public hearing that an ordinance provides seems superfluous. The ordinance procedure also causes timing problems due to the two reading requirement. Since small communities often meet only once or twice per month this can be serious.

3. AS 29.58.200. Subsection (a) seems superfluous; given the broad authority of (c). Thus (a) could simply be deleted. I suggest deleting "except taxes" in (c) since a project may need a limited tax backing short of full faith and credit to be marketable. The Palmer Industrial Park bonds were sold by pledging sales tax revenues. Tax increment financing is another possibility. Similarly if (a) is retained "solely" should be deleted.

4. Industrial Development Bonds. General law municipalities should have the authority to issue the IDB's permitted by Section 103(c) of the Internal Revenue Code as well as home mortgage bonds. A new section permitting this is attached.

5. AS 29.58.280 and 29.58.300. Delete "at par" and "for an amount not less than par and accrued interest" from 29.58.280 and use alternate 29.58.300. The ability to sell at less than par can be a useful marketing tool.

6. AS 29.58.310. Delete this section which serves no purpose.

add 7. AS 29.58.340(c). Add the following sentence at the end: "The full faith and credit of the area voting on the indebtedness is pledged for the payment of the debt." This makes it clear that there can be a service area general obligation bond.

8. AS 29.58.360. Add a new section as follows:

add AS 29.58.360 Service Area Debt. The indebtedness of a service area issued pursuant to §340(a)(3) of this chapter shall remain the indebtedness of the area incurring the debt notwithstanding a subsequent determination by a court that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. Not less than all property within the service area remains subject to taxation to pay the bonded indebtedness.

The Alaska Constitution prohibits the establishment of service areas when the function can be performed by a city or another service area. No guidelines have ever been established, leaving the legality of some areas in doubt. This language provides for the continuation of a debt should such an area subsequently be declared to have violated constitutional standards. In effect it creates a de facto service area for the purpose of the debt.

Very truly yours,

WOHLFORTH & FLINT

By
Robert B. Flint

RBF/am
Attachment
cc: Senator Arliss Sturgulewski

Sec. 29.58.200(c) [or(d) if (a) is retained]. A municipality shall have the power to borrow money and to issue bonds or other evidence of indebtedness for the purpose of promoting economic development in and adjacent to the municipality. Such indebtedness may be authorized by the municipality without a vote of the electorate for obligations which are defined as industrial development bonds by the United States Internal Revenue Code, as amended. The municipality may, with respect to the issuance of such debt, acquire, purchase, lease, construction, sell, sublease or otherwise dispose of projects by action of the council or assembly. No bonds or other indebtedness issued by the municipality under this section shall be repayable from taxes levied by the municipality nor be a charge against the general credit of the municipality.

# TITLE 29 REVISION COMMISSION
## NEWS RELEASE

Alaska Legislative Resolve number 39 directed the Alaska Legislative Council to revise Title 29 of the Alaska Statutes (Municipal Government) with the assistance of a Policy Advisory Group. A group was appointed consisting of both public and legislative members. Members are:

Senator Arliss Sturgulewski-Chairman, Anchorage
Senator Bob Mulcahy, Kodiak
Representative Margaret Branson, District 5
Representative Charles Parr, Fairbanks
Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
James Kohler, Manager, City of Yakutat
Ronald Larson, Mayor, Matanuska-Susitna Borough
Gene Moore, Manager, City of Kotzebue
Donna Sherby, City Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough

Ex-Officio Members are:
Ginny Chitwood, Alaska Municipal League,
Palmer McCarter, Department of Community & Regional Affairs
Phil Smith, RuralCAP

The first meeting of the Policy Group was in Anchorage on the 27th and 28th of August, 1980. At that meeting the Policy Group discussed the direction their policy decisions would take. It was agreed that Title 29 needed to be clarified so that elected officials could understand Title 29 without the help of attorneys, and that there needed to be greater self determination and latitude for local governments. A Technical Revision Committee was appointed to perform actual drafting. It is composed primarily of attorneys with expertise in municipal law.

The second meeting of the Policy Advisory Group was held in Anchorage on September 29th and 30th, 1980. Presentations were made by representatives of the Department of Environmental Conservation, the Department of Community and Regional Affairs, the Department of Health and Social Services, the Haines Borough Assembly, and Tanana Chiefs Conference, Inc. The Policy Group reviewed the work that had been done by the Technical Committee.

Chairman Sturgulewski attended the Alaska Federation of Natives convention and a meeting of the Alaska Village Council Presidents to answer questions and receive comments.

The latest Policy Advisory Group meeting was held in conjunction with the Alaska Municipal League's convention in Fairbanks, 10 and 11 November, 1980. Members of the public were heard including representatives from the City of Fairbanks, the City of McGrath, the City of Nome, the City of Saxman, the City of Homer, the Kodiak Island Borough, and the City of Unalaska. The Policy Group reviewed the work that the Technical Committee had accomplished.

To date changes in Title 29 granted preliminary approval by the Policy Advisory Group include a reorganization of the order of the sections, clarification and technical clean-up of the wording in many of the sections, and substantive changes in the area of initiative and referendum, recall, limitations on home rule powers, and procedures dealing with adoption of home rule or unification charters. However, all decisions made by the Policy Advisory Group are subject to further consideration and possible revision.

Copy

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980**

Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and a political subdivision. It is a city of the first class or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

EXPLANATION: A reference to unified municipalities along with a cross-reference to provisions dealing with the organization of unified municipalities has been included so that this section will provide a complete definition of home rule. No substantive change.

Sec. 29.06.050. Repeal

EXPLANATION: This section deals with the transition period following the 1972 revision of the Municipal Code and is of no effect. The reclassification of municipalities to conform to provisions of the 1972 Code were to have been essentially completed within two years of September 10, 1972.

Write new transition as last draft

Sec. 29.09.180. ORGANIZATION GRANTS. ~~(a)~~ For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or, for a second class city, reclassified after January 1, 1981 is entitled to an organization grant of $150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organization grant.

EXPLANATION: Since no new municipality formed is likely to contain a great enough population to qualify for a grant over the minimum, the provision tying population to the amount of the grant has been eliminated in favor of a flat amount. The amount of the grant has been raised from $25,000 to $150,000 in recognition of the fact that setting up a government has become an expensive proposition and to encourage the formation of local governments despite this expense. In addition, a second class city will qualify to receive that grant as well as a city within an organized borough, whereas the existing law ties the amount of a grant to a second class city and to a first class city in an organized borough to its population. This change encourages the formation of local governments in rural areas where the population may be small. The formation of a city is expensive regardless of the size of the population. It is felt that the grant should be used to cover any initial government operation, so the terms "development and interim" were eliminated as unduly restrictive. The increased grant will be available only to a municipality formed after January 1, 1981.

Do we need a diff. formula for formation of boroughs vs cities? Seed money?

Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION.

(b) If at least one nomination of a qualified charter commission candidate is not filed in accordance with AS 29.12.240. for each available seat the resolution or petition for unification is void and no election on the question of unification shall be held.

re-word
2nd class to be cities included in area outside cities.

EXPLANATION: Subsection (b) has been added to avoid the expense and inconvenience of an election on unification where there is not enough interest in the question to assure that a charter commission can be formed. An alternative would be to provide for appointment of members when not enough nominations are received, but it was felt that in such cases basic interest in unification was probably lacking so the process should be halted.

Sec. 29.15.020. NOMINATION.

(b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or city council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

EXPLANATION: Subsection (b) has been added to avoid the expense and inconvenience of an election on the question of forming a charter commission if not enough nominations for commission members are received. An alternative would be to provide for appointment of members in such cases but it was felt that failure to nominate a sufficient number of commission candidates indicated a general lack of interest in the formation of a charter commission.

Sec. 29.15.050. INITIATIVE AND REFERENDUM. (a) A municipal charter shall provide procedures for initiative and referendum.

EXPLANATION: This is technical clean-up creating no substantive change in existing law. However, it has been argued that the phrase "charters shall provide the procedures" refers to the procedures set out in Title 29 applicable to general law municipalities. Consequently, "the" has been dropped in order to clarify the fact that home rule municipalities are free to establish procedures which may differ from those set out in Title 29.

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS.

(13) AS 29.24.340(a) (election and term of mayor) Repeal.

(19) AS 29.30.040 (voter qualification)

(28) AS 29.33.220 (expenditure of borough revenue) Repeal.

EXPLANATION: AS 29.24.340(a) provides that a home rule city may prescribe additional residency requirements by charter for eligibility to hold the office of mayor. This is not a limitation and does not properly appear in the list of home rule limitations. That section also stipulates that a mayor must be a municipal voter, but it is felt that those sort of administrative decisions ought to be left up to a home rule municipality.

AS 29.30.010 provides that three judges shall be appointed for each polling place and that the assembly or council prescribe rules for conduction elections. These appear to be administrative decisions properly left up to a home rule municipality. This section is eliminated from (19) as a limitation.

AS 29.30.030(b) provides that the assembly or council may call a special election upon at least 20 days notice. This is an administrative matter properly left up to home rule municipalities and was eliminated from (19). However, it was felt that AS 29.30.040 dealing with voter qualifications ought to be included as a limitation on home rule powers to preserve uniformity across the state in this area.

AS 29.33.220 provides that revenues collected on an areawide basis may be expended on general administrative costs and on areawide functions only. Likewise, revenues collected outside cites may be expended on general administrative costs and in providing services outside cities. It was felt that home rule municipalities ought to be given more flexibility in managing revenues.

Sec. 29.65.050. FULFILLMENT OF LAND ENTITLEMENTS.

(j) Notwithstanding AS 29.65.010 - 29.65.130, a municipality which is unable to satisfy its entitlement due to a shortage of vacant, unappropriated, unreserved general grant land suitable for residential, commercial or industrial purposes may fulfill its remaining entitlement by selection of other state land which is vacant, unappropriated and unreserved.

EXPLANATION: This added subsection addresses a problem which has come up when a municipality is formed in an area with little vacant state land nearby. This allows a municipality the option of selecting vacant state land which is not general grant land if general grant land is unavailable.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980**

Sec. 29.30.01?. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. ~~If possible, a judge shall be a voter of the precinct for which he is appointed.~~

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. "The municipality may not alter voter qualification requirements of this title" was deleted because that issue is addressed in AS 29.28.030. Subsection (b) which makes this applicable to home rule municipalities was deleted to conform to the change suggested in the proposed draft of AS 29.15.110.

Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance the procedure for the nomination of elected officers by declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

EXPLANATION: This is a technical revision which does not substantively alter existing law.

Sec. 29.30.030. ELECTION DATES. (a) Unless otherwise provided by ordinance, a regular municipal election shall be held annually on the first Tuesday of October.

EXPLANATION: This is a technical revision assuring maximum flexibility for local governments.

Sec. 29.30.040. VOTER QUALIFICATION. (a) A person may vote if he meets the requirements of AS 15.05.010 - 15.05.040, has been a resident of the municipality for 30 days immediately preceding the election, is registered to vote in state elections and is not disqualified under article V of the state constitution.

(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of the precinct, district, or service area in which he votes.

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

EXPLANATION: A reference has been provided to the voter qualification requirements for state elections. A municipality has been granted the flexibility of imposing a requirement that a person be a resident of the area in which he votes to avoid the possiblity of people voting on nonareawide matters who will not have to live with the outcome of the vote.

Hold

Sec. 29.30.050. MAJORITY ELECTIONS. (a) ~~A municipality~~ Unless otherwise provided by ordinance there shall be may by ordinance provide for a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

(c) Unless provided otherwise by ordinance, a runoff election shall be held within three weeks from the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This has been liberalized to allow a municipality to provide for this by ordinance for certain offices only. Otherwise, the person who receives the greatest number of votes is elected. The provisions specifying when a runoff must be held and the notice requirements is no longer mandatory. In addition, the procedure set out in (c) for municipalities which desire more procedural guidance allows three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoffs and hold them at the same time.

Sec. 20.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by at least ten municipal voters who will sponsor the petition, shall contain the address to which all correspondence relating to the application may be sent and shall be filed with the municipal clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form, and, for an inititative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would not be unenforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

EXPLANATION: This section is new. The first part is modeled after section 2 of the intiative article in the state constitution. As drafted, the section would require the clerk to review an initative for substantive legality, with his decision subject to appeal. This would allow for a judicial determination of the legality of an initiative prior to incurring the expense of an election.

other sponsers may be added prior to filling of petition ~~at any time~~ by submitting names to clerk.

Sec. 29.30.110. PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. The petition shall Add each

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days of the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing address of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signtures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, ~~,that each signer had an opportunity before signing to read the petition, that he believes each signer to be a municipal voter~~, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit

Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days ~~of~~ after the date the clerk issues the petition. The statement provided under AS 29.30.110 (a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular municipal election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signtures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: This section carries forward the 60 day signature gathering period. It does not eliminate the possibility of an initiative or referendum on a matter which affects only a service area, but it does require that such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate ~~and vote on~~ a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body, ~~and service areas will then have the authority to become essentially automomous units of government~~. Changes have been made to require rejection of a signature not accompanied by a legible residence address and to allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

15% to regardless of size

Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) The pages of a petition shall be assembled and filed as a single instrument. Within ten days of the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may ~~be amended or~~ supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures, the sponsors have only ten days to gather the signatures and may not use signatures which were gather prior to the first filing but not submitted, and that they may not use signatures gathered during the period in which the clerk is checking the petition.

Sec. 29.30.140. PROTEST. Repeal

EXPLANATION: Since the clerk determines the sufficiency of a petition, it was felt that allowing a protest to the municipal executive when a petition is rejected to be considered by the assembly or council would serve no purpose. The assembly or council would simply rely upon the clerk, since he has the voter registration records.

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new application for a petition on substantially the same matter may not be filed sooner than six months after the petition is rejected.

EXPLANATION: This section was changed slightly to take into account the application procedure and to clarify that a new petition may not be filed dealing with the same matter, but that a petition on a different matter may be filed sooner than the six month period.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council the clerk, after certifying it, shall present it to the assembly or council at its next regular meeting or special meeting called for that purpose.

(b) Unless substantially the same measure is adopted, an iniatiative measure presented to the assembly or council shall be submitted to the all voters of the municipality at the next regular municipal election held more than 45 days after the measure was presented to the assembly or council. If the assembly or council adopts substantially the same measure and if it is not vetoed, the petition is void and the question shall not be submitted to the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

EXPLANATION: The changes allow for the submission of a measure at any time of the year, but provides it would be placed before the voters at the first regular election occurring 45 days after submission to the assembly or council. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer makes that determination. This section requires an areawide vote whether the mattter is areawide or nonareawide because a service area should not be allowed to become automonous.

160
use
lang. of 170
clerk to put on
ballot ~~unless~~
if assembly does not
act

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote, the clerk shall submit the matter to the voters All of the municipality at the next regular or special election. If no regular or special election occurs within 75 days of the certification of a petition, the assembly or council shall hold a special election within 75 days of filing.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it is suspended, becomes immediately effective. Upon certification of the election

EXPLANATION: The ability to suspend an ordinance or resolution which had taken effect when a petition is filed within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as it is covered under AS 29.13.080. This section once again requires submission of the question to the areawide voters.

Sec. 29.30.180. EFFECT. (a) An ordinance or resolution adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed may not be repealed ~~or amended~~ by the assembly or council within ~~two~~ one year years of its effective date. It may be amended at any time.

(b) If an ordinance or resolution is repealed in an referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified by the assembly or council.

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition application process.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980**

Sec. 29.30.210. RECALL. (a) An application for a petition for the recall of ~~a mayor or a member of the assembly, council, or~~ a person who holds an elective office of a home rule or general law school board may be filed with the municipal clerk after the official has served six months of the term for which elected or appointed.

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

EXPLANATION. This section lists the municipal officials which may be recalled rather than providing for the recall of an elected official in order to avoid the possibility of recalling service area board members who may be elected officials. It clarifies the dates to be used in determining when the six month period has run and includes the possibility of recalling officials who are appointed to elected positions.

use existing law but add appointed -

Sec. 29.30.220. GROUNDS. Grounds for recall may include any grounds which constitute failure to perform official duties to the satisfaction of petitioners.

EXPLANATION: This section broadens the grounds for recall in order to avoid forcing petitions to name a ground in a petition which has no connection with the real reasons which may inspire a recall effort. It is felt that an elected official ought not to be subjected to being labeled incompetent or guilty of misconduct or failure to perform his duties in a petition when the reason for a recall effort may not be based on any of those things.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980**

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. An application for a recall petition shall be filed with the municipal clerk (mine) and shall contain

(1) the signature and residence address of at least ten voters who will sponsor the petition; ← additional sponsors may be added at any time see pg. 14

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity as to specific actions~~, pertinent ordinances, laws, regulations, or judicial decrees~~.

EXPLANATION: This section requires a submission of an application to the clerk for a recall petition. The clerk will provide petition forms and the application procedure is necessary in order to allow the official sought to be recalled to be given an opportunity to have his statement included on the petition.

ok — see (a)(b) on (j)(2)

add by submitting these names to the clerk

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall submit a copy of the application to the official who is the subject of the application. The official shall have ten days from receipt of the application to provide the clerk with a statement of 200 words or less if he so chooses.

(b) The clerk shall prepare a recall petition containing

(1) the name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application;

(3) if provided, the statement of the official sought to be recalled;

(4) the date the petition is issued by the clerk;

(5) notice that signatures must be secured within ~~30~~ 60 days of the date the petition is issued;

(6) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing address of each signer;

(7) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, that each signer had an opportunity before signing to read the petition, that he believes each signer to be a municipal voter, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

should change to conform p. 15

(c) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section sets forth requirements similar to those proposed under the initiative and referendum procedures as it relates to petition content. Requiring the clerk to prepare the petition insures that it is complete and legible. The period of time within which signatures must be collected has been reduced to 30 days to minimize the period of disruption in government created by a recall effort.

✓ Statement of person being recalled deleted

clerk certifies

what happens? Technical Com. in event clerk is not present

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within ~~30~~ 60 days of the date the clerk issues the petition. The statement provided under AS 29.30.230(b)(7) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by 35 percent of the voters residing wthin the municipality based on the number of votes cast at the last regular election for that office held prior to the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by 35 percent of the voters residing within the district based on the number of votes cast at the last regular election for that office held prior to ~~filing~~ issuance of the petition.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: This section continues the 30 day signature gathering period and clarifies which election is to be used as a standard for determining the number of signatures required. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that is number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

clerk to determine
& inform
petitioner of
no. of signature required

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980**

Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The pages of a petition shall be assembled and filed as a single instrument. Within ten days ~~of~~ after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may ~~be amended or~~ supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which is insufficient on its face may not be reword supplemented. It shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980**

Sec. 29.30.260. NEW RECALL PETITION. The rejection of a petition for any reason does not preclude the filing of a new recall petition. However, a new application may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficent signatures alone triggers the waiting period.

Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall submit it to the assembly or council at its next regular meeting.

EXPLANATION: This section requires the clerk to submit the petition at the next regular meeting rather than immediately as required under existing law.

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days, but not sooner than ~~40~~ 45 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days but not sooner than ~~40~~ 45 days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the petition shall not be submitted to the voters. The assembly or council may not appoint the official who resigns from an office after a sufficient recall petition is filed naming him to the same office.

EXPLANATION: The 40 days requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) the statement of the official ~~which appeared on the recall petition or a statement~~ of 200 words or less which is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES () NO ()".

EXPLANATION: This section makes reference to the fact that the statement of the grounds is limited to 200 words or less and provides that the statement of the official used on the petition will appear on the ballot unless the official provides a different statement.

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provision to the contrary.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote is required to recall an official. Only those voters residing in the district or area which elects an official may vote on the recall of the official.

EXPLANATION: This section adds a new sentence which makes it clear that if an official is elected by the voters of a district, then only those voters may vote to recall him.

Sec. 29.30.320. EFFECT. If a majority votes to recall an official, the official's seat shall become vacant immediately upon certification of the result of the election. If an incumbent is not recalled at a recall election, an new application for a petition to recall the same incumbent may not be filed sooner than six months after the date the election is certified.

EXPLANATION: The first sentence was added to make it clear when a recalled official looses his seat. The second sentence clarifies the fact that the commencement of the six month period is the date of certification of the election results.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.330. SUCCESSORS. (a) If ~~one or more~~ an official is recalled from an assembly or council, the assembly or council, by the affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If ~~one or more~~ all officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(d) A person appointed under (a) - (c) of this section shall serve until a successor is elected and takes office.

(e) If an official is recalled the clerk, without further action by the assembly or council, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date of certification of the recall election, except that if a regular or special election occurs within 75 days of the certification of the recall election and the certification occurs at least 20 days prior to the latest date upon which first notice of the election must be published, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section; provided, nominations may be filed until the later of seven days before the latest date upon which first notice of the election must be published or the deadline for the filing of nominations for regular elections. Nominations may not be filed before the certification of the recall election.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Section (e) was changed to take into account times required for election notice and nominations.

Bonnie - Rural Cap

1- Recognize "IRAs" - Legislature never meets as assembly for unorganized boroughs.

2. Recommends referral to technical committee

Arliss - refers to staff to prepare memo on these issues. Discussion on powers to be altered deferred

Typos

34/ 19/ 7/ 8

2nd day

Bill Wood - Ex mayor, Fairbanks

- Tax incentives for business

1) Tax cut for period of construction

2) cut for period of start-up of business

i.e. freeze value of ppty for construction period up to 10 years.

Requests clarification of 2753.025 - Does Fairbanks have authority to do this under existing law?

exempt Home Rule from provisions of 2753.025

Arliss - Technical Group to address these issues.

John Hallwell - Haines

Eliminate 3rd class boroughs need planning

Bob McGrath - 2nd class city in unorganized

1) [illegible]

2) [illegible]

Recommendations

1) 2nd class cities not functioning as [illegible]

2) eliminate classes of cities - local option to assume powers, manager, term of gov.

Not regulation

3) allow services to be provided by IRAs, etc.

4) Regional entity, elected, non-regulatory which can deal with state

Ivan Widom - City Manager, Nome
- Keep options open - don't eliminate forms of gov.

Saxman -
Planning for communities - borough has too much power
Services are inaccessible to 2nd class cities -

Homer - city manager
29-48.260 - lease of 1/4 million at least without competitive bidding
"new industry" - interpreted by at. to mean new type of industry -
- Allow 1st class city to assume planning power in case not exercised by borough

Mrs - Kodiak Island Borough -
29.30.160 - mandate special election for initiatives —

Dir. of Planning - City of Unalaska -
Cross reference obligations of cities not contained in Title 29

Mayor - Nome -

We - can recommend repealing - Young People
Repeal - Dir. Cities

Lofin - attorney - can any qualified voters be petitioners

**SUMMARY OF ATTORNEY GENERAL MEMOS AND OPINIONS CONCERNING TITLE 29 - 1972-80**

1. AS 29.03.210 - .240 - (M) July 3, 1979
Vacation of a state easement across state-owned land does not constitute "disposal of an interest in land" and strict statutory requirements of notice for disposals of state land are not required. Notice required by due process are fulfilled by the notice procedures set when the state is acting as a platting authority in the unorganized borough and in third class boroughs under AS 40.15.075.

2. AS 29.13.010, 29.53.055 - (O) August 29, 1978
A strict tax-limit ordinance conflicts with state law and is void. An ordinance which, without exception, limits property tax rates would impair the obligation of contracts.

3. AS 29.13.100 - (M) July 10, 1978
Home rule boroughs are not precluded from establishing their own postsecondary educational institution which is independent of the University of Alaska.

4. AS 29.13.100, 29.48.037 - (O) May 5, 1977
Because AS 29.48.037 is identified by AS 29.13.100 as among those provisions which a home rule municipality may not provide to the contrary, it is exclusive and no additional services may be provided or jurisdiction exercised extraterritorially by any municipality. Only the matters provided for in AS 29.48.037 are within a municipality's power and it may not levy an extraterritorial tax. Insofar as revenue sharing is available for providing a serive or facility identified in AS 29.48.037, a municipality providing the service or facility extraterritorially should qualify. Ownership of the situs of the facility should have no effect except insofar as a provision on revenue sharing may contemplate ownership as a condition of eligibility. If a municipality operates a park, it makes no difference that it is on federally owned land.

5. AS 29.13.100, 29.53.035 - (O) May 19, 1972
Farm lands must be assessed at their value for farm use only.

6. AS 29.18 - (M) July 27, 1979
The Department of Natural Resources may not grant municiapl and ANCSA selections of state land within the capital site at Willow.

7. AS 29.18.180, 29.18.200-.460 - (M) February 22, 1978
Development cities are not entitled to an organization grant, only to land (AS 29.18.420) and to shared revenue (AS 29.18.440).

8. AS 29.18.190 - (M) February 14, 1974
Lands leased for oil and gas are not vacant for municipal selection. Lands classified "resource management" are appropriated and removed from municipal selection.

9. AS 29.18.201 et seq. - (M) May 22, 1979
The Department of Natural Resources should not put land selected by municipalities or by Cook Inlet Regional Corp. into the land disposal bank even though there is insufficient state land available to meet the acreage limits suggested by the letter of intent accompanying the provision creating the land disposal bank.

10. AS 29.18.201 et seq. (M) May 18, 1979
The Department of Natural Resources is obligated to approve and convey leased land which has been selected by a unified municipality prior to Julyl, 1979, the effective date of the act changing this obligation.

11. AS 29.18.202 - (M) October 19, 1978
The director of the Division of Lands may use AS 38.053.315 to do substantial equity for municipalities which do not contain "vacant, unappropriated, unreserved general grant land" for purposes of municipal selection. Mental health lands are not "general grant lands" for purposes of municipal selection.

12. AS 29.18.205(e) - (M) December 15, 1978
A nomination of land for selection by a municipality segregates it from homestead appropriation. (Interpretation of the Alaska Homestead Act.)

13. AS 29.28.030 - (M) December 15, 1978
Re-registration in a new municipality is not required before a person may vote in the municipal elections. The statute requires only 30 days residency and registration to vote in state elections.

14. AS 29.18.213(12) - (M) June 20, 1979
Kodiak Borough selections of land classified as timber land on Shutak Island should not be approved. Timber land is not "vacant, unappropriated, unreserved land" unless classified in accordance with an agreement between a municipality and the state providing for state management of municipal land.

15. AS 29.18.340, 29.23.555 - (O) September 27, 1972
A conflict of interest would arise in the event that a state employee who serves as a member of a Development City Council should also have a stock interest in the major development company.

16. AS 29.18.360, .460, 29.33.010(b), .050, .070 - (M) April 6, 1978
A development city, during its development stage, could take over planning and zoning under AS 29.33.080 from the borough, though it need not do so. An organized borough retains full authority over any schools. It is the borough, and not the development city, which must develop and adopt the district coastal management program, however, the development city's plan must be considered by the borough when it develops and adopts the coastal management program.

17. AS 29.23.020 - (M) November 6, 1978
Re-apportionment must occur when the existing apportionment does not meet equal protection (one-man, one-vote) standards. Redistribution of voting power among the existing membership (weighted voting) does not meet re-apportionment requirements for borough assemblies.

18. AS 29.23.020 - (O) February 25, 1974
The municipal code, not AS 14.12.030(a), governs the size of assembly-school boards in third class boroughs. Localities were intended to have broad latitute in determining the composition of their assemblies and the narrow restrictions on size of school boards ought not to be applied where the assembly also serves as school board.

19. **AS 29.23.020(a) - (O) February 9, 1973**
**Inclusion of non-resident military personnel and dependents in the population base for purposes of apportioning representation on a borough assembly is not constitutionally required.**

20. AS 29.23.021 - (M) March 21, 1980
Apportionment plan may provide for district-at-large representation absent an attempt to underrepresent a racial or political minority.

21. AS 29.23.021 - (M) March 20, 1980
Weighted or fractional voting is not a constitutionally valid method of reapportionment.

22. AS 29.23.100 - (O) October 31, 1974
School boards must be elected at large rather than from zones. (Incorrect - see (O) Aug. 29, 1977)

23. AS 29.23.170(a) - (O) May 2, 1977
The mayor may veto the "local source" resolution but he may not exercise an item veto upon it (or the subdequent appropriation) to strike or to reduce any of its items. The item veto is to be used solely on appropriation and my not be used on school budget "items." The "local source" resolution (setting the total amount of local money to be used to finance schools) is not itself an appropriation but rather sets the limit and advises school officials of it. A subsequent enactment makes the appropriation.

24. AS 29.23.310 - (O) August 29, 1977
Borough school board members may be elected from zones, but they must be elected only at-large from zones (while they represent the zone in which they reside, they are responsible to the entire borough electorate).

25. AS 29.28 - (O) June 6, 1977
Inaccuracy of recall petition's allegations is not concern of election officials or the courts and is irrelevant. The only question to be decided is whether or not the charges are sufficiently specific to allege incompetence or misfeasance if they were in fact true.

26. AS 29.28.140, .150(a) - (O) April 12, 1977
Recall petitions must allege specific instance of misconduct, incompetence, or failure to perform prescribed duties. Voters alone determine merits of recall petitions.

26. AS 29.23.010(b), 29.58.340 - (M) January 24, 1980
A power becomes areawide with respect to a borough and any city within it upon the duly authorized transfer of the power from the city to the borough. With respect to a city in the borough which did not transfer the same power, it is not areawide. A city which has transferred a power is not prohibited from exercising that power if the borough failed to do so.

27. AS 29.33.150 - (O) March 24, 1980
State subdivision legislation does not pre-empt local zoning of post-sale private development. A municipality may not disapprove a state subdivision plat, or prevent the sale of lots in that subdivision, based upon the fact that the land is not residentially zoned by the municipality. In the platting process, the municipality may attach

reasonable terms and conditions -- including conditions relating to lot size, configuration and layout. Private buyers of lots within a state subdivision are not immune from local zoning, so, although the zoning ordinance may not be used to prohibit platting of the subdivision, or the subsequent sale of lots, the ordinance does control subsequent private development.

28. AS 29.33.150 - (M) January 21, 1980
A borough cannot require the state to do the following work in relation to a subdivision of state land: 1. define transportation corridors to be utilized for access to subdivisions; 2. analyze defined transportation corridors as to grade and soils to insure the feasibility of borough standard road contruction; 3. in all areas in the subdivision proposal where existing grades indicate potential problems, submit proposed road plans and profiles to the satisfaction of the engineering department.

29. AS 29.33.250 - .290, 29.38.020 - .030 - (M) July 26, 1979
While a first class or home rule borough can acquire additional areawide powers merely by transfer from the city, a second class borough can do so only with respect to powers which it has already acquired to be exercised in the area outside cities. That requires an election in most instances.

30. AS 29.33.010(b), .260(b), .290(c) - (M) January 24, 1980
The borough is under a duty to exercise the powers which are transferred to it when it approved the transfer. City ordinances become borough ordinances and the borough has a duty to enforce them until they are repealed or amended by the borough assembly. A city may no longer exercise power transferred to the borough, except that a city may exercise a power which is not being exercised by the borough.

31. AS 29.33.290, .360, .550 - (M) April 20, 1979
A general law municipality may not provide by ordinance for the powers to confirm appointments, suspensions, and discharges of municipal officers and employees to be extended to include more than is prescribed by the Municipal Code.

32. AS 29.33.290, 29.48.030 - (M) February 6, 1979
No authority exists for a borough to divest itself of an areawide power and thereby restoreit to a city from which it was previously transferred. Cities may presumably act as agents or contractors of the borough for carrying out its exercise of the power.

33. AS 29.33.290(c) - (O) - March 5, 1973
North Star Borough succeeds to Fairbank's interest in Alaska land notwithstanding statutory conditions on forgiving the loan by the State Bond Committee

34. AS 29.41 - (M) January 6, 1977
Third class boroughs are nothing more than school districts.

35. AS 29.43.020, 29.48.010(7), 29.53.415(a), .440, .450 - (M) January 9, 1980
The limitation placed on a borough's sales tax is three percent. A bed tax on hotel occupants should be considered a sales tax subject to the limitation.

29.53440

36. AS 29.48.010, .440 - (O) August 14, 1973
A city of any class has the power to levy and collect sales taxes. Sale of utility services is a sale for sales tax purposes. Public utility cooperatives are exempt from all local sales and use taxes however. No local tax upon a utility company can be passed on to utility subscribers outside the local unit of government.

37. AS 29.48.010 - .035, 29.68.440 - (M) September 30, 1976
The Municipality of Anchorage has the power to contract to maintain local roads and trails.

38. AS 29.48.010(4) - July 16, 1975
Powers and functions may be conferred on municipalities by statutes not contained in the Municipal Code. AS 44.47.180-.230 constitute effective law and second class boroughs need not acquire additional powers under AS 29 in order to authorize expenditures of administrative costs required by those sections.

39. AS 29.48.010(11), .210 - (M) May 12, 1975
Boroughs may advance monies from their general funds to their service areas even in the absence of specific statutory authority.

40. AS 29.48.130(a)(5) - (M) October 21, 1977
Implementation of a CETA regulation regarding retirement benefits may require action by Anchorage to fund retirement contributions. Under state law, municipal funds may be used to fund these benefits only if the municipal assembly or council enacts an ordinance to that effect.

41. AS 29.48.200 - (M) July 24, 1979
Municipalities can precribe mandatory sentencing for OMVI. The maximum for violating any local ordinance is $500 and 30 days.

42. AS 29.48.260 - (M) August 22, 1979
For the limited purpose of providing certain facilities in rural areas, Regional Housing Authorities may be considered political subdivisions of the state. A municipality may dispose of its property to a political subdivision, so a racially exclusive regional association can receive municipal property for public housing programs.

43. AS 29.53.020, .045 - (M) November 9, 1977
A city may prohibit hunting as a safety measure within city limits, but not for wildlife management purposes.

44. AS 29.53.020(a) - (M) March 7, 1979
No amendment to AS 29.53.020 could modify the definition of taxable property for purposes of the general statewide property tax. The "business inventories" exemption form municipal property taxation will not affect total state revenue.

45. AS 29.53.020(a)(3), .020(c) - (M) April 5, 1973
To remain tax exempt, property may generate income solely for the statutorily expressed purposes. The income derived from property must be from only its use as classroom space under this section.

46. AS 29.53.020(e) - (M) August 17, 1979
By interpretive regulation, a property tax exemption can be limited to comport with legislative intent. The Department of Community and Regional Affairs may define "permanent place of abode" as being

limited to not more than one acre if urban nor more than five acres if rural because the legislature intended to relieve senior citizens from tax burdens on their dwellings, not to create a windfall for holders of vast tracts of land. However, such a regulation must be adopted under the APA to have legal effect.

47. AS 29.53.020(e) - (g), .025 (M) September 17, 1975
State must reimburse municipalities for senior citizen exemptions even though the local tax code also exempts the property from taxation, but the Department of Community and Regional Affairs could adopt interpretive regulations stipulating that payments will be made to a municipality for revenue lost to it for claims only to the extent that senior citizens' exemption exceeds an exemption the senior citizens are eligible for under municipal ordinance.

48. AS 29.53.045, .045(e), .050 -.(O) May 16, 1978
The military population should be included in the total when calculating the average per capita assessed valuation in the state.

49. AS 29.53.045, . 050 - (M) May 2, 1978
AS 29.53.045(a) gives a municipality a choice as to the methods of taxation, but both methods are subject to the 30 mill limit.

50. AS 29.53.135 - (M) February 10, 1978
The phrase "at least ... over and above the number required for a quorum" means at least one more than a quorum. Since the statute does not set a maximum number, it may be set by ordinance. The phrase "number of members of" refers to the number required for a quorum and does not require an appointed board's membership to include assembly members. (Suggests that this statute be rewritten.)

51. AS 29.53.180(b), .390(b) - (M) December 21, 1979
Municipalities must pay interest on excess tax penalties they have levied. A municipality may initiate refunds on its own motion.

52. AS 29.53.405 - (M) February 1, 1980
Differential tax zones within cities are authorized. Changes in differential tax zones may be made by ordinance without voter approval.

53. AS 29.53.415 - (M) October 6, 1976
A city may impose a tax upon retail sales and limit it to intoxicating liquor, or apply a higher rate to the sale of alcoholic beverages than the sales of other commodities.

53. AS 29.53.415, .440, .450 - (M) August 21, 1973
A municipality may impose a sales tax on the sale of intoxicating liquor.

54. AS 29.63.010, 29.53.010-.020 - (M) April 23, 1974
State property is subject to special assessments by units of local government for improvements which benefit the property

55. AS 29.63.065 (M) October 24, 1975
The state must reimburse a municipality for special assessments which persons 65 years of age or older are exempt from paying in full at its initial levy, not in installments as allowed in AS 29.63.060.

56. AS 29.63.090 - (O) January 14, 1974
Depending upon circumstances, a service area can embrace one or more cities as well as unincorporated areas.

57. AS 29.68.010(b)(3), 29.78.010 - (M) August 24, 1979
The state and the United States need not be considered "property owners" for purposes of obtaining consent to annexation by ordinance. This way property-owner consent is not lost when state or federal holders of rights of way, easements, railroads, streambeds and the like do not consent to annexation.

58. AS 29.68.010(b)(3) - (M) April 17, 1979
The Bureau of Land Management's townsite trustee is a "property owner" for purposes of the requirement of obtaining consent to annexation.

59. AS 29.68.020 - (O) April 29, 1975
The repeal of the provision which excluded military reservations from mandatory boroughs did not thereby cause their inclusion. The borough must annex military reservations.

60. AS 29.68.240, .410 - (O) February 18, 1976
A unified municipality can issue general obligation bonds approved by the voters of its predecessor units of government.

61. AS 29.68.500 - (O) October 5, 1973
Including an existing city within a new city does not, in itself, dissolve it. (This is probably wrong, i.e., the lesser is probably swallowed by the greater.)

62. (M) August 21, 1973
There is no state law which prohibits boroughs and municipalities from levying user charges and industrial cost recovery assessments for waste treatment facilities which have been federally funded.

Notes Working group.
Sept 19, 1982

1. Clarify status of unified mun. - are home rule

2.) 29.08.050 - Transition. - Appeal

3) REAA's - how to handle integration into newly organized boroughs

4) Orgnizational grants are inadequate. 29.18.180 Triple?

5) 29.65.210 - leg. body to appoint in case of vacancies on Commission because of failure to elect enough people.

6) 29.65.440. - what is a unified municipality?

8) Frontage requirements for petitions
9) Voters what type of election?

10) Methods of dissolution are confusing?

11) 29.15.060 - Initiative and referendum - for H.R., clarify as H.R not bound by procedures set out in statute

12) More precise way of dealing with inconsistencies between h.h & State enactments
13) 29.13.100 - Review "laundry list" limitation on H.R

14) What to do with Doe Cases?
Should we repeal or attempt drafting improvements on.

(15) Public Records policy?
Except as provided by ordinance, all records shall be public.

(16) 29.23.050 - Residency requirement? 5 years to one year.
Assemblyman, councilmen, voters?

(17) Quorum - majority requirement 29.23?

(18) Terms of mayors, etc. - allow gen law municipalities to provide otherwise?

(19) Provide for emergencies arising when there is lack of quorum

(20) 29.45.130 - Acts required to be by ordinance, How about shifting of budget? by motion or resolution.

(21) Extent of mayor's veto?

(22) Planning in city & boroughs. How are planning responsibilities to be divided between cities and boroughs?

(23) Repeal Youth programs

at 2:15 working group meeting

## I. General Provisions Applicable to All Municipalies

| | |
|---|---|
| Chapter 03. | The Unorganized Borough |
| 29.03.010 | Establishment |
| 29.03.020 | Service areas |
| Chapter 08. | Classification of Municipalities |
| 29.08.010(80) | Home Rule |
| 29.08.020 | General Law |
| 29.08.030 | Classes of general law |
| 29.08.040 (S) | Reclassification |
| 29.08.050 | Transition (should repeal) |
| Chapter 18 | Incorporation |
| Article 1. | Requirements |
| 29.18.011(S) | Incorporation of cities |
| 29.18.021(S) | Limitations on incorporation of cities |
| 29.18.030 | Organized boroughs |
| Article 2. | Procedures |
| 29.18.050(80S) | Petition |
| 29.18.060 | Review |
| 29.18.070(S) | Investigation |
| 29.18.080(S) | Report and hearing |
| 29.18.090(S) | Decision on municipal incorporation |
| 29.18.110(S) | Incorporation Election |
| 29.18.120(S) | Election of initial officers |
| 29.18.130 | Integration of special districts and service areas. |
| 29.18.140 | Transition |
| 29.18.150 | Challenge of legality |

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| **Article 3.** | **Transitional Assistance** |
| 29.18.180 | Organization grants |
| Article 3A.(S) | General grant land |
| 29.18.201(S) | Determination of entitlement of boroughs and unified municipalities |
| 29.18.202(S) | Determination of entitlement for cities |
| 28.18.203(S) | Determination of entitlement for newly incorporated municipalities |
| 29.18.204(S) | Status of entitlements |
| 29.18.205(S) | Fulfillment of land entitlements |
| 29.18.206(S) | School, university, and mental health land |
| 29.18.207(S) | Selection and conveyance procedure |
| 29.18.208(S) | Payment for land deficiency |
| 29.18.209(S) | Authorization for land exhanges |
| 29.18.210(S) | Public purpose and expansion needs |
| 29.18.211(S) | Election of benefits |
| 29.18.212(S) | Administration |
| 29.18.213(S) | Definitions |
| Chapter 13. | Formation of Home Rule Municipalities |
| Article 1. | Charters |
| 29.13.010(80) | Municipal charter adoption |
| 29.13.020 | Nomination |
| 29.13.030 | Election |
| 29.13.040 | Preparation of charter |
| 29.13.050 | Initiative and referendum |
| 29.13.060 | Charter election |
| 29.13.070 | Charter adoption |
| 29.13.080 | Charter amendment |

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| Chapter New | Powers and Duties of Municipalities |
| [CHAPTER 33]. | [AREAWIDE BOROUGH POWERS AND DUTIES] |
| Article 1. | [SCOPE] Areawide Borough Powers and Duties |
| 29.33.010(S) | Scope of areawide powers |
| [ARTICLE 5. | ADDITIONAL AREAWIDE POWERS] |
| 29.33.250 | Additional areawide powers |
| 29.33.260 | Transfer by city |
| 29.33.270 | Petition for power |
| 29.33.280 | Investigation |
| 29.33.290 | Election |
| Article 2. | Borough Powers and Duties in the Area Outside Cities |
| [CHAPTER 38. | BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES] |
| 29.38.010 | First class borough |
| 29.38.020(S) | Second class borough |
| 29.38.030 | Additional powers |
| 29.38.040 | Investigation |
| 29.38.050 | Election |
| Article 3 | Powers of Cities Outside Boroughs |
| [CHAPTER 43. | POWERS OF CITIES OUTSIDE BOROUGHS] |
| 29.43.010 | Additional powers |
| ?29.43.020 | Assessment and tax collection |
| ?29.43.030 | Education |
| ?29.43.040(S) | Planning and zoning |
| 29.43.100(S) | Extension of curfews outside cities |
| 29.43.105(S) | Enforcement of curfews |
| 29.43.110(S) | Penalty for violation of curfew |

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| Article 4 | Powers of Third Class Boroughs |
| [CHAPTER 41. | POWERS OF THIRD CLASS BOROUGHS] |
| 29.41.010(S) | Powers of third class boroughs |
| Chapter New | Extraterritorial Jurisdiction of Municipalities |
| 29.48.037(S) | Extraterritorial jurisdiction |
| Chapter New | School Boards |
| [ARTICLE 5. | SCHOOL BOARDS] |
| 29.23.310 | Election |
| 29.41.020(80) | Assembly to serve as school board |
| Chapter 68. | Alteration of [BOUNDARIES] Municipalities |
| Article New. | Change of Name |
| 29.73.050 | Change of municipal name |
| Article 1. | Annexation and exclusion |
| 29.68.010 | Local boundary commission |
| 29.68.020(S) | Annexation of military reservations |
| Article 2. | Merger and consolidation |
| 29.68.030 | Methods of merger and consolidation |
| 29.68.040 | Petition |
| 29.68.050 | Review |
| 29.68.060 | Investigation |
| 29.68.070 | Report and hearing |
| 29.68.080 | Decision |
| 29.68.090 | Election |
| 29.68.100 | Assets and liabilities |
| 29.68.110 | Ordinances |

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| Article 3. | **Unification of Local Governments** |
| 29.68.240 | **Unification of local governments authorized** |
| 29.68.250 | **Unification to be proposed by petition** |
| 29.68.260 | **Petition requirements** |
| 29.68.270 | **Review of petition** |
| 29.68.280 | **Call for charter commission nominations** |
| 29.68.290 | **Nomination of charter commission candidates** |
| 29.68.300 | **Qualifications of charter commission candidates** |
| 29.68.310 | **Composition of charter commission** |
| 29.68.320 | Election |
| 29.68.330 | Requirements for approval of unification and election of charter commission |
| 29.68.340 | Charter commisssion organization and procedure |
| 29.68.350(80) | Charter preparation |
| 29.68.360 | Public hearings |
| 29.68.370 | Filing of proposed charter |
| 29.68.380 | Publication and posting of charter |
| 29.68.390 | Election on charter |
| 29.68.400 | Effect of the charter after ratification |
| 29.68.410 | Assets and liabilities |
| 29.68.420 | Ordinances |
| 29.68.430 | Right to state and federal funds preserved |
| 29.68.440 | Powers of a unified municipality |
| Article 4. | Dissolution |
| 29.68.500 | Methods of dissolution |
| 29.68.510 | Petition |
| 29.68.520 | Standards |

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| 29.68.530 | Review |
| 29.68.540 | Investigation |
| 29.68.550 | Report and hearing |
| 29.68.560 | Decision |
| 29.68.570 | Election |
| 29.68.580 | Succession |

## II. STATUTES APPLICABLE TO HOME RULE AND TO GENERAL LAW MUNICIPALITIES

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| Chapter 48 | Powers and Duties Applicable to [ALL MUNICIPALITIES] Home Rule and General Law Municipalities |
| Article 3. | Education |
| 29.33.050(S) | Education |
| Article New | Eminent Domain |
| 29.73.020 | Eminent domain (In III "In the case of a second class city, before exercising the power, the council shall request or petition the Department of Community and Regional Affairs for permission to exercise the power. The council may not exercise the power of emminent domain or declaration of taking without the formal approval of the Department of Community and Regional Affairs.") |
| Article 3. | Municipal Enactments |
| 29.48.180(S) | Codification |
| 29.48.210 | Expenditure of borough revenues |
| 29.48.220 | Post audit |
| Article 5. | Construction of Powers |
| 29.48.310 | General construction |
| 29.48.320 | Extent of powers |
| 29.48.330 | Exumeration of powers |
| Chapter 23. | Municipal Officers and Employees |
| Article 1. | Borough Assembly |
| 29.23.040(80) | Regular term of office |
| 29.23.050 | Qualifications |
| Article 4. | City Executive and Administrator |
| 29.23.250(a)(S)1. | Election and term of mayor. A voter of a home rule or general law city is elegible to hold the office of mayor if he meets additional requirements imposed by charter or ordinance. The mayor's regular term begins on the first Monday following certification of the mayor's election. |

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|---|---|
| Article 9. | Miscellaneous Provisions |
| 29.23.500 | Oaths of office (in III ?) |
| 29.23.540(S) | Prohibitions |
| 29.23.555 | Conflict of interest |
| 29.23.560(80S) | Reports |
| 29.23.580 | Meetings public |
| Chapter 28. | Elections |
| Article 1. | Regular and Special Elections |
| 29.28.010 | Administration |
| 29.28.030 | Voter qualification |
| Article 3. | Recall |
| 29.28.130 | Recall |
| 29.28.140 | Grounds |
| 29.28.150 | Petition |
| 29.28.160 | Examination for sufficiency |
| 29.28.170 | Supplemental petition |
| 29.28.180 | New petition |
| 29.28.190 | Submission |
| 29.28.200 | Election |
| 29.28.210 | Form of recall ballots |
| 29.28.220 | Election procedure |
| 29.28.230 | Majority required |
| 29.28.240 | Effect |
| 29.28.250 | Election of successor |

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| Chapter 53. | Municipal Assessment and Taxation |
| Article 1. | [MUNICIPAL] Borough Property Tax |
| 29.53.010 | General Property Tax |
| 29.53.020(80S) | Required exemptions |
| 29.53.025(80S) | Optional exemptions and exclusions |
| 29.53.030 | Mining claims |
| 29.53.035(S) | Farm or agricultural lands |
| 29.53.040 | Mobile homes |
| 29.53.045(S) | Tax on oil and gas production and pipeline property |
| 29.53.050(S) | Tax limitation |
| 29.53.055(S) | No limitation on taxes to pay bonds |
| 29.53.060(S) | Full and true value |
| 29.53.070 | Returns |
| 29.53.080 | Independent investigation |
| 29.53.090 | Statement |
| 29.53.095 | Reevaluation |
| 29.53.100(S) | Assessment roll |
| 29.53.110 | Assessment notice |
| 29.53.120 | Corrections |
| 29.53.130 | Appeal |
| 29.53.135 | Board of equalization |
| 29.53.140 | Hearing |
| 29.53.150 | Supplementary assessment rolls |
| 29.53.160 | Tax adjustments on property affected by a natural disaster |
| 29.53.170 | Tax levy and rate |
| 29.53.180 | Rates of penalty and interest |

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| **Article 3.** | **City Property Tax (consider with service areas)** |
| 29.53.400 | Power of levy |
| 29.53.405 | Differential tax zones (in III?) |
| 29.53.410 | Limited property taxing powe- for second class cities (in III?) |
| Article 4. | Borough Sales and Use Taxes |
| 29.53.415(d)(80) | Sales and use tax (re-draft - "for any tax levied, cannot change more than...") |
| [CHAPTER 33. | AREAWIDE BOROUGH POWERS AND DUTIES] |
| Article 2. | Assessment and Collection of Taxes |
| 29.33.030 | Assesment and collection (29.53) |
| 29.73.070(80) | Taxpayer notice |
| Artic.e .. | Enforcement of Tax Liens |
| 29.53.200 | Validity |
| 29.53.210 | Tax liability |
| 29.53.220 | Enforcement of personal property tax liens by distraint and sale |
| 29.53.230 | Real property tax collection |
| 29.53.240 | Foreclosure list |
| 29.53.250 | Clearing delinquencies |
| 29.53.260 | List to lienholder |
| 29.53.270 | General foreclosure |
| 29.53.280 | Answer and objection |
| 29.53.290 | Judgment |
| 29.53.300 | Transfer and appeal |
| 29.53.310(S) | Redemption period |
| 29.53.320 | Effect |
| 29.53.330 | Additional liens |
| 29.53.340 | Possession during redeption period |

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| 29.53.350(S) | Expiration |
| 29.53.360 | Deed to borough or city |
| 29.53.370(s) | Disposition and sale of forclosed properties |
| 29.53.375(S) | Repurchase by record owner |
| 29.53.380(S) | Proceeds of tax sale |
| 29.53.385 | Payment of taxes upon public utilization |
| 29.53.390 | Refund of taxes |
| Chapter 73. | Miscellaneous Provision |
| 29.73.030 | Adverse possession |
| 29.73.040 | Taxation of municipalities |
| 29.73.060(80S) | Property tax equivalency payments |

## III. Limitations or Prescriptions for Specific Classes of Municipalities

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|---|---|
| Article 2. | [HOME RULE] Limitations |
| 29.13.100(80S) | Limitation of home rule powers (to be left out) |
| 29.73.020 | Eminent domain for a second class city (part, see II) |
| Chapter 48. | Powers applicable to All Municipalities |
| Article 1. | General Powers |
| 29.48.010(S) | General powers (rewrite?) |
| 29.48.020(80) | Second class borough powers outside cities (rewrite?) |
| Article 2. | Facilities, Services, and Regulations |
| 29.48.030(S) | Municipal facilities and services (rewrite?) |
| 29.48.033(S) | Garbage and solid waste services (put in Title 42) (in II?) |
| 29.48.035(80S) | Regulatory powers (rewrite?) (b & c in II?) |
| Article 3. | Municipal Enactments |
| 29.48.130(S) | Acts required to be by ordinance [(a)(12) in II?] |
| 29.48.140 | Form of ordinances |
| 29.48.150 | Ordinance procedure |
| 29.48.160 | Emergency ordinances |
| 29.48.170 | Codes of regulation |
| 29.48.185(S) | Resolutions |
| 28.48.190 | Budget & capital program |
| 29.48.200(S) | Penalties |
| Article 4. | Miscellaneous Provisions |
| 29.49.260(S) | Municipal properties |
| 29.48.270 | Emergency disaster powers |

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| **Chapter 33.** | **Areawide Borough Powers and Duties** |
| Article 4. | Planning, Platting, and Zoning |
| 29.33.070(S) | Planning, platting, and zoning |
| 29.33.080(80) | Planning commission |
| 29.33.085 | Comprehensive plan |
| 29.33.090(80S) | Zoning (d in II?) |
| 29.33.110(S) | Board of Adjustment |
| 29.33.120 | Adjustment procedure |
| 29.33.130 | Judicial review |
| 29.33.150(S) | Platting jurisdiction and power (b in II?) |
| 29.33.160(S) | Procedure |
| 29.33.170 | Waiver in certain cases |
| 29.33.180 | Information required |
| 29.33.190(S) | Penalties |
| 29.33.200 | Alteration of replat petition |
| 29.33.210 | Notice of hearing |
| 29.33.220 | Hearing and determination |
| 29.33.230 | Recording |
| 29.33.240 | Title to vacated area |
| 29.33.245 | Delegations |
| Chapter 23. | Municipal Officers and Employees |
| Article 1. | Borough Assembly |
| 29.23.010 | General power |
| 29.23.021(80S) | Assembly composition and apportionment (in II?) |
| 29.23.023(80) | Composition and form of representation (in II?) |
| 29.23.025(80S) | Assembly recomposition and reapportionment (in II?) |

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|---|---|
| 29.23.027(80) | Apportionment appeals (in II?) |
| 29.23.029(80) | Judicial review and relief (in II?) |
| 29.23.031(80) | Effective date of apportionment (in II?) |
| 29.23.033(80) | Applicability of apportionment provisions (in II?) |
| 29.23.060(80) | Procedure [(c) in II?] |
| 29.23.070 | Departments |
| 29.23.080 | Assembly vacancies |
| Article 2. | Borough Executive and Administrator |
| 29.23.130(80S) | Power generally [(f) in II?] |
| 29.23.140 | Powers and duties of borough administrator |
| 29.23.150 | Executive absence |
| 29.23.160 | Assembly participation |
| 29.23.170 | Veto |
| 29.23.180 | Filling a vacancy |
| Article 3. | City Council |
| 29.23.200(S) | Composition, eligibility, election, and term |
| 29.23.210(80S) | Procedure [(b) in II?] |
| 29.23.220 | Filling a vacancy |
| Article 4. | City Executive and Administrator |
| 29.23.240 | Mayor |
| 29.23.250(b)(c)(d)(S) | Election and term of mayor [(a) in II?] |
| 29.23.255(80) | Removal from office (in II?) |
| 29.23.260 | Mayor's vote |
| 29.23.270 | Veto |
| 29.23.280 | Filling a vacancy |
| 29.23.290 | Powers and duties of a city manager |

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| **Article 7.** | **Other Officers and Employees** |
| **?29.23.360** | **Appointment of officers (some in IV?)** |
| **29.23.370** | **Municipal attorney** |
| **29.23.380** | **Municipal clerk** |
| **29.23.390** | **Municipal treasurer** |
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| 29.23.440(S) | Adoption |
| 29.23.450 | Appointment |
| 29.23.460 | Term |
| 29.23.470 | Appointment of temporary or new manager |
| 29.23.480 | Repeal |
| Article 9. | Miscellaneous Provisions |
| 29.23.530(S) | Salaries of elected officers |
| 29.23.550 | Personnel system |
| 29.23.570 | Vacancies |
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| 29.28.020 | Election dates [(b) in II?] |
| 29.28.040 | Majority elections |

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| 29.28.050(80) | Election contest and appeal [(f) in II?] |
| Article 2. | Initiative and Referendum |
| 29.28.060 | Reservation of powers |
| 29.28.062 | Petition |
| 29.28.065 | Contents of petition |
| 29.28.070 | Required signatures |
| 29.28.073 | Sufficiency of petition |
| 29.28.075 | Protest |
| 29.28.077 | New Petition |
| 29.28.080 | Presentation of initiative |
| 29.28.090 | Presentation of referendum |
| 29.28.110 | Effect |
| Chapter 59.(S) | Obligations Issued on Behalf of Municipalities |
| Chapter 63. | Special Assessments and Service Areas |
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| 29.63.015 | Procedure |
| 29.63.020 | Decision and notice |
| 29.63.025 | Record owner |
| 29.63.030 | Objections and revision |
| 29.63.040 | Assessment roll |
| 29.63.050 | Hearing and settlement |
| 29.63.060 | Payment |
| 29.63.065(S) | Exemption (in II?) |
| 29.63.070 | Reassessment |
| 29.63.080 | Objection and appeal |
| 29.63.085 | Special assessment bonds |

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| **29.63.090(S)** | **Service Areas** |
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| 29.53.450 | Power of levy and collection |
| 29.53.460 | Combining sales tax with incorporation |
| Chapter 58. | Municipal Debt (2 odd subsections) |
| Article 1. | Revenue Anticipation Notes |
| 29.58.010(S) | Borrowing in anticipation of revenue |
| 29.58.020(S) | Issuance of notes |
| 29.58.040 | Issuance of notes in anticipation of state, federal grants |
| 29.58.050 | Priority of repayment |
| 29.58.060 | Sale of notes |
| Article 2. | Bond Anticipation Notes |
| 29.58.070 | Bond anticipation borrowing |
| 29.58.080 | Issuance of notes |
| 29.58.090 | Issuance of new notes |
| 29.58.100 | Repayment of notes |
| 29.58.110 | Security |
| 29.58.120 | Limitation |
| 29.58.130 | Use of proceeds |
| 29.58.140 | Sale of notes |

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| 29.58.170 | Form and terms of sale |
| 29.58.180(S) | Payment [(b) in II?] |
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| 29.58.210(S) | Forms and terms |
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| Article 5. | Refunding Bonds |
| 29.58.240 | Authorization |
| 29.58.250 | Effect of bonds |
| 29.58.260 | No election required |
| 29.58.270 | Payment of refunding bonds |
| 29.58.280 | Sale |
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| 29.58.320 | Redemption before maturity |
| 29.58.340(S) | Borough indebtedness |
| 29.58.345(S) | Bonded idebtedness for school construction (in II?) |
| 29.58.350(S) | Bond guarantee fund (in II?) |

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| 29.23.395 | Intent of AS 29.23.397 - .401 |
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| 29.18.380 | Procedures |
| 29.18.390 | Development city capital improvement funds |
| 29.18.400 | Transition |
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| Chapter 88.(80) | Municipal Tax Resource Equalization (in II?) |
| 29.88.010(80) | State equalization of tax resources for local government services |
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| 29.89.020(80) | State aid to municipalities for roads |
| 29.89.030.(80) | State aid to municipalities and other eligible recipients for health facilities and hospitals |

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| 29.89.040(80) | State aid to volunteer fire departments in the unorganized borough |
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| 29.89.100(80) | Definitions |
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TITLE 29 REVISION COMMITTEE
Policy Advisory Group Meeting

Minutes of August 27 & 28 1980

The first meeting of the Policy Advisory Group of the Title 29 Revsion Committee was held August 27, 1980 in the Conference Room of the Legislative Information Office, 1024 6th Avenue, Anchorage, Alaska. The meeting was called to order by Billy G. Berrier, Director of the Division of Legal Services at 9:00 am.

Present were: Ted Berns, Terry Cook, Marilyn Dimmick, James Kohler, Gene Moore, Donna Sherby, Jonathan Solomon, Russell W. Walker, Ronald Larson, Senator Arliss Sturgulewski, Senator Bob Mulcahy, Representative Margaret Branson, Representative Charles H. Parr as members of the Policy Group. Also present were Phil Smith and Mr. Palmer McCarter, Ex Officio Members of the Policy Advisory Group. Allan E. Tesche attended representing the Technical Committee. Ted Berns and Russell Walker are also members of the Technical Committee. Mike Walleri of the Tanana Chiefs Conference, Inc., and Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee were present. Billy Berrier and Tamara Cook were present representing the Division of Legal Services, Legislative Affairs. Tam Cook explained that Ginny Chitwood from the Alaska Municipal League could not be present but would attend future meetings as an Ex Officio member.

The first order of business was the selection of a chairman for the committee. Nominations were opened and Senator Sturgulewski was nominated by Representative Parr. The nomination was seconded and Senator Sturgulewski was elected Chairman by acclamation.

Mr. Berrier spoke on the role of the Technical Revision Committee and asked for an appointment of a group. A motion to set up a Technical Revision Group was made by Representative Branson. The motion was seconded and carried. The Technical Revision Committee members will be Ted Berns, Richard Garnett, III; John Messenger, Jim Nordale, JoAnne Shanley, Gerald Lee Sharp, Allan Tesche, and Russell Walker.

The Ex Officio members were introduced and there was discussion as to their role. It was agreed that they should sit at the table and take part in the discussion. Palmer McCarter spoke about the role of Community and Regional Affairs. He said that there would be a representative of C&RA at every meeting, either he or Patrick Poland would attend. Mr. McCarter also presented a letter from the Local Boundary commission requesting the statutes regarding Development cities be left in Title 29 but improved. Phil Smith spoke on the concerns of RuralCAP regarding the impact of government on villages and rural areas.

Representative Parr suggested directions for the Policy Committee: 1). greater self determination and latitude for local governments; and 2.) that elected officials should be able to understand Title 29 without the help of attorneys. Senator Sturgulewski agreed that Title 29 needed clarification.

The members present of the Technical Committee met briefly and Ted Berns, as spokesman, gave a report regarding the ideas they discussed. The group recommended that Title 29 be broken down into three sections.

1. The first section to be general provisions applying to all local government.
2. The second section to be delineation of procedures and additional limits on specific forms of government.
3. The third section to be directory provisions to be used unless the local government adopts ordinances of their own.

It was decided that the Technical Committee should attempt to reorganize Title 29 along these lines and present a draft at the next meeting.

Mike Walleri, Village Government Specialist, Tanana Chiefs Conference, Inc., spoke, saying he would like a simplification of government.

A list of items pertaining to Title 29 included in the preliminary draft of the Alaska Municipal League 1981 policy statement was handed out. .

Future meeting dates and places were discussed. None were decided upon.

The kinds of things applicable to all municipalities were discussed, such as incorporation, dissolution, boundary changes, classification of government, extraterritorial powers, merger/consoldiation, revenue, taxation, bonding, and intergovernmental relations.

Protection of people in service areas who are not represented by local government, such as persons living outside city limits, was discussed.

The meeting recessed at 4:00 pm.

The meeting was called to order the second day at 9:00 am., Chairman Sturgulewski presiding. In addition to the persons present at the first day's meeting, Chris Johnson of House Research and Nels Franklin from near Dillingham were present, and introduced by Chairman Sturgulewski.

Ted Berns gave a recap of the first days meeting.

Terry Cook was appointed repository of ridiculous laws.

Senator Mulcahy spoke on the problem of getting information, drafts, and policy issues to all municipalities within the time constraints. Phil Smith suggested a teleconference and said that he would be presenting material at the Alaska Federation of Natives Convention (23-25 October 1980, in Anchorage). It was decided that the problem of getting materials and information to the public would be an agenda item at the next meeting. Palmer McCarter, Phil Smith, and Ginny Chitwood of the Alaska Municipal League were appointed to a committee to research this problem and make recommendations.

Melissa Fouse was introduced as the new secretary to the Title 29 Revision Committee.

As part of the reorganization of Title 29, there was discussion as to which statutues belonged in which category.

Representative Parr wants a uniform provision on executive session. There was discussion on executive sessions.

The question of retaining present categories of government was raised and discussed. Ted Berns suggested only two classes of boroughs and home rule, pointing out that there are no first class boroughs.

The question of development cities was raised and discussed. Should we retain, restructure, or eliminate development cities?

There was discussion on the third category. If a municipality choses to follow procedures, should they be required to follow all of them?

Senator Mulcahy's legislation regarding the recognition of village governments was discussed. Copies of HB 192 are to be mailed to committee members.

There was discussion of persons representing committee members being allowed to vote. Mr. Berrier had reservations based on the appointment of the members of the commission according to resolution. It was decided that persons filling in for committee members be allowed to take part in the discussion, but would not be allowed to vote.

The meeting was adjourned at 12:00 pm.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse

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Conversation Sept 15, 1980

David Die

Land disposal –
How to structure disposal ordinance which would help keep land in hands of locals? Local people don't have cash incomes, can't compete with rich folks from Juneau/Anchorage.

Would like specific authorization to exchange land between mun. & private people.
Would like lottery's to be specifically allowed.

Libby v Dillingham – decided wrong. Want statutory provisions for opposite result – Land under this section should be exempted from procedural requirement 29 48 260(c).

Wants to be able to use planned unit Dev. (performance standard base) or pt. system – Dev have to have certain no. of pts but can accumulate them in various ways – so a person could put commercial use in residential area if he could get points for
1) set back
2) open space
3) height of building

Techniques other than zoning should be allowed

BEGINNING WITH AS29

| DATE | DOCUMENT NAME | PSR(S) | DOCUMENT ID |
|---|---|---|---|
| 09/09/80 | AS29.03.010 | 1 | AS29.03.010 |
| 09/09/80 | AS29.03.020 | 1 | AS29.03.020 |
| 09/09/80 | AS29.08.010 | 1 | AS29.08.010 |
| 09/09/80 | AS29.08.020 | 1 | AS29.08.020 |
| 09/09/80 | AS29.08.030 | 1 | AS29.08.030 |
| 09/09/80 | AS29.08.040 | 4 | AS29.08.040 |
| 09/09/80 | AS29.08.050 | 2 | AS29.08.050 |
| 09/09/80 | AS29.13.010 | 1 | AS29.13.010 |
| 09/09/80 | AS29.13.020 | 1 | AS29.13.020 |
| 09/09/80 | AS29.13.030 | 1 | AS29.13.030 |
| 09/09/80 | AS29.13.040 | 1 | AS29.13.040 |
| 09/09/80 | AS29.13.050 | 1 | AS29.13.050 |
| 09/09/80 | AS29.13.060 | 1 | AS29.13.060 |
| 09/09/80 | AS29.13.070 | 2 | AS29.13.070 |
| 09/09/80 | AS29.13.080 | 1 | AS29.13.080 |
| 09/09/80 | AS29.13.100 | 6 | AS29.13.100 |
| 09/09/80 | AS29.18.010 (repealed) | 1 | AS29.18.010 |
| 09/09/80 | AS29.18.011 | 2 | AS29.18.011 |
| 09/09/80 | AS29.18.020 (repealed) | 1 | AS29.18.020 |
| 09/09/80 | AS29.18.021 | 1 | AS29.18.021 |
| 09/09/80 | AS29.18.030 | 2 | AS29.18.030 |
| 09/09/80 | AS29.18.050 | 4 | AS29.18.050 |
| 09/09/80 | AS29.18.060 | 1 | AS29.18.060 |
| 09/09/80 | AS29.18.070 | 2 | AS29.18.070 |
| 09/09/80 | AS29.18.080 | 1 | AS29.18.080 |
| 09/09/80 | AS29.18.090 | 1 | AS29.18.090 |
| 09/09/80 | AS29.18.100 (repealed) | 1 | AS29.18.100 |
| 09/09/80 | AS29.18.110 | 2 | AS29.18.110 |
| 09/09/80 | AS29.18.120 | 4 | AS29.18.120 |
| 09/09/80 | AS29.18.130 | 2 | AS29.18.130 |
| 09/09/80 | AS29.18.140 | 2 | AS29.18.140 |
| 09/09/80 | AS29.18.150 | 1 | AS29.18.150 |
| 09/09/80 | AS29.18.180 | 2 | AS29.18.180 |
| 09/09/80 | AS29.18.190 (repealed) | 3 | AS29.18.190 |
| 09/09/80 | AS29.18.200 (repealed) | 2 | AS29.18.200 |
| 09/09/80 | AS29.18.201 | 2 | AS29.18.201 |
| 09/09/80 | AS29.18.202 | 1 | AS29.18.202 |
| 09/09/80 | AS29.18.203 | 1 | AS29.18.203 |
| 09/09/80 | AS29.18.204 | 2 | AS29.18.204 |
| 09/09/80 | AS29.18.205 | 3 | AS29.18.205 |
| 09/09/80 | AS29.18.206 | 4 | AS29.18.206 |
| 09/09/80 | AS29.18.207 | 2 | AS29.18.207 |
| 09/09/80 | AS29.18.208 | 6 | AS29.18.208 |
| 09/09/80 | AS29.18.209 | 1 | AS29.18.209 |
| 09/09/80 | AS29.18.210 | 2 | AS29.18.210 |
| 09/09/80 | AS29.18.211 | 3 | AS29.18.211 |
| 09/09/80 | AS29.18.212 | 1 | AS29.18.212 |
| 09/09/80 | AS29.18.213 | 4 | AS29.18.213 |
| 09/09/80 | AS29.18.220 | 1 | AS29.18.220 |
| 09/09/80 | AS29.18.230 | 1 | AS29.18.230 |
| 09/09/80 | AS29.18.240 | 1 | AS29.18.240 |

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| DATE | DOCUMENT NAME | PSR(S) | DOCUMENT ID |
|---|---|---|---|
| 09/09/80 | AS29.18.250 | 2 | AS29.18.250 |
| 09/09/80 | AS29.18.260 | 1 | AS29.18.260 |
| 09/09/80 | AS29.18.270 | 1 | AS29.18.270 |
| 09/09/80 | AS29.18.280 | 1 | AS29.18.280 |
| 09/09/80 | AS29.18.290 | 3 | AS29.18.290 |
| 09/09/80 | AS29.18.300 | 1 | AS29.18.300 |
| 09/09/80 | AS29.18.310 | 2 | AS29.18.310 |
| 09/09/80 | AS29.18.320 | 2 | AS29.18.320 |
| 09/09/80 | AS29.18.330 | 2 | AS29.18.330 |
| 09/09/80 | AS29.18.340 | 2 | AS29.18.340 |
| 09/09/80 | AS29.18.350 | 1 | AS29.18.350 |
| 09/09/80 | AS29.18.360 | 1 | AS29.18.360 |
| 09/09/80 | AS29.18.370 | 1 | AS29.18.370 |
| 09/09/80 | AS29.18.380 | 1 | AS29.18.380 |
| 09/09/80 | AS29.18.390 | 1 | AS29.18.390 |
| 09/09/80 | AS29.18.400 | 3 | AS29.18.400 |
| 09/09/80 | AS29.18.410 | 1 | AS29.18.410 |
| 09/09/80 | AS29.18.420 (repeated) | 2 | AS29.18.420 |
| 09/09/80 | AS29.18.430 | 1 | AS29.18.430 |
| 09/09/80 | AS29.18.440 | 1 | AS29.18.440 |
| 09/09/80 | AS29.18.450 | 1 | AS29.18.450 |
| 09/09/80 | AS29.18.460 | 1 | AS29.18.460 |
| 09/09/80 | AS29.18.510 | 1 | AS29.18.510 |
| 09/09/80 | AS29.18.520 | 1 | AS29.18.520 |
| 09/09/80 | AS29.18.530 | 2 | AS29.18.530 |
| 09/09/80 | AS29.18.540 | 1 | AS29.18.540 |
| 09/09/80 | AS29.18.550 | 1 | AS29.18.550 |
| 09/09/80 | AS29.18.570 → .580 | 2 | AS29.18.570 |
| 09/09/80 | AS29.18.590 | 3 | AS29.18.590 |
| 09/09/80 | AS29.18.600 | 1 | AS29.18.600 |
| 09/09/80 | AS29.18.610 | 1 | AS29.18.610 |
| 09/09/80 | AS29.23.010 | 1 | AS29.23.010 |
| 09/09/80 | AS29.23.020 (repeated | 2 | AS29.23.020 |
| 09/09/80 | AS29.23.021 | 2 | AS29.23.021 |
| 09/09/80 | AS29.23.023 | 3 | AS29.23.023 |
| 09/09/80 | AS29.23.025 | 4 | AS29.23.025 |
| 09/09/80 | AS29.23.030 (repeated) | 1 | AS29.23.030 |
| 09/09/80 | AS29.23.040 | 2 | AS29.23.040 |
| 09/09/80 | AS29.23.050 | 1 | AS29.23.050 |
| 09/09/80 | AS29.23.060 | 3 | AS29.23.060 |
| 09/09/80 | AS29.23.070 | 1 | AS29.23.070 |
| 09/09/80 | AS29.23.080 | 2 | AS29.23.080 |
| 09/09/80 | AS29.23.090 (repeated) | 1 | AS29.23.090 |
| 09/09/80 | AS29.23.100 (repeated) | 1 | AS29.23.100 |
| 09/09/80 | AS29.23.130 | 3 | AS29.23.130 |
| 09/09/80 | AS29.23.140 | 3 | AS29.23.140 |
| 09/09/80 | AS29.23.150 | 1 | AS29.23.150 |
| 09/09/80 | AS29.23.160 | 1 | AS29.23.160 |
| 09/09/80 | AS29.23.170 | 1 | AS29.23.170 |
| 09/09/80 | AS29.23.180 | 1 | AS29.23.180 |
| 09/09/80 | AS29.23.200 | 2 | AS29.23.200 |

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| DATE | DOCUMENT NAME | PSR(S) | DOCUMENT ID |
|---|---|---|---|
| 09/09/80 | AS29.23.210 | 2 | AS29.23.210 |
| 09/09/80 | AS29.23.220 | 1 | AS29.23.220 |
| 09/09/80 | AS29.23.240 | 1 | AS29.23.240 |
| 09/09/80 | AS29.23.250 | 3 | AS29.23.250 |
| 09/09/80 | AS29.23.260 | 1 | AS29.23.260 |
| 09/09/80 | AS29.23.270 | 1 | AS29.23.270 |
| 09/09/80 | AS29.23.280 | 1 | AS29.23.280 |
| 09/09/80 | AS29.23.290 | 2 | AS29.23.290 |
| 09/09/80 | AS29.23.310 | 1 | AS29.23.310 |
| 09/09/80 | AS29.23.340 | 2 | AS29.23.340 |
| 09/09/80 | AS29.23.360 | 1 | AS29.23.360 |
| 09/09/80 | AS29.23.370 | 1 | AS29.23.370 |
| 09/09/80 | AS29.23.380 | 2 | AS29.23.380 |
| 09/09/80 | AS29.23.390 | 1 | AS29.23.390 |
| 09/09/80 | AS29.23.395 | 2 | AS29.23.395 |
| 09/09/80 | AS29.23.397 | 2 | AS29.23.397 |
| 09/09/80 | AS29.23.399 | 1 | AS29.23.399 |
| 09/09/80 | AS29.23.401 | 2 | AS29.23.401 |
| 09/09/80 | AS29.23.410 | 1 | AS29.23.410 |
| 09/09/80 | AS29.23.420 | 1 | AS29.23.420 |
| 09/09/80 | AS29.23.430 | 1 | AS29.23.430 |
| 09/09/80 | AS29.23.440 | 1 | AS29.23.440 |
| 09/09/80 | AS29.23.450 | 1 | AS29.23.450 |
| 09/09/80 | AS29.23.460 | 1 | AS29.23.460 |
| 09/09/80 | AS29.23.470 | 1 | AS29.23.470 |
| 09/09/80 | AS29.23.480 | 1 | AS29.23.480 |
| 09/09/80 | AS29.23.500 | 1 | AS29.23.500 |
| 09/09/80 | AS29.23.510 | 1 | AS29.23.510 |
| 09/09/80 | AS29.23.520 | 1 | AS29.23.520 |
| 09/09/80 | AS29.23.530 | 1 | AS29.23.530 |
| 09/09/80 | AS29.23.540 | 2 | AS29.23.540 |
| 09/09/80 | AS29.23.550 | 1 | AS29.23.550 |
| 09/09/80 | AS29.23.555 | 1 | AS29.23.555 |
| 09/09/80 | AS29.23.560 | 2 | AS29.23.560 |
| 09/09/80 | AS29.23.570 | 2 | AS29.23.570 |
| 09/09/80 | AS29.23.580 | 1 | AS29.23.580 |
| 09/09/80 | AS29.28.010 | 1 | AS29.28.010 |
| 09/09/80 | AS29.28.015 | 1 | AS29.28.015 |
| 09/09/80 | AS29.28.020 | 1 | AS29.28.020 |
| 09/09/80 | AS29.28.030 | 1 | AS29.28.030 |
| 09/09/80 | AS29.28.040 | 2 | AS29.28.040 |
| 09/09/80 | AS29.28.050 | 2 | AS29.28.050 |
| 09/09/80 | AS29.28.060 | 1 | AS29.28.060 |
| 09/09/80 | AS29.28.062 | 1 | AS29.28.062 |
| 09/09/80 | AS29.28.065 | 1 | AS29.28.065 |
| 09/09/80 | AS29.28.070 | 2 | AS29.28.070 |
| 09/09/80 | AS29.28.073 | 1 | AS29.28.073 |
| 09/09/80 | AS29.28.075 | 1 | AS29.28.075 |
| 09/09/80 | AS29.28.077 | 1 | AS29.28.077 |
| 09/09/80 | AS29.28.080 | 2 | AS29.28.080 |
| 09/09/80 | AS29.28.090 | 2 | AS29.28.090 |

BEGINNING WITH AS29.

| DATE | DOCUMENT NAME | PSR(S) | DOCUMENT ID |
|---|---|---|---|
| 09/09/80 | AS29.28.110 | 1 | AS29.28.110 |
| 09/09/80 | AS29.28.130 | 1 | AS29.28.130 |
| 09/09/80 | AS29.28.140 | 1 | AS29.28.140 |
| 09/09/80 | AS29.28.150 | 1 | AS29.28.150 |
| 09/09/80 | AS29.28.160 | 1 | AS29.28.160 |
| 09/09/80 | AS29.28.170 | 1 | AS29.28.170 |
| 09/09/80 | AS29.28.180 | 1 | AS29.28.180 |
| 09/09/80 | AS29.28.190 | 1 | AS29.28.190 |
| 09/09/80 | AS29.28.200 | 1 | AS29.28.200 |
| 09/09/80 | AS29.28.210 | 1 | AS29.28.210 |
| 09/09/80 | AS29.28.220 | 1 | AS29.28.220 |
| 09/09/80 | AS29.28.230 | 1 | AS29.28.230 |
| 09/09/80 | AS29.28.240 | 1 | AS29.28.240 |
| 09/09/80 | AS29.28.250 | 1 | AS29.28.250 |
| 09/09/80 | AS29.33.010 | 1 | AS29.33.010 |
| 09/09/80 | AS29.33.030 | 1 | AS29.33.030 |
| 09/09/80 | AS29.33.050 | 4 | AS29.33.050 |
| 09/09/80 | AS29.33.070 | 2 | AS29.33.070 |
| 09/09/80 | AS29.33.080 | 3 | AS29.33.080 |
| 09/09/80 | AS29.33.085 | 1 | AS29.33.085 |
| 09/09/80 | AS29.33.090 | 4 | AS29.33.090 |
| 09/09/80 | AS29.33.110 | 2 | AS29.33.110 |
| 09/09/80 | AS29.33.120 | 1 | AS29.33.120 |
| 09/09/80 | AS29.33.130 | 2 | AS29.33.130 |
| 09/09/80 | AS29.33.150 | 2 | AS29.33.150 |
| 09/09/80 | AS29.33.160 | 2 | AS29.33.160 |
| 09/09/80 | AS29.33.170 | 2 | AS29.33.170 |
| 09/09/80 | AS29.33.180 | 1 | AS29.33.180 |
| 09/09/80 | AS29.33.190 | 2 | AS29.33.190 |
| 09/09/80 | AS29.33.200 | 1 | AS29.33.200 |
| 09/09/80 | AS29.33.210 | 1 | AS29.33.210 |
| 09/09/80 | AS29.33.220 | 1 | AS29.33.220 |
| 09/09/80 | AS29.33.230 | 1 | AS29.33.230 |
| 09/09/80 | AS29.33.240 | 3 | AS29.33.240 |
| 09/09/80 | AS29.33.245 | 1 | AS29.33.245 |
| 09/09/80 | AS29.33.250 | 1 | AS29.33.250 |
| 09/09/80 | AS29.33.260 | 1 | AS29.33.260 |
| 09/09/80 | AS29.33.270 | 1 | AS29.33.270 |
| 09/09/80 | AS29.33.280 | 1 | AS29.33.280 |
| 09/09/80 | AS29.33.290 | 3 | AS29.33.290 |
| 09/09/80 | AS29.38.010 | 1 | AS29.38.010 |
| 09/09/80 | AS29.38.020 | 1 | AS29.38.020 |
| 09/09/80 | AS29.38.030 | 1 | AS29.38.030 |
| 09/09/80 | AS29.38.040 | 1 | AS29.38.040 |
| 09/09/80 | AS29.38.050 | 2 | AS29.38.050 |
| 09/09/80 | AS29.41.010 | 5 | AS29.41.010 |
| 09/09/80 | AS29.41.020 | 1 | AS29.41.020 |
| 09/09/80 | AS29.43.010 | 1 | AS29.43.010 |
| 09/09/80 | AS29.43.020 | 1 | AS29.43.020 |
| 09/09/80 | AS29.43.030 | 1 | AS29.43.030 |
| 09/09/80 | AS29.43.040 | 1 | AS29.43.040 |

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| DATE | DOCUMENT NAME | PSR(S) | DOCUMENT ID |
|---|---|---|---|
| 09/09/80 | AS29.43.100 | 2 | AS29.43.100 |
| 09/09/80 | AS29.43.105 | 2 | AS29.43.105 |
| 09/09/80 | AS29.43.110 | 1 | AS29.43.110 |
| 09/09/80 | AS29.48.010 | 3 | AS29.48.010 |
| 09/09/80 | AS29.48.020 | 1 | AS29.48.020 |
| 09/09/80 | AS29.48.030 | 2 | AS29.48.030 |
| 09/09/80 | AS29.48.033 | 3 | AS29.48.033 |
| 09/09/80 | AS29.48.035 | 4 | AS29.48.035 |
| 09/09/80 | AS29.48.037 | 2 | AS29.48.037 |
| 09/09/80 | AS29.48.040 | 1 | AS29.48.040 |
| 09/09/80 | AS29.48.050 | 2 | AS29.48.050 |
| 09/09/80 | AS29.48.060 | 1 | AS29.48.060 |
| 09/09/80 | AS29.48.070 | 2 | AS29.48.070 |
| 09/09/80 | AS29.48.080 | 2 | AS29.48.080 |
| 09/09/80 | AS29.48.090 | 1 | AS29.48.090 |
| 09/09/80 | AS29.48.100 | 1 | AS29.48.100 |
| 09/09/80 | AS29.48.108 | 1 | AS29.48.108 |
| 09/09/80 | AS29.48.110 | 3 | AS29.48.110 |
| 09/09/80 | AS29.48.130 | 3 | AS29.48.130 |
| 09/09/80 | AS29.48.140 | 1 | AS29.48.140 |
| 09/09/80 | AS29.48.150 | 2 | AS29.48.150 |
| 09/09/80 | AS29.48.160 | 2 | AS29.48.160 |
| 09/09/80 | AS29.48.170 | 1 | AS29.48.170 |
| 09/09/80 | AS29.48.180 | 2 | AS29.48.180 |
| 09/09/80 | AS29.48.185 | 1 | AS29.48.185 |
| 09/09/80 | AS29.48.190 | 2 | AS29.48.190 |
| 09/09/80 | AS29.48.200 | 1 | AS29.48.200 |
| 09/09/80 | AS29.48.210 | 1 | AS29.48.210 |
| 09/09/80 | AS29.48.220 | 1 | AS29.48.220 |
| 09/09/80 | AS29.48.250 | 1 | AS29.48.250 |
| 09/09/80 | AS29.48.260 | 4 | AS29.48.260 |
| 09/09/80 | AS29.48.270 | 2 | AS29.48.270 |
| 09/09/80 | AS29.48.310 | 1 | AS29.48.310 |
| 09/09/80 | AS29.48.320 | 1 | AS29.48.320 |
| 09/09/80 | AS29.48.330 | 1 | AS29.48.330 |
| 09/09/80 | AS29.53.010 | 1 | AS29.53.010 |
| 09/09/80 | AS29.53.020 | 8 | AS29.53.020 |
| 09/09/80 | AS29.53.025 | 6 | AS29.53.025 |
| 09/09/80 | AS29.53.030 | 1 | AS29.53.030 |
| 09/09/80 | AS29.53.035 | 3 | AS29.53.035 |
| 09/09/80 | AS29.53.040 | 1 | AS29.53.040 |
| 09/09/80 | AS29.53.045 | 3 | AS29.53.045 |
| 09/09/80 | AS29.53.050 | 3 | AS29.53.050 |
| 09/09/80 | AS29.53.055 | 2 | AS29.53.055 |
| 09/09/80 | AS29.53.060 | 2 | AS29.53.060 |
| 09/09/80 | AS29.53.070 | 1 | AS29.53.070 |
| 09/09/80 | AS29.53.080 | 2 | AS29.53.080 |
| 09/09/80 | AS29.53.090 | 1 | AS29.53.090 |
| 09/09/80 | AS29.53.095 | 1 | AS29.53.095 |
| 09/09/80 | AS29.53.100 | 2 | AS29.53.100 |
| 09/09/80 | AS29.53.110 | 1 | AS29.53.110 |

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| DATE | DOCUMENT NAME | PSR(S) | DOCUMENT ID |
|---|---|---|---|
| 09/09/80 | AS29.53.120 | 1 | AS29.53.120 |
| 09/09/80 | AS29.53.130 | 1 | AS29.53.130 |
| 09/09/80 | AS29.53.135 | 1 | AS29.53.135 |
| 09/09/80 | AS29.53.140 | 1 | AS29.53.140 |
| 09/09/80 | AS29.53.150 | 1 | AS29.53.150 |
| 09/09/80 | AS29.53.160 | 2 | AS29.53.160 |
| 09/09/80 | AS29.53.170 | 1 | AS29.53.170 |
| 09/09/80 | AS29.53.180 | 2 | AS29.53.180 |
| 09/09/80 | AS29.53.200 | 1 | AS29.53.200 |
| 09/09/80 | AS29.53.210 | 1 | AS29.53.210 |
| 09/09/80 | AS29.53.220 | 1 | AS29.53.220 |
| 09/09/80 | AS29.53.230 | 1 | AS29.53.230 |
| 09/09/80 | AS29.53.240 | 2 | AS29.53.240 |
| 09/09/80 | AS29.53.250 | 1 | AS29.53.250 |
| 09/09/80 | AS29.53.260 | 1 | AS29.53.260 |
| 09/09/80 | AS29.53.270 | 1 | AS29.53.270 |
| 09/09/80 | AS29.53.280 | 1 | AS29.53.280 |
| 09/09/80 | AS29.53.290 | 1 | AS29.53.290 |
| 09/09/80 | AS29.53.300 | 2 | AS29.53.300 |
| 09/09/80 | AS29.53.310 | 2 | AS29.53.310 |
| 09/09/80 | AS29.53.320 | 1 | AS29.53.320 |
| 09/09/80 | AS29.53.330 | 1 | AS29.53.330 |
| 09/09/80 | AS29.53.340 | 1 | AS29.53.340 |
| 09/09/80 | AS29.53.350 | 3 | AS29.53.350 |
| 09/09/80 | AS29.53.360 | 2 | AS29.53.360 |
| 09/09/80 | AS29.53.370 | 2 | AS29.53.370 |
| 09/09/80 | AS29.53.375 | 2 | AS29.53.375 |
| 09/09/80 | AS29.53.380 | 2 | AS29.53.380 |
| 09/09/80 | AS29.53.385 | 1 | AS29.53.385 |
| 09/09/80 | AS29.53.390 | 1 | AS29.53.390 |
| 09/09/80 | AS29.53.400 | 1 | AS29.53.400 |
| 09/09/80 | AS29.53.405 | 1 | AS29.53.405 |
| 09/09/80 | AS29.53.410 | 1 | AS29.53.410 |
| 09/09/80 | AS29.53.415 | 2 | AS29.53.415 |
| 09/09/80 | AS29.53.420 | 1 | AS29.53.420 |
| 09/09/80 | AS29.53.440 | 1 | AS29.53.440 |
| 09/09/80 | AS29.53.450 | 1 | AS29.53.450 |
| 09/09/80 | AS29.53.460 | 1 | AS29.53.460 |
| 09/09/80 | AS29.58.010 | 2 | AS29.58.010 |
| 09/09/80 | AS29.58.020 | 1 | AS29.58.020 |
| 09/09/80 | AS29.58.030 (repeated) | 1 | AS29.58.030 |
| 09/09/80 | AS29.58.040 | 2 | AS29.58.040 |
| 09/09/80 | AS29.58.050 | 1 | AS29.58.050 |
| 09/09/80 | AS29.58.060 | 1 | AS29.58.060 |
| 09/09/80 | AS29.58.070 | 1 | AS29.58.070 |
| 09/09/80 | AS29.58.080 | 1 | AS29.58.080 |
| 09/09/80 | AS29.58.090 | 1 | AS29.58.090 |
| 09/09/80 | AS29.58.100 | 1 | AS29.58.100 |
| 09/09/80 | AS29.58.110 | 1 | AS29.58.110 |
| 09/09/80 | AS29.58.120 | 1 | AS29.58.120 |
| 09/09/80 | AS29.58.130 | 1 | AS29.58.130 |

BEGINNING WITH AS29

| DATE | DOCUMENT NAME | PSR(S) | DOCUMENT ID |
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| 09/09/80 | AS29.58.140 | 1 | AS29.58.140 |
| 09/09/80 | AS29.58.150 | 1 | AS29.58.150 |
| 09/09/80 | AS29.58.160 | 2 | AS29.58.160 |
| 09/09/80 | AS29.58.170 | 1 | AS29.58.170 |
| 09/09/80 | AS29.58.180 | 2 | AS29.58.180 |
| 09/09/80 | AS29.58.200 | 2 | AS29.58.200 |
| 09/09/80 | AS29.58.205 | 1 | AS29.58.205 |
| 09/09/80 | AS29.58.210 | 1 | AS29.58.210 |
| 09/09/80 | AS29.58.220 | 2 | AS29.58.220 |
| 09/09/80 | AS29.58.240 | 1 | AS29.58.240 |
| 09/09/80 | AS29.58.250 | 1 | AS29.58.250 |
| 09/09/80 | AS29.58.260 | 1 | AS29.58.260 |
| 09/09/80 | AS29.58.270 | 1 | AS29.58.270 |
| 09/09/80 | AS29.58.280 | 1 | AS29.58.280 |
| 09/09/80 | AS29.58.300 | 1 | AS29.58.300 |
| 09/09/80 | AS29.58.310 | 1 | AS29.58.310 |
| 09/09/80 | AS29.58.315 | 1 | AS29.58.315 |
| 09/09/80 | AS29.58.320 | 1 | AS29.58.320 |
| 09/09/80 | AS29.58.340 | 2 | AS29.58.340 |
| 09/09/80 | AS29.58.345 | 1 | AS29.58.345 |
| 09/09/80 | AS29.58.350 | 5 | AS29.58.350 |
| 09/09/80 | AS29.59.010 (Unpealed) | 1 | AS29.59.010 |
| 09/09/80 | AS29.63.010 | 1 | AS29.63.010 |
| 09/09/80 | AS29.63.015 | 2 | AS29.63.015 |
| 09/09/80 | AS29.63.020 | 2 | AS29.63.020 |
| 09/09/80 | AS29.63.025 | 1 | AS29.63.025 |
| 09/09/80 | AS29.63.030 | 1 | AS29.63.030 |
| 09/09/80 | AS29.63.040 | 1 | AS29.63.040 |
| 09/09/80 | AS29.63.050 | 1 | AS29.63.050 |
| 09/09/80 | AS29.63.060 | 2 | AS29.63.060 |
| 09/09/80 | AS29.63.065 | 5 | AS29.63.065 |
| 09/09/80 | AS29.63.070 | 1 | AS29.63.070 |
| 09/09/80 | AS29.63.080 | 1 | AS29.63.080 |
| 09/09/80 | AS29.63.085 | 2 | AS29.63.085 |
| 09/09/80 | AS29.63.090 | 4 | AS29.63.090 |
| 09/09/80 | AS29.68.010 | 2 | AS29.68.010 |
| 09/09/80 | AS29.68.020 | 3 | AS29.68.020 |
| 09/09/80 | AS29.68.030 | 1 | AS29.68.030 |
| 09/09/80 | AS29.68.040 | 2 | AS29.68.040 |
| 09/09/80 | AS29.68.050 | 1 | AS29.68.050 |
| 09/09/80 | AS29.68.060 | 1 | AS29.68.060 |
| 09/09/80 | AS29.68.070 | 1 | AS29.68.070 |
| 09/09/80 | AS29.68.080 | 1 | AS29.68.080 |
| 09/09/80 | AS29.68.090 | 2 | AS29.68.090 |
| 09/09/80 | AS29.68.100 | 1 | AS29.68.100 |
| 09/09/80 | AS29.68.110 | 1 | AS29.68.110 |
| 09/09/80 | AS29.68.240 | 1 | AS29.68.240 |
| 09/09/80 | AS29.68.250 | 1 | AS29.68.250 |
| 09/09/80 | AS29.68.260 | 2 | AS29.68.260 |
| 09/09/80 | AS29.68.270 | 1 | AS29.68.270 |
| 09/09/80 | AS29.68.280 | 1 | AS29.68.280 |

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| DATE | DOCUMENT NAME | PSR(S) | DOCUMENT ID |
|---|---|---|---|
| 09/09/80 | AS29.68.290 | 1 | AS29.68.290 |
| 09/09/80 | AS29.68.300 | 1 | AS29.68.300 |
| 09/09/80 | AS29.68.310 | 1 | AS29.68.310 |
| 09/09/80 | AS29.68.320 | 1 | AS29.68.320 |
| 09/09/80 | AS29.68.330 | 1 | AS29.68.330 |
| 09/09/80 | AS29.68.340 | 2 | AS29.68.340 |
| 09/09/80 | AS29.68.350 | 3 | AS29.68.350 |
| 09/09/80 | AS29.68.360 | 1 | AS29.68.360 |
| 09/09/80 | AS29.68.370 | 1 | AS29.68.370 |
| 09/09/80 | AS29.68.380 | 2 | AS29.68.380 |
| 09/09/80 | AS29.68.390 | 3 | AS29.68.390 |
| 09/09/80 | AS29.68.400 | 1 | AS29.68.400 |
| 09/09/80 | AS29.68.410 | 2 | AS29.68.410 |
| 09/09/80 | AS29.68.420 | 1 | AS29.68.420 |
| 09/09/80 | AS29.68.430 | 1 | AS29.68.430 |
| 09/09/80 | AS29.68.440 | 1 | AS29.68.440 |
| 09/09/80 | AS29.68.500 | 2 | AS29.68.500 |
| 09/09/80 | AS29.68.510 | 1 | AS29.68.510 |
| 09/09/80 | AS29.68.520 | 1 | AS29.68.520 |
| 09/09/80 | AS29.68.530 | 1 | AS29.68.530 |
| 09/09/80 | AS29.68.540 | 1 | AS29.68.540 |
| 09/09/80 | AS29.68.550 | 1 | AS29.68.550 |
| 09/09/80 | AS29.68.560 | 1 | AS29.68.560 |
| 09/09/80 | AS29.68.570 | 2 | AS29.68.570 |
| 09/09/80 | AS29.68.580 | 1 | AS29.68.580 |
| 09/09/80 | AS29.73.020 | 2 | AS29.73.020 |
| 09/09/80 | AS29.73.030 | 1 | AS29.73.030 |
| 09/09/80 | AS29.73.040 | 1 | AS29.73.040 |
| 09/09/80 | AS29.73.050 | 2 | AS29.73.050 |
| 09/09/80 | AS29.73.060 | 2 | AS29.73.060 |
| 09/09/80 | AS29.78.010 | 4 | AS29.78.010 |

607 PSR(S) USED
120 MESSAGES WAITING

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# Title 29. MUNICIPAL GOVERNMENT


| SECTIONS | HEADINGS |
|---|---|
| Chapter 03. | The Unorganized Borough |
| 29.03.010 | Establishment |
| Chapter 08. | Classification of Municipalities |
| 29.08.010(80) | Home rule |
| 29.08.020 | General law |
| 29.08.030 | Classes of general law |
| 29.08.040(S) | Reclassification |
| 29.08.050 | Transition (repeal) |
| Chapter 48. | Powers (and Duties) Applicable to All Municipalities |
| Article 1. | General Powers |
| 29.48.010(S) | General powers |
| Article 2. | Facilities, Services and Regulation |
| 29.48.030(S) | Municipal facilities and services |
| 29.48.033(S) | Garbage and solid waste services |
| 29.48.035(80S) | Regulatory powers |
| 29.48.037(S) | Extraterritorial jurisdiction |
| 29.48.040 | Municipally-owned utilities |
| 29.48.050 | Franchises and permits |
| 29.48.060(80) | Public utilities rates |
| 29.48.070 | Hearing for regulation of utilities rates |
| 29.48.080 | Right to participate and compel testimony |
| 29.48.090 | Further proceedings |
| 29.48.100 | Application |
| 29.48.108(S) | Creation of historical district commissions |
| 29.48.110(S) | Establishment of historical districts |

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|---|---|
| Article (3) 4. | **Miscellaneous Provisions** |
| 29.48.210 | Expenditure of borough revenues |
| 29.48.220 | Post audit |
| 29.48.250 | Centralized purchasing |
| 29.48.260(S) | Municipal properties |
| 29.48.270 | Emergency disaster powers |
| Article (4) 5. | Construction of Powers |
| 29.48.310 | General construction |
| 29.48.320 | Extent of powers |
| 29.48.330 | Enumeration of powers |
| Chapter (New) | Service Areas |
| 29.03.020 | Service areas (in the unorganized borough) |
| 29.63.090(S) | Service areas (in organized boroughs) |
| Chapter 33. | Areawide Borough Powers and Duties |
| Article 1. | Scope |
| 29.33.010(S) | Scope of areawide powers |
| Article 2. | Assessment and Collection of Taxes |
| 29.33.030 | Assessment and collection |
| Article 3. | Education |
| 29.33.050(S) | Education |
| Article 4. | Planning, Platting and Zoning |
| 29.33.070(S) | Planning, platting and zoning |
| 29.33.080(80) | Planning commission |
| 29.33.085 | Comprehensive plan |
| 29.33.090(80S) | Zoning |
| 29.33.110(S) | Board of adjustment |
| 29.33.120 | Adjustment procedure |
| 29.33.130 | Judicial review |
| 29.33.150(S) | Platting jurisdiction and power |

29.33.160(S) Procedure

29.33.170 Waiver in certain cases

29.33.180 Information required

29.33.190(S) Penalties

29.33.200 Alteration of replat petition

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29.33.230 Recording

29.33.240 Title to vacated area

29.33.245 Delegations

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29.33.250 Additional areawide powers

29.33.260 Transfer by city

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29.33.280 Investigation

29.33.290 Election

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

29.38.010 First class borough

29.38.020(S) Second class borough

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Chapter 41. Powers of Third Class Boroughs

29.41.010(S) Powers of third class boroughs

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| | |
|---|---|
| **Chapter 43.** | **Powers of Cities Outside Boroughs** |
| 29.43.010 | Additional powers |
| 29.43.020 | Assessment and tax collection |
| 29.43.030 | Education |
| 29.43.040(S) | Planning and zoning |
| 29.43.100(S) | Extension of curfews outside cities |
| 29.43.105(S) | Enforcement of curfews |
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| Chapter (New) | Municipal Enactments |
| 29.48.130(S) | Acts required to be by ordinance |
| 29.48.140 | Form of ordinances |
| 29.48.150 | Ordinance procedure |
| 29.48.160 | Emergency ordinances |
| 29.48.170 | Codes of regulation |
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| 29.13.020 | Nomination |
| 29.13.030 | Election |
| 29.13.040 | Preparation of charter |
| 29.13.050 | Initiative and referendum |
| 29.13.060 | Charter election |
| 29.13.070 | Charter adoption |
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29.23.027(80) Apportionment appeals

29.23.029(80) Judicial review and relief

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29.23.140 Powers and duties of borough administrator

29.23.150 Executive absence
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29.23.240 Mayor
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29.23.255(80) Removal from office
29.23.260 Mayor's vote
29.23.270 Veto
29.23.280 Filling a vacancy
29.23.290 Powers and duties of city manager
Article 5. School Boards
29.23.310 Election
Article 6. Utility Boards
29.23.340 Utility boards
Article 7. Other Officers and Employees
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29.23.370 Municipal attorney
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29.23.397 Commission
29.23.399 Interns
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29.28.015 Nominations
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29.28.030 Voter qualification
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29.28.065 Contents of petition

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29.28.130 Recall

29.28.140 Grounds

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29.28.170 Supplemental petition

29.28.180 New petition

29.28.190 Submission

29.28.200 Election

29.28.210 Form of recall ballots

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29.28.230 Majority required

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29.18.240 Incorporation

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29.18.260 Review

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29.18.340 Development city council

29.18.350 Filling a vacancy

29.18.360 Powers and duties of council

29.18.370 Powers and duties of development city executive director

29.18.380 Procedures

29.18.390 Development city capital improvement funds

29.18.400 Transition

29.18.410 Housing powers

29.18.430 Revenue bonds

29.18.440 Shared revenue

29.18.450 Applicability of other provisions of this title

29.18.460 Definition

29.18.510(S) Incorporation

29.18.520(S) Boundaries

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29.53.050(S) Tax limitation

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| 29.53.150 | Supplementary assessment rolls |
| 29.53.160 | Tax adjustments on property affected by a natural disaster |
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Article 5. City Sales and Use Taxes

29.53.440 Power of levy

29.53.450 Power of levy and collection

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Chapter 63. Special Assessments ~~and Service Areas~~

~~Article 1.~~ ~~Special Assessments~~

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Article 1. Revenue Anticipation Notes

29.58.010(S) Borrowing in anticipation of revenue

29.58.020(S) Issuance of notes

29.58.040 Issuance of notes in anticipation of state, federal grants

29.58.050 Priority of repayment

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29.58.070 Bond anticipation borrowing

29.58.080 Issuance of notes

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29.58.150 General obligation bonds

29.58.160 Vote and notice of existing indebtedness required

29.58.170 Form and terms of sale

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29.58.200(S) Revenue bonds

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29.58.210(S) Forms and terms

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Article 5. Refunding Bonds

29.58.240 Authorization

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29.58.270 Payment of refunding bonds

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29.58.300 Public sale

29.58.310 Interest rate

29.58.319 Bond attorneys, bond and financial consultants

29.58.320 Redemption before maturity

29.58.340(S) Borough indebtedness

29.58.345(S) Bonded indebtedness for school construction

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Chapter 88.(80) Municipal Tax Resource Equalization

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29.88.015(80) Determination of population

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29.88.040(80) Administration

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Chapter 90.(80) State Aid for Hospital Construction

29.90.010(80) State aid for hospital construction

29.90.020(80) Hospital construction assistance account

29.90.030(80) Definitions

Chapter 89.(80)State Aid for Miscellaneous Municipal Purposes

29.89.010(80) Revenue sharing payable

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29.89.030(80) State aid to municipalities and other eligible recipients for health facilities and hospitals

29.89.040(80) State aid to volunteer fire departments in the unorganized borough

29.89.050(80) State aid to certain native village governments

29.89.060(80) Population determination

29.89.070(80) Area cost-of-living differential

29.89.080(80) Miscellaneous services account

29.89.090(80) Regulations

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Chapter 95.(80)Administration of Municipal Financial Assistance Programs

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Chapter 68. Alteration of Boundaries

Article 1. Annexation and Exclusion

29.68.010 Local boundary commission

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Article 2. Merger and Consolidation

29.68.030 Methods of merger or consolidation

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| 29.68.300 | Qualifications of charter commission candidates |
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| 29.68.320 | Election |
| 29.68.330 | Requirements for approval of unification and election of charter commission |
| 29.68.340 | Charter commission organization and procedure |
| 29.68.350(80) | Charter preparation |
| 29.68.360 | Public hearings |
| 29.68.370 | Filing of proposed charter |
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| 29.68.390 | Election on charter |
| 29.68.400 | Effect of the charter after ratification |
| 29.68.410 | Assets and liabilities |
| 29.68.420 | Ordinances |
| 29.68.430 | Right to state and federal funds preserved |
| 29.68.440 | Powers of a unified municipality |

**Article 4. Dissolution**

29.68.500 **Methods of dissolution**

29.68.510 **Petition**

29.68.520 Standards

29.68.530 **Review**

29.68.540 Investigation

29.68.550 Report and hearing

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29.68.570 Election

29.68.580 Succession

Chapter 73. Miscellaneous Provisions

29.73.020 Eminent domain

29.73.030 Adverse possession

29.73.040 Taxation of municipalities

29.73.050 Change of municipal name

29.73.060(80S) Property tax equivalency payments

Chapter 78. General Provisions

29.78.010(S) Definitions

From Allan [illegible]

# I General Provisions / Applicable to All Municipalities

## A. "General Provisions"

General Provisions
Formation, creation of munis

AS 29.03.010, .020
AS 29.08.010 – .050
AS 29.13.010 – .100
AS 29.18.011 – 29.18.180
AS 29.18.220 29.18.460
AS 29.18.510 – 29.18.610
AS 29.23.310
AS 29.68.010 – .020
AS 29.68.240 – .440
AS 29.68.500 – 580
AS 29.78.010

## II B. Statute governing all municipalities.

Substantive provisions governing all municipalities

AS 29.53 Taxation
AS 29.18.201 – .213
AS 29.23.010
AS 29.23.020
AS 29.23.021
AS 29.23.250 (a)
AS 29.23.540
AS 29.23.555, .560
AS 29.23.580
AS 29.28.010
AS 29.28.020 (b) – .030
AS 29.28.060
AS 29.28.130 – .250
AS 29.33.010 (a)
AS 29.33.030, .050
AS 29.33.290 (c)
AS 29.43.020 – .040
AS 29.43.100 – 110

AS 29.48.010
AS 29.48.033
AS 29.48.035 (b) (c)
AS 29.48.037 ~~(b)~~
AS 29.48.040 – 100
AS 29.48.180
AS 29.48.210 – 220
AS 29.48.310 – 330
AS ~~29.53 (entire)~~
↳ 29.53.010 – .400
29.53.415 (d)
AS 29.58.180 (b)
29.58.315
AS 29.68.030 – .110
AS 29.73.020 – .060

III

II. Statutory provisions which are binding on all General law Municipalities.

As 29.23.023
As 29.23.027
As 29.23.040
As 29.23.050
As 29.23.130 – 180
As 29.23.200 – 240
As 29.23.250 (b) – (d)
As 29.23.260 – .290
As 29.23.410 – 480
As 29.23.500
As 29.23.550
As 29.23.570
As 29.28.020 (a)
As 29.28.040
As 29.28.062 – 110
As 29.33.010 (a)
As 29.33.070
As 29.33.080 – .240
As 29.33.250 – .290 (b)
As 29.38.010
As 29.38.020 – .050
As 29.41.010 – .020
As 29.43.010
As 29.48.020
As 29.48.030
As 29.48.035 (a)(b)
~~As 29.48.037 (b)~~
As 29.48.130 – .140
As 29.48.145
As 29.48.150 – 175
As 29.48.190 – 200
As 29.48.250 – 270
As 29.53.405 – 415 (c)
As 29.58.180 (a)
As 29.53.420 – 460
As 29.58.010 – 180 (a)
As 29.58.200 – 310
As 29.58.320 – 350
As 29.63.010 – .090

IV III. Directory Provisions applicable to board law municipalities unless they provide otherwise

AS 29.23.060
AS 29,23,070
AS 29.23.070
AS 29.23.340
AS 29.23.360 - 401
AS 29.23.510 - 530
AS 29.28.050
AS 29.33.080
AS 29.33.245
AS 29.48.110

V miscellaneous

Work group Sept. 8

~~29th~~ 30th



I Uniform Provisions - All municipalities
II Specific
III Directory

I General
.010 - .020 II

Suggestions

29.23.040 → cat. IV
29.23.0

1) 29.23.040 — [illegible] IV
.210

2) 29.23.310 - suggest [illegible]

3) 29.23.3[illegible] → .401 repeal

4) 29.23.550 - rewrite - [illegible] municipalities
established by ordinance [illegible] of [illegible] years
[illegible] "at [illegible]"

5) 29.23.570 - recommend move to ~~#~~ IV

6) ~~New section to I~~

Note may need rewrite to get area-wide powers/relationships between entities

7) Put ~~[illegible]~~ 29.48.033

8 - 29.48.[illegible] - do [illegible]

~~Aug 28, 29~~ ~~Aug 27, 28~~ Aug. 27, 28

Anchorage - Pioneer School
Parks & Rec.
Wilda Hudson - (say Hrliss recommended)
Sept. 22, 23
Mon. Tues.

ask about rules of procedure for city boards

Juneau -

~~Fairbanks~~

Nov. 10, 11

Fairbanks -

send out
Suggested meeting
dates, agenda, suggestions changes
Introduction of committee members -
- election of chairman

- Procedure - basic rules, propose a set of working rules (draft a proposed rules)

- send title 29 (Ck with suggestions Proposed rules

1) Discussion of technical review committee
2) Role of proposed ex-officio members
3) Presentation of proposed items for consideration
   members
   Staff
   ex-officio
4) Discussion & Direction
5) Next meeting dates

Get slide rules from Ginny C.

SUGGESTED CHANGES TO TITLE 29

1. Reorganize the title.
2. Adopt uniform definitions of "municipality", "borough", "organized borough" and use the terms consistently throughout the title.
3. Allow persons who buy or sell property to keep the price confidential. Since assessors must appraise at "full and true" value and since they have the right to independently investigate the value of property, appraisal need not be based on information concerning actual price. (29.53.070)
4. AS 29.28.130 is unclear as to whether an official may be subject to recall within 6 months of being re-elected. It would seem that the original intent of this section was to protect rookies rather than encumbants. Recommendation: all an official to be recalled after 6 months have been served in office. The 6 month grace period would not apply if a person is re-elected to the same office.
5. The grounds for recall listed in AS 29.28.140 are too narrow in scope. Since the grounds stated in recall petitions need not be proven, people are forced to name one of the three listed grounds even when the real reason behind the petition bears little relation to it.
6. AS 29.28.150 should be changed so that it is clear that a recall petition can seek to recall only one named official. A separate petition should be filed for each offical sought to be recalled. A petition should be required to contain the mailing address of each person who signs it.
7. AS 29.28.180 should be changed so that a new petition may not be filed sooner than 6 months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

8. There has been a fear that once a sufficient petition has been submitted and accepted, members of the council could resign and be re-appointed to the council. The statutes should preclude this possibility.

9. The statutues should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition, not on the state election.

10. It is unclear whether a person recalled is removed from his office at once after the election has been certified, without any transition period. Some sort of transition period should be provided by statute to allow a government to continue to operate when a majority has been recalled from office.

11. Include a provision by which a state officer (governor, commissioner, etc.) enjoys authority to appoint municipal voters to fill elected council or assembly seats when the number of members drops below the number required to produce a quorum. For example, if the 5 members of the Juneau assembly are recalled, it may be that the four remaining cannot function even to the point of filling a vacancy or calling for an election to fill the vacancy, or a council or assembly might be precluded from operating by charter if there are several resignations or wholesale removals.

12. AS 29.23.025(e)(9) outlines procedures to be followed if a reapportionment ordinance has not been approved by the voters after the assembly has determined that reapportionment is necessary. The statute should address what happens to the order - is it voted on by the people? Can it be appealed? Is administrative or judicial review provided for?

13. There should be statory references providing for judicial review and relief in all appoicable instances in AS 29.23.029 and .031. References should be made in AS 29.23.031 to voter approved ordinances and reapportionment orders.
14. Use the term "general election" to refer to state, not local elections.
15. Clarify whether "health and hospital" power is one or two separate local powers.
16. Include property tax exemptions for disabled veterans of any age.
17. Analyze the kind and amount of taxes that various classes of municipalities can levy and exemptions.
18. Delete the sections dealing with development cities.
19. AS 29.18.050(8) should be changed if there are inhabitants in the area. This section of the statute does not follow the standard incorporation procedures because it was assumed that a development city would be located in an uninhabited area.
20. AS 29.18.340 should be changed to read: "the governor shall appoint no fewer than two public members from a list of nominees designated by the major developer providing the industrial base of the city as measured by employment and capital investment; and two members who are state residents preferably residing in the surrounding area or borough if the development city is located in a borough."
21. AS 29.18.360 should have the following language added: "except within an organized borough unless the borough waives DPD powers over development, planning, and zoning." This provision gives planning and zoning powers to the division of planning and research and the Dept. of Environmental Conservation during the development stage. If a project is located in an organized borough it may want some control.

22. AS 29.18.380 - add the following: "meetings shall be made public."

23. Consider the following alternatives regarding development cities:

    1. Change the law to apply to locations which include a population; providing for a more democratic process in the development state of the project.
    2. Repeal the law altogether.
    3. Limit the law to only those areas in the unorganized borough that have no inhabitants.
    4. Leave the statute as is, counting on the regulations from C and RA to clarify the confusing aspects of its application.

Things to talk about

1) Organization of title 29

2) Mailing list - should we inform people of meetings who are not on the committees? Of progress?
Bob Walker of Exxon has requested notice of "public activities"

3) Uniform definitions for title 29

4) ~~Development~~ Cities Suggested Changes

Bob Lord
Marilin
Parr / Branson / Mulcahy

Technical review group -

get copies of session laws for all group members

Glen Svenson - get him to come in with Marjorie Gorsuch Have them gather reports for background information
Each agency should gather material for committee -

- Introduce technical review committee
Who they are.
That they will work at Billie's direction, but be available for background information if needed.

- Role of proposed ex officio members (talk to Palmer)
  1) Ginny Chitwood
  2) Phil Smith

Meeting Time - Aug. 27, 28

What are we doing? Rural problem - recognition of small Native Village governments

① Guidance as to making title 29 more specific, re-defining powers, providing help to areas with no full time attorney.

② Lack of interrelationships between Title 29 and other titles

Ex: election precincts take no cognizance of municipal boundaries, so can't rely on computer information for local elections

Ck with Dept of Law for AG opinions dealing with problems in Title 29 Summarize contents as background for Committee (Ck with Palmer)

Try to get committee to set up meeting dates

Call officers of each house to try to see if appointments are made

— Stew —
Documents

Jinny - Municipal League — 15th annually
Palmer - CRA - 209 - community Bldg -
Read - Metropolitan Experiment in Alaska -
"Grejo notes" referred to by Palmer

- Go back to recognizing old third class cities
(Native ~~boroughs~~ villages)

"unified municipality" is a form of home rule borough

"municipality" could be used to cover any form
of local gov. which is incorporated.

Clarify "general" (state election) "regular" & "special"
elections
29.18.050 - State elections
29.20.540 - should be local elections
Usual both ways - 29.41.010

municipal elections = regular

"health & hospital powers" is that one or two separate
local powers

Clean up / delete development cities

Municipal League / CRA - will send out letter
selecting suggested changes to Title 29

Numbers in - July 10th
Draft - End of August

Meeting w/ Arliss

Bob
Sen. McCay & Arliss

Letter to all Legislators

Recommend people to serve + ideas

Speaker Not appointed we take liberty of
Sending attached copy & ask for suggested
nominations — persons interested in being kept
informed of progress

Mon. 319 - 4999 — Arliss would like names
before submitted & must OK letter
before sent

Sign for Arliss & McCay

point out Arliss & Bob are only ones appointed
so they are writing — send out under Bob/Arliss
name

Definitions AS. 29.08 - Classification of Municipalities

"Municipality" as used in Ch. 08

29.08.010 - A home rule municipality is a city of the first class or an organized borough which has adopted a home rule charter and includes a municipality unified under AS 29.68

29.08.020 - A general law municipality is an unchartered borough or city

29.08.030 - Classes of general law municipalities

(1) first class boroughs
(2) second class boroughs
(3) third class boroughs
(4) first class cities
(5) second class cities

New Section: A unified municipality is a first or ~~organized~~ second class borough and all cities within the borough which have united to form a single unit of home rule local government by complying with Ch. AS 29.68

Sec. 29.18.213 - Cln § 201-213 of this chapter:

(7) "municipality" means a home rule or general law city or organized borough of any class, and includes unified municipalities established under AS 29.68.24 - 29.68.440.

Chap. 78 - Definitions - In this title, unless otherwise provided, or the context otherwise requires

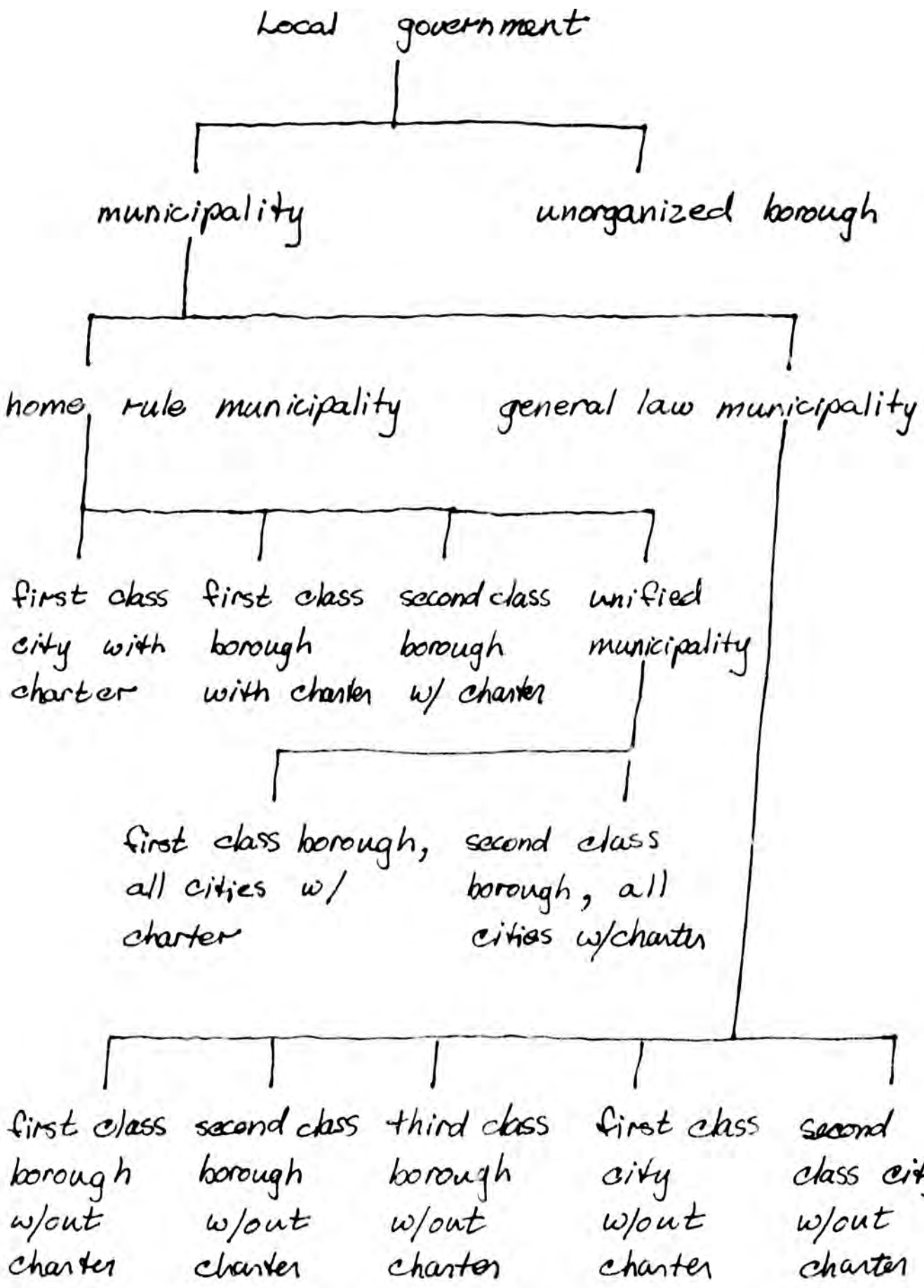
(1) "borough" means a general law first, second or third class organized borough

(eliminate all statutory references to "organized" borough & rely on definition or use term "organized borough" in definition

(8) "municipality" means a general law municipal corp. and political subdivision, which is a first or second class borough or city, or a third class borough, incorporated under the laws of the State
(excludes "home rule", "unified" municipalities)

How about adding a definition —
"local government" means a municipality ~~and~~ or the unorganized borough

Now "borough" is defined to be an organized borough of any class yet many statutes say "organized borough" Even more confusing because the other some statutes use "organized borough" refers to only 1st & 2nd class.




Borough [ Unorganized Borough
Organized Borough
1) first class borough w/ or w/out charter
2) second class borough w/ or w/out charter
3) third class borough

City
1) first class city w/ or w/out charter
2) second class city

SCOMM

#23:5

# HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

HAINES BOROUGH RESOLUTION NO. 184

A RESOLUTION OF THE HAINES BOROUGH OPPOSING THE REPEAL OF ALASKA STATUTES GOVERNING A THIRD CLASS BOROUGH AND REQUESTING THE ALASKA STATE LEGISLATURE TO AMEND EXISTING LAWS TO CLARIFY CERTAIN AMBIGUITIES REGARDING THE THIRD CLASS BOROUGH

WHEREAS, the Title 29 Revision Commission formed under Senate Concurrent Resolution No. 66 was charged to consider the experience gained in local government since the previous Municipal Code revision in 1972; and

WHEREAS, experience shows that a third class borough is a viable form of goverment without insurmontable difficulties; and

WHEREAS, experience shows that the difficulties that the only third class borough in the State of Alaska has encountered can be assuaged by some revisions of statutes and that the difficulties are not such as to warrant eradication of the third class borough form of government; and

WHEREAS, the Haines Borough is a third class borough incorporated as a third class borough since 1968,

WHEREAS, repeal of the statutes governing a third class borough will inhibit the operation of our local government;

BE IT THEREFORE RESOLVED BY THE HAINES BOROUGH ASSEMBLY to request the Alaska State legislature to reverse the decision of the Title 29 Revision Commission to repeal state statutes authorizing the third class borough;

BE IT FURTHER RESOLVED to request the legislature to provide for additions to Title 29 which will indicate that State statute 29.48.010 General Powers is applicable to the third class borough; which will clarify the Commission's revision to the statutes regarding the veto of the borough executive to show that the third class borough mayor does not have the veto power; which will provide for monetary transitional assistance to the third class borough should it choose to up-grade to another class; which will provide for transition from third class borough to home-rule status without the necessity of becoming a second class borough; and to work with legislative counsel to make certain that the revisions to Title 29 do not undermine the existing laws governing third class boroughs.

ADOPTED: January 27, 1981

APPROVED: R. E. Henderson
R. E. Henderson, Mayor

ATTEST: [illegible]
Clerk Pro Tem

TO WHOM IT MAY CONCERN:

WE, RESIDENTS OF THE CHILKAT VALLEY - HAINES, ALASKA, DO HEREBY OPPOSE HOUSE BILL NO 584 AND SENATE BILL NO 354 FOR THE FOLLOWING REASONS:

1. WE ARE SATISFIED WITH OUR THIRD CLASS BOROUGH, THE LOW TAXES AND THE WORKABLE ECONOMIC BASE TO SUPPORT IT.

2. WE FEEL THAT A CHANGE OF BOROUGH STATUS WOULD RAISE OUR TAXES AND PLACE RULES AND REGULATIONS UPON US THAT WE DO NOT NEED.

3. WE WISH TO STAY WITH PRACTICAL LIMITED LAWS.

4. WE WOULD BE TAXED FOR SERVICES THAT CANNOT BE DELIVERED.

5. OUR COMMUNITY DOES NOT NEED MORE GOVERNMENT BUT NEEDS RESPONSIBLE FREEDOM OF CHOICE.

| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| | P.O. Box 55 | ✓ | | 6/20/80 |
| Clara McRae | P.O. Box 55 | ✓ | | 6/20/80 |
| | | | | 6/20/80 |
| | | | | 6/20/80 |
| | | | | 6/20/80 |
| | | | | 6/20/80 |
| | | | ✓ | 6-21-80 |
| | | | | 6-21-80 |
| | | | ✓ | 6-21-80 |
| Versia Bielski | | | ✓ | 6-21-80 |
| Harold Bielski | | | ✓ | 6-21-80 |
| | | | ✓ | 6-21-80 |
| | | | ✓ | 6-21-80 |
| | | | ✓ | 6-21-80 |
| Rodney E Higgins | Box 481 | | ✓ | 6-21-80 |
| | | | ✓ | 6-21-80 |
| John D Richards | | | ✓ | 6-21-80 |
| Lillian Richards | | | ✓ | 6-21-80 |

O WHOM IT MAY CONCERN:

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. OUR COMMUNITY DOES NOT NEED MORE GOVERNMENT BUT NEEDS RESPONSIBLE FREEDOM OF CHOICE.

| AME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Jon Spencer | 5/8 mile Small Tract | | ✓ | 9-13 80 |
| [illegible] Miller | Box 201 | | ✓ | 9/13/80 |
| [illegible] | [illegible] Box 201 | | ✓ | 9/13/80 |
| [illegible] | Box 527 | | ✓ | 9/13/80 |
| [illegible] | Box 527 | | ✓ | 9-13-80 |
| [illegible] | Box 401 | | ✓ | 9-13-80 |
| [illegible] | Box L | ✓ | ✓ | 9-13-80 |
| Bernice Stuart | Box 58 | | ✓ | 9-13-80 |
| Ray [illegible] | Box 664 | | ✓ | 9/13/80 |
| Jon [illegible] | [illegible] | | ✓ | 9/13/80 |
| [illegible] | [illegible] | | ✓ | 9/13/80 |
| [illegible] | [illegible] | | ✓ | 9/13/80 |
| Barbara Sue ROTH | | | ✓ | 9/13/80 |
| Richard M. DeWitt | Box 128 Haines | X | | 9/13/80 |
| Lorraine DeWitt | " " | X | | 9/13/80 |
| Joshua D. Fain | Box 318 Haines | | ✓ | 9/17/80 |
| Russell E Wilkins | P.O. Box 593, City | | ✓ | 9-17-80 |
| Edna R. Wilkins | Box 593 | | ✓ | 9-17-80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| [illegible] | Gen Del | Haines | | 6-19-80 |
| Eileen Y Sewilliger | Box 217 | Haines 210 Tower Rd | | 6-20-80 |
| Nell Dale | Box 417 | Haines | | 6-20-80 |
| Timothy D Sewilliger | Box 217 | Haines | | 6-20/80 |
| Kermit Browning | Box 520 | HAINES | X | 6/20/80 |
| Neil C Lusby | Box 397 | Haines | | 6-21-80 |
| Ronee Laird | Bx 671 | Haines | X | 6/21/80 |
| [illegible] | [illegible] | Haines | X | [illegible] |
| [illegible] | [illegible] | | | [illegible] |
| [illegible] | [illegible] | | X | 6/22/80 |
| [illegible] | Box 56[illegible] | | X | 6/22/80 |
| [illegible] | Box 56[illegible] | | X | [illegible] |
| Cheri Pardee | Box 296 | X | ~~X~~ | 6/22/80 |
| Barbara J. Sykes | | Haines | Box 456 | 6/22/80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| R D Humphreys | Box 515 | X | | 10/20/80 |
| Sally Kressler | Box 515 | " | | 10/20/8[illegible] |
| [illegible] | Gen. Del. | | ✓ | 10/2/80 |
| Sunny Robinson | Box 376 | | ✓ | 11/4/80 |
| [illegible] | Box 12[illegible] | | ✓ | 11-11-80 |
| [illegible] Davis | Box 411 | | ✓ | 12-8-80 |
| [illegible] Allen | Haines | | ✓ | 12-8-80 |
| Kevin Alfred | Haines | ✓ | | 12/13/80 |
| James Margaretroff | Box 559 Haines | | ✓ | 1/18/81 |
| Dorothy E. Fossman | Box 237 | | | 1/26/81 |
| Clifford E. Fossman | Box 237 | | | |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Marolynne Strong | Klukwan | | | 6-27-80 |
| Merrill I Palmer | 31 mile | | X | June 28-80 |
| Rick Palmer | 31 mile | | X | June 28 |
| Patricia D. Clark | Box 112 | ✓ | | Aug 14, 198 |
| Sally Dresser | Box 515 | ✓ | | Aug 28, 80 |
| R D Humphreys | Box 515 | ✓ | | aug 28, 80 |
| Sue Braaten | Box 111 | | X | Sept 5, 80 |
| Aaron Streets | Box 433 | | X | Sept. 5-80 |
| Frances Streets | Box 433 | | X | Sept 5-80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Joanne Reichert | Box 488 | Haines | ✓ | 11/12/80 |
| Ron Reichert | Box 488 | Haines | ✓ | 11/12/80 |
| David R. Kohlstedt | Box 373 | Haines | | 11/17/80 |
| Joyce Simons | Box 380 | Haines Al | ✓ | 11/19/80 |
| Kenneth H. Gross | Box 281 | Haines AK | ✓ | 11/19/80 |
| Paul Douglas Potter | Box 497 | Haines Alaska | | 11-19-80 |
| Hazel J Hennig | Box 416 | Haines, Ok | | 11-19-80 |
| [illegible] | Box 416 | Haines AK | | 11-19-80 |
| Merle M. Hauser | P.O. Box 309 | Haines Alaska | | 11-20-80 |
| Hubert Gulleford | Box 144 | Haines Alaska | | 11-20-80 |
| Betty Deardorff | Bx 324 | Haines | | 11-21-80 |
| Royce Deardorff | " | " | | " |
| Fred Emerson | 27 mile | " | | 11 21 80 |
| Suzanne Butz | POB 334 | Lot 36 Sun Tract Haines Ak | | |
| Connie Lawbanks | Box 398 | Haines AK. | | |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| ~~David Woodring~~ | ~~Box 555~~ | | ~~yes~~ | ~~11/21/80~~ |
| ~~Janet Woodring~~ | ~~Box 555~~ | | ~~yes~~ | ~~11/21/80~~ |
| Joanne J. Waterman | Box 261 | yes | | 11/22/80 |
| Preston Ostrander | Box 151 | yes | | 11 23 80 |
| Rev B.L. Kulpa | Box 534 | | yes | 11/22/80 |
| Brenda Eastham | | | | |
| Thos. J. Eastham | | | yes | 11-22 |
| Marge Matthews | Box 96 | | yes | 11.22 |
| Viola H Caleder | Box 101 | | yes | 11/22 |
| | | | yes | 11/22 |
| Diana Felton | Gen Del (8½ m. Haines Hwy) | | yes | 11/22/80 |
| Patricia Peters | Box 152 | yes | no | 11/22/80 |
| Lenore Walker | Box 421 | | yes | 11-22/80 |
| Sir Potter | Box 497 | | yes | 11-22/80 |
| John Marquardt | Gen Del 25½ m Haines Hwy | | yes | 11-22 80 |
| Stephen Staneland | Gen. Delivery (1 mile) | | | 11-25-80 |
| Gregory Podarki | Box 512, Haines, AK | | | |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| David E Woodring | Box 555 | | 33½ mi Haines AK | May 26/80 |
| Janet B Woodring | Box 555 | | 33½ mi Haines Ak | 5/26/80 |
| Larry Schmidt | Box 687 | | 33½ mi Haines, Ak | 5/26/80 |
| Lynn W. Myl | Box 417 | 5th & Dalton | X | 5/26/80 |
| Lyman H. Myl | Box 417 | 1 mi Trailer Park | X | 5/26/80 |
| Kathie Lopp | Box 633 | | 33 Mile Haines Hwy | 5/26/80 |
| Jerry Lopp | Box 633 | | 33 Mile Haines Hwy | 5/26/80 |
| William J Herman | Gen Del. | Union St. | | 5/28/80 |
| Alan Hetrick | Box 406 | | Comstock Rd | 6/2/80 |
| Everett Simons | Box 380 | | 33 Mile | 6/2/80 |
| Jim Rivers | Box 505 | X | | 6/6/80 |
| Marilyn J Cervera | Box 241 | | 3¼ | 6-9-80 |
| Helen Becker | Box 834 | X | 5½ mi Mud Bay Rd | 6-9-80 |
| G. J. Lamerford | Box 100 | X | 100 Walton St | 6-10-80 |
| Mary Belden | | X | Box 293 Hons | |
| Everett C Belden | | X | " " " | |
| Joyce E Simons | | | 33 Mile Haines Box 380 | 6/18/80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| [illegible] | Box 196 | ✓ | | 1-27-81 |
| [illegible] | Box 196 | ✓ | | 1-27-81 |
| [illegible] | Box 232 | ✓ | | 1-27-81 |
| [illegible] | Box 234 | ✓ | | 1/27/81 |
| [illegible] | [illegible] | ✓ | | 1-27-81 |
| [illegible] | | ✓ | | 1-27-81 |
| John W Simmons | Box 465 | ✓ | | 1-27-81 |
| Fred C Hamber | Box 219 | ✓ | | 1-27-81 |
| [illegible] | Box 164 | ✓ | | 1-27-81 |
| [illegible] | | ✓ | | 1-27-81 |
| Frank Jurin | Box 295 | ✓ | | 1-27-81 |
| [illegible] | Box 148 | ✓ | | 1-27-81 |
| [illegible] | | ✓ | | 1-27-81 |
| Don Douglass | Box 268 | ✓ | | 1-27-81 |
| [illegible] | Box 343 | ✓ | | [illegible] |
| Steve Geary | Box 673 | ✓ | | 1-27-81 |
| Wilda Geary | P.O Box 673 | ✓ | | 1/27/81 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Bob. Browning | P.O. Box 528 | | X | 6/22/80 |
| R E Henlen | Box 105 | | X | 6/22/80 |
| Roger L Potter | P.O. Box 86 | | X | 6-24-80 |
| Bonnie Potter | PO Box 86 (31 Mile) | | X | 6-24-80 |
| [illegible] | 33 Mile | | X | 6-24-80 |
| [illegible] Slater III | | | | |
| [illegible] | PO Box 614 | | X | 6-25 80 |
| Bill Herman | Gen. Del. | X | | 6-25-80 |
| Katherine E Lusby | Box 397 | X | | |
| Karen Bertrock | PO Box 396 | | X | 6-2[illegible]80 |
| ~~[illegible]~~ | ~~[illegible]~~ | ~~X~~ | | ~~[illegible]~~ |
| The Ray Benson | P.O. Box 441 | | X | 6-26-80 |
| [illegible] | P.O. Box 483 | | X | 6/28/80 |
| [illegible] | GENERAL DELIVERY, HAINES | | X | 6-28-80 |
| Mary Manuell | Box M Haines | X | | 6/28/80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| John P. Norton | Box 582 Haines | | X | 7-24-80 |
| Susan Meacock | Box 487 Haines | | X | 7-24-80 |
| Gob Marquardt | Gen Del 25 mile | | X | 7-24-80 |
| [illegible] | Mile 7 1/2 Haines Highway | | X | 7-24-80 |
| D. L. Carlson | Box 577 | X | | 7-24-80 |
| McCoy Taylor | Box 499 | | X | 7-24-80 |
| Marie Taylor | Box 499 | | X | 7-24-80 |
| Lawrence Alexander | Gen Del. | | X | 7-24-80 |
| Martha Alexander | Gen Del. | | X | 7-24-80 |
| Deborah K Davis | | | X | 7-26-80 |
| Larry Jungbluth | Box 292 Haines | | X | 7-26-80 |
| Molly Hubler | Box 313, Haines | | X | 7-26-80 |
| Joe Madden (MADDUX, DAVE) | Box 418 Haines | | X | 7-26-80 |
| Elmer A. Smith | PO Box 471 | | X | 7-26-80 |
| Jenny Lyn Smith | Box 471 | | X | 7-26-80 |
| Daniel E Morrison | Box 691 | | X | 7-26-80 |
| Lynn C. Morrison | P.O. Box 691 Haines | | X | 7-26-80 |

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5. OUR COMMUNITY DOES NOT NEED MORE GOVERNMENT BUT NEEDS RESPONSIBLE FREEDOM OF CHOICE.

| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Kenneth J Ewald | Small Tract Rd | | ✓ | 7/26/80 |
| Sunny J Robinson | Small Tract Rd | | ✓ | 7/26/80 |
| Jeffrey M. Gorman | Small tract Rd | | ✓ | 7/26/80 |
| Darlene Gorman | Small Tract Rd | | ✓ | 7-26-80 |
| Elwood B Lee | Small Tract RD | | ✓ | 7-26-80 |
| Judie Lee | Small Tract Rd | | ✓ | 7-26-80 |
| Rose Hughes | Sm. Track Rd. | | ✓ | 7-26-80 |
| Jay Hughes | Small Track Rd. | | ✓ | 7-26-80 |
| Ray Hill | Small Track Rd. | | ✓ | 7-26-80 |
| Lynne Hill | Small Track Rd | | ✓ | 7-26-80 |
| Barbara Eaton | Small Track Rd. | | ✓ | 7-26-80 |
| R.J. Watts | Small Track Rd | | — | 7-26-80 |
| Jeanne C. Watts | Small Tract Rd. | | ✓ | 7/26-80 |
| Betty R Cooper | Small Tract Rd | | ✓ | 7-26-80 |
| Don Bertuch | Small tract Rd | | ✓ | 7-26-80 |

TO WHOM IT MAY CONCERN:

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Carrie D. Williams | Box 593 | | ✓ | 9-12-80 |
| [illegible] | Box 75 | Haines | | 9-22-80 |
| [illegible] | Box 341 | Haines | | 9-22-80 |
| [illegible] | Box 341 | Haines | ✓ | 9-22-80 |
| [illegible] | Box 457 | Haines | | 9-22-80 |
| [illegible] | P.O. Box 334 | Haines | ✓ | 9-29-80 |
| [illegible] | Box 673 | Haines | ✓ | 10-2-80 |
| [illegible] | [illegible] | [illegible] | ✓ | [illegible] |
| [illegible] | Box 154 | Haines | | 10-2-80 |
| [illegible] | Box 304 | Haines | | 10-2-80 |
| [illegible] | Box 113 | Haines | | 10-2-80 |
| Ella M. Paddock | Box 134 | Haines | | 10-2-80 |
| [illegible] | Box 154 | Haines | | 10-2-80 |
| [illegible] | P.O. Box 643 | Haines | | 10-3-80 |
| [illegible] | P.O. Box 643 | Haines | | 10-5-80 |
| [illegible] | P.O. Box 454 | Haines | | |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Marvin L. Smith | Box 38 | X | | 7/2/80 |
| Louise Smith | Box 38 | X | | 7/2/80 |
| Theodore H. Gorbel | Box 263 | X | | 7/5/80 |
| Robert L. Schubel | Box 486 | X | | 7/6/80 |
| George R. Davis | Box 378 | | X | 7/6/80 |
| Pat Philpott | Box 188 | | X | 7/6/80 |
| Larry Dixon | Box 132 | | X | 7/6/80 |
| Murray J. Clayton | Box 188 | X | | 7/6/80 |
| James Fredrickson | Box 533 | | X | 7-7-80 |
| James C Schubel | Box 303 | X | | 7-10-80 |
| Peter Gall | Box 81 | 6 | | 7-10-80 |
| Edith Jacquot | Box 412 | + | | 7-10-80 |
| ~~[illegible]~~ | | ~~X~~ | | ~~[illegible]~~ |
| Josephine Jurgelert | | 44 | X | 7-10-80 |
| Robert J Schwalbach | Box 173 | | X | 7/10/80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| [illegible] | Box 2?1 | Haines | | 7/24/81 |
| [illegible] | [illegible] | " | | 7/23/81 |
| [illegible] | [illegible] | Haines | | 7-24-81 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| [illegible] | 26 Mile | | ✓ | 10/8/80 |
| [illegible] | 1 Mile Mud Bay Rd | | ✓ | |
| [illegible] | [illegible] | | | |
| Troy E Brown | Glen Del | | ✓ | 10-8-80 |
| Teresa S Brown | Glen Del | | ✓ | 10-8-80 |
| [illegible] | [illegible] | | ✓ | 10-9-80 |
| [illegible] | P.O. Box 691 | | ✓ | 10-9-80 |
| [illegible] | P.O. Box 614 | | ✓ | 10-9-80 |
| [illegible] | P.O. Box 614 | | ✓ | 10-9-80 |
| [illegible] | P.O. Box 614 | | ✓ | 10-9-80 |
| [illegible] | P.O. Box 482 | | ✓ | 10-9-80 |
| [illegible] | [illegible] | | ✓ | 10-9-80 |
| [illegible] | [illegible] | | ✓ | 10-9-80 |
| Walter E. Clayton | Box 364 | | ✓ | 10-9-80 |
| Mae I. Clayton | Box 364 | | ✓ | 10-9-80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Alicia Kohlstaedt | Box 373 Haines, AK | X | | 10-10-80 |
| Barbara Cox | Box 354 | | X | 10-10-80 |
| Debra Lawson | Box 142 | | X | 10-10-80 |
| Roger D. Buttram | Box 552 | X | | 10-11-80 |
| [illegible] | Box 550 | X | | 10-11-80 |
| Nathan Spooner | Box 571 | X | | 10-12-80 |
| Bud Jones | Gen Del. Lutak Pt. | | X | [illegible] |
| [illegible] | Box 266 | | X | 10/12/80 |
| Daniel A. Kasip | P.O. 692 | | X | 10/13/80 |
| Terry Lapp | Box 633 | | X | 10/13/80 |
| [illegible] | Box 492 | | X | 10/15/80 |
| [illegible] Guelford | Box 140 | | X | 10/18/80 |
| Robert Johnson | Box 631 | | X | 10/18/80 |
| ~~Yankee Doodle~~ | ~~Box 35~~ | | | ~~10/18/80~~ |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Gary Cranston | Box 472 | Haines | | 10/3/80 |
| Toni J Cranston | Box 472 | Haines | | 10/3/80 |
| [illegible] Jim Johnson | General delivery | Haines | | 10/3/80 |
| Andrew J Johnson | Gen Del | Haines | | 10/3/80 |
| Robert J Chavulak Jr | P.O 651 | Haines | ✓ | 10/5/80 |
| [illegible] Friedrichsen | Box 553 | HAINES | X | 10/9/80 |
| [illegible] Havulak | Box 651 | Haines | X | 11-10-80 |
| Charles R Kelley | Box 651 | Haines | X | 11-10-80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Robert Witkin | 26 Mile Haines, ak | | ✓ | 9-21-80 |
| Brian Ge | 26 Mile Haines ak | | ✓ | 9-21-80 |
| Frank Argento | 26 Mile Haines | | ✓ | 9-21-80 |
| Richard K. Jepsen | 26 mile Haines | | ✓ | 9-21-80 |
| Pauline Jepsen | 26 mile Haines | | ✓ | 9-21-80 |
| Mimi Beach | 26 mile Haines | | ✓ | 9-21-80 |
| Paul Beach | 26 Mile | | ✓ | 9-21-80 |
| Roberta M. Lane | 26 Mile, Haines | | ✓ | 9/21/80 |
| Linda Giannino | 26 Mile | | | |
| [illegible] | Box 343 - Haines (Chilkat Lake) | | ✓ | 11/10/80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Mary Jane Davis | Box 411 | | ✓ | 6/21/80 |
| Guy Davis | Box 411 | | ✓ | 6/21/80 |
| Gary [illegible] | Box 451 | Haines | 33 mile | 6/26/80 |
| Jerry Potter | Box 86 | | 31 mile | 6-26-80 |
| [illegible] | Box 685 | Mosquito Lake Rd | | 7/20/80 |
| Brenda Eastham | Box 642 | | 27 mile | 7-27-80 |
| Jerry Eastham | Box 642 | | 27 mile | 7-27-80 |
| Bob Trotter | Box 485 | Mosquito Lake Rd 27 Mile | | 7/29/80 |
| Connie Trotter | Box 485 | Mosquito Lake Rd 27 Mile | | 7/29/80 |
| Richard E Clark | Box 445 | Haines AK 99827 | | 9/2/80 |
| Betty J Clark | Box 445 | Haines AK 99827 | | 9/2/80 |
| Lynda Eyre | Mile 26 | | Out of City | 9-22-80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Robert Watkins | 26 Mile Haines, ak | | ✓ | 9-21-80 |
| Brenda [illegible] | 26 Mile Haines ak | | ✓ | 9-21-80 |
| Frank Argento | 26 Mile Haines | | ✓ | 9-21-80 |
| Richard K. Jepsen | 26 mile Haines | | ✓ | 9-21-80 |
| Pauline Jepsen | 26 mile Haines | | ✓ | 9-21-80 |
| Mimi Beach | 26 mile Haines | | ✓ | 9-21-80 |
| Paul Beach | 26 Mile | | ✓ | 9-21-80 |
| Roberta M. Lane | 26 Mile, Haines | | ✓ | 9/21/80 |
| Linda Hanning | 26 Mile | | | |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| Julie R. Woodrow | Box 413 Haines | | ✓ | 9-28-80 |
| Ethel E. Walker | P.O.B. 355 X | | | 9-28-80 |
| Maurice G. Sandy | Box 121 Haines | | ✓ | 9-28-80 |
| Cecily Stern | Box 696 Haines | | ✓ | 9/30/80 |
| Gwen M. Horton | Box 267 Haines | | | 10/2/80 |
| Judy L. Goenett | Box 357 Haines | | | 10/2/80 |
| Jack P. Goenett | Box 357 Haines | | | 10/2/80 |
| Helen B. Campbell | Box 458 (472 Lynnville) Haines | | | 10/2/80 |
| Julianne Falta | Box 37 Haines | | | 10/2/80 |
| Austin Hammond | Box 88 Haines | | | 10/2/80 |
| [illegible] | Box 458 Haines | | | 10/2/80 |
| Bob R. Elston | Box 504 Haines | | ✓ | 10/3/80 |
| Mary L. Elston | Box 504 Haines | | ✓ | 10/3/80 |
| Ernest J. Wilkins | Box 593 Haines | | ✓ | 10-3-80 |
| Victor M. Palmer | Box 542 Haines | | | 10-3-80 |
| Linda J. Palmer | " | " | | 10-3-80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| John L Lawson | 27 Mile - Mosquito Lake Rd | | ✓ | 8-9-80 |
| [illegible] L. Jeff | Haines Box 361 | | in city | 8-11-80 |
| David F Berry Jr. | Box 8 | ✓ | | 8/17/80 |
| Norman H. Plank | Box 112 Haines. 2nd Ave | | in city | 8/14/80 |
| Mayoria [illegible] | [illegible] | | ✓ | 8/14/80 |
| Manuel Baxter | 42 mile | | ✓ | 8/14/80 |
| Rusty Allen | 27 mile | | X | 8/15/80 |
| Sam Cray | 25 mile | | X | 8/17/80 |
| Harold G. Hannon | Allen Road 471 | X | | 8-22-80 |
| Elaine C. Hannon | 471 Allen Rd | ✓ | | 8-22-80 |
| Lee E. Clayton | Mile 7 Mud Bay Rd | | X | 9-5-80 |
| Ellis Spencer | Comstock Rd | | X | 9-5-80 |
| Betty Spencer | Comstock Rd | | X | 9-5-80 |
| Monty Spencer | Comstock Rd | | X | 9-5-80 |
| Lois Spencer | Comstock Rd | | ✓ | 9/5/80 |
| John Spencer | Comstock Rd | | ✓ | 9-5-80 |

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| NAME | ADDRESS | IN CITY | OUT OF CITY | DATE |
|---|---|---|---|---|
| John R Jager | Small Tract Rd. Box 676 | | X | 9-7-80 |
| Rose Mary C Jager | Small Tract Rd. Box 676 | | X | 9-7-80 |
| Theodore P. Bertier | 2.0 mile Small Tract Rd | | X | 9-7-80 |
| Florence E. Bertier | 2.0 mile Small Tract Rd. | | X | 9-7-80 |
| Jerry C. Turner | 2.1 Small Tract Rd | | X | 9-7-80 |
| Terry Hepler | Small Track | | X | 9-7-80 |
| Gene Stuart | " | " | X | " " " |
| Alberta Katzenmeyer | " | " | X | 9/7/80 |
| John M. Koehler | " | " | X | 9/7/80 |
| Georgene H. Koehler | " | " | X | 9/7/80 |
| Joseph J Etzler | " | " | X | 9-7-80 |
| Daniel Blackwell | " | " | X | 9-7-80 |
| Barbara Blackwell | " | " | X | 9-7-80 |
| Elwood W. Mahr | " | " | X | 13 Sept 80 |
| Betty J. Pryse | Schnabb Trailer Ct. | | | 13 Sept 80 |

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| Greg Davis | Box 411 | | ✓ | 6/21/80 |
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| Jerry Potter | Box 86 | | 31 mile | 6-26-80 |
| Bob Gray | Box 685 | Mosquito Lake Rd | | 7/20/80 |
| Brenda Eastham | Box 642 | | 27 mile | 7-27-80 |
| Jerry Eastham | Box 642 | | 27 mile | 7-27-80 |
| Bob Trotter | Box 485 | Mosquito Lake Rd 27 Mile | | 7/29/80 |
| Connie Trotter | Box 485 | Mosquito Lake Rd 27 Mile | | 7/29/80 |
| Richard E Clark | Box 445 | Haines AK 99827 | | 9/2/80 |
| Betty J Clark | Box 445 | Haines AK 99827 | | 9/2/80 |

Official Business

# Alaska State Legislature

JOINT SENATE AND HOUSE
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
LOCAL GOVERNMENT STUDY

Co-Chairmen
Senator Arliss Sturgulewski
Representative Bill Parker

Address all correspondence to:

LOCAL GOVERNMENT STUDY
Pouch V
State Capitol
Juneau, Alaska 99811

A FINAL REPORT PREPARED BY THE
JOINT SENATE AND HOUSE
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
LOCAL GOVERNMENT STUDY

Submitted to the
LEGISLATIVE COUNCIL
JANUARY, 1980

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## EXHIBITS


| | |
|---|---|
| Research and Analyses Papers Sponsored by the Joint Committee | A |
| Local Government Study Final Report | B |

## EXHIBIT A

I. Borough Incorporation Standards as Interpreted by Local Boundary Commission
Marjorie Gorsuch, Administrative Assistant, House Community & Regional Affairs, August, 1979

II. Bureau of Indian Affairs and Comprehensive Employment and Training Assistance Contracting Procedures, August, 1979
Jim Sanders, Graduate Student Intern

III. Distribution of Flow of Funds in Alaska, June, 1979
Elke Kallab, Policy Analyst, Division of Legislative Research Services, Legislative Affiars Agency

IV. Financial Disincentives to Borough Formation, November, 1979
Milt Barker, Fiscal Analyst, Legislative Finance Division

V. Legislative Proposals related to Organization and Financial Equalization in the Unorganized Borough, August, 1979
Jack Chenoweth, Legislative Counsel, Legislative Affairs Agency

VI. Local Government Study - Report of Local Government Symposium, 9/20/79

VII. Pipeline Boroughs, January, 1980
Vic Fischer, Consultant

VIII. Property Tax Revenues of Pipeline Boroughs, November, 1979
Milt Barker, Fiscal Analyst, Legislative Finance Division

IX. Requests relating to Borough Formation, August, 1979
Pat Poland, Local Government Specialist, Department of Community and Regional Affairs

X. Service Delivery to the Unorganized Borough, August, 1979
Majorie Gorsuch, Administrative Assistant, House C&RA

XI. Services and Programs Provided by the Non-Governmental and Quasi-Governmental Organizations in the Unorganized Borough, August, 1979
Jim Sanders, Graduate Student Intern

XII. State/Federal A95 Review Process, August, 1979
Lamar Cotten, Graduate Student Intern

XIII. State Municipal Land Trustee Program, August, 1979
Lamar Cotten, Graduate Student Intern

XIV. Statutory Inducements and Disincentives re Municipal Government Incorporation, August, 1979
Eric Simpson, Director, Division of Community Services, Department of Community and Regional Affairs

XV. Taxing Capacity of the Unorganized Borough, June, 1979
Alexander Hoke, Jack Kreinheder, Research Analysts Division of Research Services

XVI. Traditional, Non-Traditional and Quasi-Governmental Native Methods of Organization, August, 1979
Lamar Cotten, Graduate Student Intern

# I

# BOROUGH INCORPORATION STANDARDS
# AS INTERPRETED BY LOCAL BOUNDARY COMMISSION

## LOCAL BOUNDARY COMMISSION INTERPRETATION OF BOROUGH INCORPORATION STANDARDS

A review of the requests for borough incorporation which have been denied is helpful for the insight it gives into the Local Boundary Commission's interpretation of incorporation standards.

Article X Section 3 of the State Constitutuion outlines the standards for borough incorporation as follows:

> "The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law."

These standards are further refined in the statutes.

> AS 29.18.030 Organized boroughs An area may incorporate as an organized borough if it conforms to the following standards:
> (1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;
> (2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;
> (3) the economy of the area includes the human and financial resources capable of porviding local services; evaluation of an area's economy includes land use, property valuation, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;
> (4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

It is the role of the Local Boundary Commission to determine if a proposed boroough meets the standards for incorporation. (AS 29.18.090 (a))

In 1973 the Local Boundary Commission had requests for borough incorporation from the Anchorage area (Cook Inlet Borough petition) and the Kenai area including the City of Kenai and the North Kenai Fire Service area (Nikiski Borough petition). The two were rejected on similar grounds.

The Department of Community and Regional Affairs, in its May 11, 1973 report to the Commission, made reference to the underlying principles which prompted the framers of the state constitution to provide for the borough system of government. It reviewed the concept of borough government as an approach to areawide and regional government, functionally adaptable throughout the State as variation in geography, economy and other circumstances required. The report emphasized that the boundaries of a city are not fixed -- that the constitutional framers directed that the boundaries might be altered and the power of a city extended in response to growth and development outward from the central core.

The Department recommended that the petition be denied unless the borough boundaries were expanded to include Tetlin, Tanaccross, Dot Lake, Northway --the entire area between Delta Junction and Tok-as the proposed borough stating, "We find no reason why the entirety of the valley, an area geographically distinct, economically sound, and having the requisite transportation facilities sufficient to foster communication and interrelationship of people in their activities should be divided into separate units." (Department of Community and Regional Affairs report to Local Boundary Commission on the Deltana Borough proposal, p. 33)

In its final decision on July 12, 1974, the Local Boundary Commission found that even if the boundaries were expanded, that based on the testimony received from the residents of the area, the boundaries of the area would not comply with the provisions of AS 29.18.030 (1)"as the population of the area was not interrelated and integrated as to its social, cultural, and economic activities..."

In its statement of decision on the petiton for detachment of the Chugiak-Eagle River area from the Greater Anchorage Area Borough and for incorporation of a second class borough in the Chugiak-Eagle River area (March 15, 1976), the Commission cited the following reasons for rejecting the petition.

1. The proposed petition fails to meet statutory and regulatory standards for detachment and incorporation contained in AS 29.18.030 and AAC 19.15.230 in that the area is an integral part of the municipality of Anchorage culturally, socially, and economically.
2. There are no natural boundaries separating the area from the remainder of the Anchorage municipality.
3. The detachment would be inimical to the interest of the State in that the constitutional mandate of a minimum of local government units and tax levying jurisdictions would be violated.
4. The area is not stable enough to support orgnaized borough government in that the Eagle River-Chugiak tax base is not large enough to support necessary services without the support of the larger tax base of the entire Anchorage area.

The interpretation of the incorporation standard related to boundaries (AS 29.18.030 (2) again became an issue with the formation of the North Slope Borough. The appellants in Mobil Oil Corporation v. Local Boundary Commission argued that neither the geography nor the transportaton standards had been satisfied and that the Local Boundary Commission had erred in granting borough status to the North Slope.

In the Supreme Court decision on the case (January 16, 1974), the Court made reference to Article X Section 1 of the Constitution and stated:

> "We read this to favor upholding organization of borougns by the Local Boundary Commission whenever the requirements for incorporation have been minimally met."

The Court further found that the inclusion of Naval Petroleum Reserve No. 4 was desirable for integrated local government so that it might fall within the new borough's planning and zoning power. The record gave evidence of the Reserve's importance to the subsistence lifestyle of area residents and this evidence justified such inclusion.

# IV

# FINANCIAL DISINCENTIVES TO BOROUGH FORMATION

IV

# STATE OF ALASKA

**THE LEGISLATURE**

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF-STATE CAPITOL
JUNEAU, ALASKA 99811
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November 15, 1977

M E M O R A N D U M

TO: Arliss Sturgulewski, Chairman
Senate Community & Regional Affairs Committee

FROM: Milt Barker, Fiscal Analyst MB
Legislative Finance Division

SUBJECT: Financial Disincentive to Borough Formation

In this memo the net change in state aid and local effort for all REAA's upon their conversion to organized boroughs is estimated. The date of the assumed conversions is July 1, 1977; the period of state aid is fiscal year 1978. The following principal elements are considered:

1. public school foundation support (AS 14.17)
   (a) in-lieu funds for REAA's (AS 14.08.121)
   (b) basic need
   (c) required local effort (AS 14.17.071)

2. municipal revenue sharing under the terms of HB 192

3. shared corporate income taxes (AS 43.20.016)

Foundation Support

Current state funding for REAA's is at 100% of basic need under the foundation program as well as a state contribution equal to the number of REAA pupils times the average local tax contributions per pupil in the organized school districts during the prior fiscal year, which in this case was $688 per pupil for FY 77 (AS 14.08.121).

Upon conversion to borough status, an REAA loses this latter "in-lieu" contribution of $688 per pupil. For all REAA's, the loss of this support would have amounted to

"In-Lieu" ($7,610,656)

for FY 78.

Also upon conversion, the new borough would have received less than 100% of basic need, the actual percentage depending on the new borough's assessed value per ADM relative to the average assessed value per ADM for all districts in the state, but in no case being less than 97% (ADM is average daily membership of pupils).

For FY 78 foundation support, the "Alaska Taxable", January 1, 1976, assessed valuation of municipalities of $9,805,715,960 was used. Using a method described in Appendix I, I estimate assessed value of outside municipalities at $110,714,000 for a total statewide valuation of $9,916,429,960 excluding oil and gas property in the unorganized borough.

With 83,274 pupils in ADM for FY 78 according to the Department of Education's "Statistical Report 1978-79", this would have been a statewide average assessed value per ADM of $119,082. As further described in Appendix I, the average assessed value per ADM for an REAA with no oil or gas property would have been $19,895.

Plugging these assessed values per ADM into the formula for determining state support (AS 14.17.021(c)) yields a level of state aid equal to 99.5% of basic need for REAA's that would have become boroughs.

From the attached statement of REAA FY 78 revenues prepared by the Department of Education, we see that total basic need for all REAA's is $47,530,826, this being the sum of amounts under the headings "federal 874" and "foundation" since PL 81-874 funds are deducted from foundation support for both REAA's and organized school districts (AS 14.08.121(a)(1) and AS 14.17.021(a)). Thus, the decrease in foundation support would be $47,530,826 times .5% or

Basic Need ($237,654)

for all REAA's in total.

Finally, the assumption of borough status by an REAA would have required local effort for the first time. The required local to state match would have been 1 to 199 for all newly formed boroughs on average.

The state contribution would have been the $47,530,826 in basic need reduced by the $237,654 equilization amount and by the $17,485,871 in PL 81-874 funds or $29,807,301. This would have required a local match of

Local Effort ($149,785)

Thus, the total financial disincentive under the school foundation program for borough formation is

($7,998,095)

and is due almost entirely to loss of the "in-lieu" funds. The additional loss is about 5% on top of the "in-lieu" funds. A glance at the DOE table on REAA FY 78 revenues allows one to estimate the disincentive for any particular REAA.

It must be cautioned that these estimates are in terms of averages and that the results could differ for individual REAA's. However, the differences should not be that significant, especially for non-pipeline REAA's; even at the minimal level of 97% state support (which only pipeline REAA's would come close to) the loss of foundation support for all REAA's would have been at most $1,425,924, with required local effort decreasing to $44,100 because the match ratio drops to a minimum of 1:32. Thus, the total loss to any individual REAA would probably have been no more than 19% on top of the "in-lieu" loss.

More likely to affect these estimates are changes overtime in the contributions per ADM of organized school districts that determine "in-lieu" funds. The continued increases in the statutory level of basic need (an increase of 10% is scheduled for FY 80 -- AS 14.17.056) should not be significant since the loss due to the equalization factor was only $237,654 to start with.

Municipal Revenue Sharing

Under the method proposed in HB 192, municipal revenue sharing funds would be distributed based on a formula that takes account of population and local effort in relation to assessed valuation per capita (proposed AS 29.88.010). 1/

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1/ For purposes of the revenue sharing formula, a municipality's assessed valuation may not be less than 15% of the average statewide assessed value per capita. Using the $9,916,429,960 statewide assessed value derived above and the "Alaska Taxable 1977" January 1, 1977 statewide population estimate of 398,983, we have average per capita of $24,854 of which 15% would be $3,728 per capita. However, estimated unorganized borough valuation per capita is $6,096. (from Appendix I)

If we use the Appendix I population and valuation per capita figures for the unorganized borough excluding oil and gas property (50,451 persons and $6,096 per capita) and assume the only local effort is the required school foundation match ($149,785), the total revenue sharing to all new boroughs would be only

HB 192 Revenue Sharing

$64,130

on the assumption that the appropriation for all revenue sharing is $27,000,000, the level at which HB 192 becomes effective. 2/

The $149,785 level of local effort is the equivalent of .49 mills. If the new boroughs increased their local effort above the minimum .49 mills required for school foundation aid, they would receive revenue sharing support as follows: 3/

| Mills | Local Effort | HB 192 Revenue Sharing |
|---|---|---|
| 5 | $1,528,418 | $ 654,387 |
| 10 | 3,056,836 | 1,308,775 |
| 20 | 6,113,673 | 2,617,551 |
| 30 | 9,170,510 | 3,926,326 |

If the revenue sharing appropriation were roughly $63,000,000 it would on average provide a 1 to 1 match of entitlement to local effort for new boroughs (other than pipeline boroughs).

Depending on the average mill rate in the new boroughs, the appropriation would have to be much larger to offset $7,610,656 "in-lieu" disincentive under the foundation program:

| Mills | Revenue Sharing Appropriation Required to Offset "in-lieu" |
|---|---|
| 5 | $377,000,000 |
| 10 | 220,000,000 |
| 20 | 141,000,000 |
| 30 | 115,000,000 |

2/ Sec. 11 of HB 192 provides a minimum entitlement of $25,000 plus a COLA during the first fiscal year the act is effective. Thus, if the act takes effect before a new borough formation, this floor is of no value to new boroughs and would not in any event provide increased support beyond the first year.

3/ See next page for footnote

Thus, at common borough millages of 5 or 10 and the trigger appropriation level, HB 192 revenue sharing would provide insignificant revenues to any individual non-pipeline, newly-formed borough since the total support to 21 old REAA's would have been from $65,000 to $1,300,000.

Shared Corporate Income Taxes

AS 43.20.016 distributes the appropriation for shared corporate income taxes in an amount equal to that received by boroughs in FY 78, or for newly-formed boroughs in amount equal to the FY 78 receipts of the borough closest in population, pro-rated if the appropriation is insufficient to fund these base levels. If it is greater, the excess is distributed per capita.

FY 78 total distribution was $10,571,500. FY 80's appropriation was just a little above that, $11,400,000. If appropriation levels remain sufficient to only fund base amounts the entitlements of newly-formed boroughs would be:

| REAA | Population 4/ | Base Entitlement |
|---|---|---|
| Adak | 3,200 | $ 7,275 |
| Alaska Central Railbelt | 1,095 | 13,985 |
| Alaska Gateway | 788 | 13,985 |
| Aleutian Region | 2,375 | 7,275 |
| Annette Island | 962 | 13,985 |

(con't on p. 6)

3/ These estimated new Chapter 88 revenue sharing entitlements are based on a pro-ration factor of 2.61 shown on the attached Legislative Affairs computer simulation of HB 192 dated February 19, 1979. As the new boroughs took a bigger bite of the pie the pro-ration factor would decrease. Thus, the estimates for the higher millages become progressively greater than they should be. However, the estimates still give a rough idea of entitlements and a more accurate picture of the relative fiscal effect if only one or two REAA's should actually convert to boroughs.

4/ Estimated by applying ratio of total population to ages 5 through 18 from appropriate 1970 census divisions to Department of Education pupil ADM figures for FY 78 and adding population of city school districts from "Alaska Taxable 1978". The total population differs from that in Appendix I because of the inclusion of Valdez and one year later data.

| REAA | Population | Base Entitlement |
|---|---|---|
| Bering Strait | 4043 | 7,275 |
| Chatham | 3178 | 7,275 |
| Chugach | 7438 | 1,220,920 |
| Copper River | 1925 | 7,275 |
| Delta/Greely | 3051 | 7,275 |
| Iditarod | 731 | 13,985 |
| Kuspuk | 880 | 13,985 |
| Lower Kuskokwim | 7420 | 1,220,920 |
| Lower Yukon | 2615 | 7,275 |
| Northwest Arctic | 3660 | 7,275 |
| Pribilof | 973 | 13,985 |
| Southeast Island | 9408 | 208,145 |
| Southwest | 2620 | 7,275 |
| Lake & Peninsula | 923 | 13,985 |
| Yukon Flats | 1004 | 13,985 |
| Yukon Koyukuk | 2828 | 7,275 |
| Total | 61,117 | $2,834,615 |

The pattern here presents a crazy-quilt of aid in which some larger communities get less than smaller ones, with Chugach and the Lower Kuskokwim to receive substantially more than any of the others because their populations were near that of the North Slope Borough which had, of course, large business license tax receipts for FY 78.

Although the administration's estimates for the corporate petroleum income tax have remained at $160 million a year (the calendar 1978 level), legislative finance estimates the petroleum income taxes alone, disregarding non-petroleum corporate income taxes, will mount to around $600 million by FY 81. If distributions were at 10% of this level, $60,000,000, the excess of roughly $50,000,000 over base entitlements would bring $7,500,000 to newly-formed boroughs on a per capita distribution, more nearly offsetting the other financial disincentives to borough formation.

The Lower Kuskokwim should clearly gain from borough formation as should Chugach if Valdez is incorporated into the borough, even at current appropriation levels.

Other Considerations

This analysis has not considered the further decline in state support to REAA's that become boroughs that would occur for school construction. Under AS 43.18.100, the state would pick up 80% of the debt service for new borough's school construction debt whereas the state now builds entirely at its own expense the necessary school facilities for REAA's.

Of course, with the "Hooch" case settlement new boroughs school construction needs may not be that significant for some time.

One incentive not considered is the value of municipal land selections a new borough would be entitled to under AS 29.18.203. However, it may be an incentive to postpone formation since a new borough receives 10% of state lands within its boundary at the time of incorporation. So until Alaska's land status is resolved, there are disincentives here too, considering opportunity costs.

## APPENDIX I
## UNORGANIZED BOROUGH ASSESSED VALUES

The potential average assessed value of real and personal property in the unorganized borough is estimated in a roughshod way here, using data from several points in time, partially because that is the way the Department of Education does it for the foundation formula, and partially to not pretend to insupportable exactitude.

The FY 78 REAA pupil ADM was 10,729 according to the Department of Education's "1978-1979 Statistical Report" The average ratio of total population to school population (ages 5 through 18) for all census divisions outside organized cities or boroughs in the 1970 consensus was 3.01:1. Thus, total REAA population for FY 78 is estimated at 32,294. For purposes of estimating property values, we deduct 666 persons from this figure for Selawik and Eagle, which levy property taxes and have assessed value figures in "Alaska Taxable", but are part of REAA's.

Using some assumptions from Darbyshire & Associates, August 1979 Yukon Flats Regional Government Study (see attached page 139 from that study) -- namely, 3.5 persons per household, restricted deeds on 50% of residential property, $20,000 average value per non-restricted dwelling, and $2,000 taxable personal property per household -- I estimate assessable values outside taxing jurisdictions at $110,714,000. This is conservative in that no commercial or industrial values are inputed; such properties are assumed to be in the taxing cities in the unorganized borough.

Adding this $110,714,000 to the January 1, 1976 assessed value for all cities, except Valdez, which are outside organized boroughs, $196,849,710, we get a total assessable value for the unorganized borough, excluding Valdez and oil and gas property, of $307,563,710.

As of January 1, 1977, total population, excluding Valdez, that resided outside organized boroughs was 32,294 estimated for REAA's, plus 18,157 for school districts outside organized boroughs (from "Alaska Taxable 1977"), or 50,451.

The total pupil ADM for FY 78 was the 10,729 for REAA's plus 4,730 for all school districts, excluding Valdez, outside organized boroughs, or 15,459.

Based on these figures, the average assessed value per ADM would be $19,895 and per capita $6,096 in the unorganized borough for FY 78 excluding oil and gas property.

## RURAL EDUCATION ATTENDANCE AREAS
## REVENUE

### FY-78 Audited

| | Other Federal | Federal 874 | Total Federal | Foundation | Pupil Trans | In Lieu Of | Boarding Home | Other State | Total State | Rental | Interest | Other Local Income | Total Local |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Adak | | 1,469,558 | 1,469,558 | 245,201 | 57,737 | 416,240 | --- | --- | 719,178 | 9,088 | 60,417 | 12,889 | 82,394 |
| Alaska Central | | 355,136 | 355,136 | 1,226,448 | 160,372 | 241,488 | --- | 1,107 | 1,629,415 | 19,402 | 35,816 | --- | 55,218 |
| Alaska Gateway | | 44,531 | 44,531 | 1,551,000 | 163,454 | 290,336 | 482 | --- | 2,005,272 | 2,183 | 23,248 | 7,616 | 33,047 |
| Aleutian | | 187,079 | 187,079 | 1,297,921 | --- | 160,304 | 10,442 | --- | 1,468,667 | 2,278 | 12,890 | 72,638[1] | 87,806 |
| Annette Is. | | 974,909 | 974,909 | 23,125 | 5,645 | 219,472 | | 1,984 | 250,226 | | 21,209 | 2,500 | 26,709 |
| Bering Strait | | 661,549 | 661,549 | 1,981,201 | 21,080 | 304,784 | 305,784 | | 2,612,849 | 30,133 | 11,348 | 2,768 | 44,249 |
| Chatham | | 278,532 | 278,532 | 410,502 | --- | 127,968 | --- | --- | 538,470 | 24,073 | 1,670 | --- | 25,743 |
| Chugach | | 72,804 | 72,804 | 230,032 | --- | 33,024 | --- | --- | 263,056 | --- | --- | 8,903 | 8,903 |
| Copper River | | 343,113 | 343,113 | 1,870,637 | 289,715 | 482,976 | 9,404 | | 2,652,732 | | 19,314 | 21,838 | 41,152 |
| Delta/Greely | | 900,583 | 900,583 | 1,244,417 | 267,219 | 533,200 | 1,760 | | 2,046,596 | | 36,343 | 1,351 | 37,694 |
| Iditarod | | 465,099 | 465,099 | 1,239,901 | | 195,392 | | 61,145[2] | 1,496,438 | 20,829 | 3,101 | --- | 23,930 |
| Kuspuk | 16,880 | 706,247 | 723,127 | 1,363,906 | 31,749 | 233,920 | 4,654 | 33,521 | 1,667,830 | 20,255 | 23,864 | 3,951 | 48,070 |
| Kower Kuskokwim | 89,098 | 2,173,269 | 2,262,367 | 3,154,856 | 50,582 | 1,016,176 | 1,070,870 | | 5,292,484 | 95,177 | 75,530 | 142,242[3] | 312,949 |
| Lower Yukon | | 1,480,442 | 1,480,442 | 2,227,933 | | 615,072 | | 51,500 | 2,894,505 | 148,234 | 68,122 | 46,405[4] | 262,761 |
| Northwest Arctic | | 2,316,087 | 2,316,087 | 3,992,413 | | 1,033,376 | 91,811 | 2,711 | 5,120,311 | 169,692 | 50,415 | 22,340[4] | 242,447 |
| Pribilof | | 439,713 | 439,713 | 467,787 | | 126,592 | | 3,181 | 597,560 | | 20,012 | | 20,012 |
| Southeast Is. | | 896,690 | 896,690 | 770,310 | 12,332 | 294,464 | 23,793 | 3,253 | 1,054,152 | | 29,415 | | 29,415 |
| Southwest | | 1,293,592 | 1,293,592 | 1,649,017 | | 359,824 | | | 2,008,841 | 66,090 | 52,532 | 26,605 | 136,027 |
| Lake & Pen. | | 751,920 | 751,920 | 1,635,080 | 33,708 | 263,504 | 4,275 | | 1,936,567 | 36,250 | 21,541 | 231 | 58,022 |
| Yukon Flats | | 415,576 | 415,576 | 1,328,863 | | 209,152 | 17,432 | | 1,555,447 | | | 4,339[5] | 4,339 |
| Yukon-Koyukuk | | 1,259,442 | 1,259,442 | 2,184,325 | | 453,392 | | 51,500 | 2,689,217 | 70,505 | 43,400 | 122,574[5] | 236,479 |
| | | 17,485,871 | 17,591,849 | 30,044,955 | 1,093,593 | 7,610,656 | 1,540,707 | 209,902 | 40,499,813 | 704,959 | 613,187 | 499,190 | 1,817,366 |

1 Sale of Capital Equipment
2 Includes 21,000 Insurance Proceeds
3 Federal Payments
4 Includes Indirect Cost Payments
5 Includes AVEL Subsidy

| YEAR | POPULATION | HOUSEHOLDS | PER CAPITA ASSESSED VALUE $ | MAXIMUM OPERATING BUDGET $M | LOCALLY ASSESSED PROPERTY RESIDENTIAL TOTAL PROPERTY $M | RESIDENTIAL EXEMPTIONS $M | RESIDENTIAL NET TAXABLE $M | STATE ASSESSED PROP. OIL PIPELINE $M | STATE ASSESSED PROP. GAS PIPELINE $M | TOTAL TAXABLE PROPERTY INCLUDING GAS PIPELINE $M | TOTAL TAXABLE PROPERTY EXCLUDING GAS PIPELINE $M |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1980 | 1,667 | 476 | 49,710 | 5,593 | 10,712 | 2,380 | 8,332 | 875,500 | | 883,832 | 883,832 |
| 81 | 1,717 | 490 | 52,190 | 6,049 | 11,030 | 2,450 | 8,580 | 901,850 | | 910,430 | 910,430 |
| 82 | 1,768 | 505 | 54,800 | 6,540 | 18,865 | 2,525 | 16,340 | 929,550 | 155,480 | 1,101,370 | 938,390 |
| 83 | 1,821 | 520 | 57,540 | 7,073 | 19,204 | 2,600 | 16,604 | 957,100 | 368,560 | 1,342,664 | 966,204 |
| 84 | 1,876 | 536 | 60,420 | 7,651 | 17,060 | 2,680 | 14,380 | 985,150 | 522,750 | 1,522,280 | 994,530 |
| 1985 | 1,932 | 552 | 63,440 | 8,273 | 14,920 | 2,760 | 12,160 | 1,014,900 | 526,800 | 1,553,860 | 1,024,560 |
| 86 | 1,990 | 569 | 66,610 | 8,947 | 12,798 | 2,845 | 9,953 | 1,045,500 | 511,000 | 1,566,453 | 1,055,453 |
| 87 | 2,050 | 586 | 69,950 | 9,679 | 13,181 | 2,930 | 10,251 | 1,014,050 | 495,200 | 1,519,501 | 1,024,301 |
| 88 | 2,111 | 603 | 73,440 | 10,465 | 13,570 | 3,015 | 10,555 | 983,450 | 479,390 | 1,473,395 | 994,005 |
| 89 | 2,175 | 621 | 77,120 | 11,322 | 13,976 | 3,105 | 10,871 | 953,700 | 463,580 | 1,428,151 | 964,571 |
| 1990 | 2,240 | 640 | 80,970 | 12,243 | 14,400 | 3,200 | 11,200 | 925,650 | 447,780 | 1,384,630 | 936,850 |
| 91 | 2,307 | 659 | 85,020 | 13,240 | 14,829 | 3,295 | 11,534 | 897,600 | 431,970 | 1,341,104 | 909,134 |
| 92 | 2,376 | 679 | 89,270 | 14,317 | 15,277 | 3,395 | 11,882 | 870,400 | 416,170 | 1,298,452 | 882,282 |
| 93 | 2,448 | 699 | 93,730 | 15,488 | 15,731 | 3,495 | 12,236 | 844,900 | 400,370 | 1,257,506 | 857,136 |
| 94 | 2,521 | 720 | 98,420 | 16,748 | 16,203 | 3,600 | 12,603 | 819,400 | 384,560 | 1,216,563 | 832,003 |
| 1995 | 2,597 | 742 | 103,340 | 18,115 | 16,694 | 3,710 | 12,984 | 794,750 | 368,760 | 1,176,494 | 807,734 |
| 96 | 2,675 | 764 | 108,510 | 19,593 | 17,192 | 3,820 | 13,372 | 770,950 | 352,960 | 1,137,282 | 784,322 |
| 97 | 2,755 | 787 | 113,930 | 21,187 | 17,708 | 3,935 | 13,773 | 748,000 | 337,150 | 1,098,923 | 761,773 |
| 98 | 2,837 | 811 | 119,630 | 22,909 | 18,244 | 4,055 | 14,189 | 725,050 | 321,350 | 1,060,589 | 739,239 |
| 99 | 2,923 | 835 | 125,610 | 24,783 | 18,788 | 4,175 | 14,613 | 703,800 | 305,540 | 1,023,953 | 718,413 |
| 2000 | 3,010 | 860 | 131,890 | 26,797 | 19,350 | 4,300 | 15,050 | 682,550 | 289,740 | 987,340 | 697,600 |

Column 1 - The year of projection.

Column 2 - Population - Base year is 1978 - population 1,571. The annual increase in population is projected to be 3% per year. From Derbyshire & Associates "Technical Report #2 - Data Reconnaissance."

Column 3 - Households - The number of households was estimated by dividing the projected population by 3.5 persons per household.

Column 4 - Per Capita Assessed Value - The average per capita assessed value for the state as published annually by the Department of Community and Regional Affairs. It is estimated the annual increase for the projection period will be 5% per year. From 1978 to 1979 the per capita assessed value for the state increased 13%, excluding oil and gas property. Therefore, the writer estimates a 5% annual increase over the projection period is reasonable to anticipate.

Column 5 - Maximum Operating Budget - The estimated maximum amount of revenue that can be levied through property tax for the operating budget of the proposed borough.

Formula:

Population x 225% Average per Capita Assessed Value x 30 Mills = Maximum Operating Budget.

Example: 1980

1,667 x $49,710 x 2.25 x 0.03 = $5,593,493.48 — Say $5,593,490.00.

Population - As certified by the Commissioner of Community and Regional Affairs on the Assessment Date (A.S. 29.53.045a).

Average Per Capita Assessed Value - A.S. 29.53.045a.

30 Mills - A.S. 29.53.080.

Column 6 - Locally Assessed Property/Total Property - Includes:

Real Property -

A - Residential,

B - Commercial-Industrial

Personal Property -

C - Individual,

D - Commercial-Industrial

A - Real Property/Residential: A survey of deeds issued by the townsite trustee indicates 50% of the residential property is subject to the covenants and restrictions of the restricted deed, and therefore not subject to property tax. It is estimated there is one dwelling unit per household with an average value of $20,000;

Therefore:

Households x 50% x $20,000 = Residential Assessed Value.

B - Real Property/Commercial-Industrial: It is estimated that there is $2,500/capita invested in commercial and industrial development to support the population of the proposed borough. The growth of commercial and industrial properties will equal the growth of the population.

C - Personal Property/Individual: It is estimated the taxable personal property will average $2,000/household.

D - Personal Property/Commercial-Industrial: It is estimated that there is $600/capita invested in commercial and industrial equipment and inventory to support the population of the proposed borough. Value will increase in direct proportion to the population.

Column 7 - Residential Exemptions - It is assumed 80% of the dwelling units are owner-occupied and the proposed borough will enact the $10,000 single-family owner-occupied exemption allowed under A.S. 29.53. This column gives the projected assessed value that would be exempt from taxation.

Column 8 - Locally Assessed Property/Net Taxable - Column 6 minus Column 7.

# V

# LEGISLATIVE PROPOSALS RELATED TO ORGANIZATION AND FINANCIAL EQUALIZATION IN THE UNORGANIZED BOROUGH

| LEGISLATIVE PROPOSALS UNORGANIZED BOROUGH | SB 101 (1969) | HB 736 (1970) | HB 161 (1971) | HB 122 (1971) |
|---|---|---|---|---|
| POINT OF REGIONAL GOVERNMENT AUTHORIZED | Six unorganized boroughs and service area within unorganized boroughs (Northwestern, Western, Interior, Southwestern, Southcentral, Southeastern) Residents of each unorganized borough represented on elected five-member advisory board. | Regional unorganized boroughs, as a prerequisite to so-called regional boroughs; service areas authorized within regional unorganized boroughs. A regional borough, once established, would be supervised by an elected regional council. | None; service areas of the unorganized borough were authorized. Authority was given to the director of local Affairs Agency to establish, alter and abolish unorganized borough areas in accordance with standards he developed. Once established, the service areas would be controlled and directed by Regional Service Area Commissions, appointed or elected, whose principal responsibilities were advisory. | Second class boroughs with boundaries corresponding to the boundaries of the 12 geographic areas described by the Alaska Native Claims Settlement Act. The bill made provision for elections to determine the initial powers which the second class boroughs would enjoy and for the choice of initial borough officers. |
| MANNER OF ORGANIZATION | Directive as to the number of unorganized boroughs; discretionary with the legislative Affairs Agency as to the subsequent establishment of service areas. | Boundary determinations for regional unorganized boroughs were mandatory; the first election for the establishment of a regional borough was also mandatory, but subsequent action seeking incorporation of regional boroughs required submission of a petition from area voters. | Discretionary with the director of the local Affairs Agency. | Mandatory, in accordance with the provisions of the legislation which require mandatory incorporation if no voluntary incorporation occurred before Jan. 1, 1977. |
| FISCAL INCENTIVES AND IMPLICATIONS | Authority was retained by the legislature to levy service area taxes, with the Local Affairs Agency authorized to collect any taxes which were levied; the unorganized borough boards were granted the authority to receive and expend funds. | A Regional and Community Affairs fund was established as a source of shared revenues for borough gov'ts. and for regional unorganized boroughs (with a 10% reserve for cities of the unorganized borough). To be distributed on the basis of population ratio and income deficiency. No fiscal estimate was provided. Regional unorganized boroughs might select 10% land entitlement. | No authority was granted to a service area to raise revenues within the region; presumably state grants would be made available for purposes of organization operation and provision of state services. | No incentives; the bill specifically denied to "boroughs incorporated by this act" the benefits of the then applicable ten percent land selection authorization. |

LEGISLATIVE PROPOSALS
UNORGANIZED BOROUGH

| | SB 122 (1973) | HB 291 (1973) | HB 292 (1977)HB 9 (1979) | Governor's 1972 "Package" HB 596, HB 597, HB 598 |
|---|---|---|---|---|
| FORM OF REGIONAL GOVERNMENT AUTHORIZED | None. This was the predecessor of legislation eventually enacted in 1975 to provide for the decentralization of responsibility for the operation of schools. | Unorganized borough districts. This legislation is quite similar to HB 596 except that the entities are called "unorganized borough districts and it modified the local hearing requirements with respect to the drawing of the boundaries of these districts and requires affirmative legislative approval of the proposed boundaries. | None. | FORM OF REGIONAL GOV'T. Unorganized borough mills each of which would have authority to adopt home rule charters. (HB 596) Boundaries would be recommended by the Boundary Commission Voters would chose 11 member advisory council in each borough. |
| MANNER OF ORGANIZATION | Mandatory formation of educational service areas. | (See above and HB 596) | Not applicable. | MANNER OF ORGANIZATION Mandatory formation of unorganized borough mills. (HB 596) |
| FISCAL INCENTIVES AND IMPLICATIONS | Full state funding of the basic costs of educational services to be provided; no authorization to generate and expend revenues from local sources. | (See above and HB 596) | The levy of a millage rate, the proceeds of which are to be deposited in the general fund to partially off-set state-funded educational costs, would constitute the first general property tax levy in the unorganized borough. The tax would necessarily fall on the improved commercial property as possibility exists 2nd Class cities would establish residential exemptions. | FISCAL INCENTIVES AND IMPLICATIONS Extension of the property tax levy on a statewide basis (HB 597), with the levy of a premium rate on certain real and personal property of companies engaged in oil and gas activities (HB 598), was, even with the credits & exceptions allowed, expected to be sufficient to meet revenue sharing demands built into the two bills. The sharing of general property tax revenue, involving population and fiscal capacity factors, represented a realistic effort to address economic disparities. Major source of shared revenue was to be 20 mill tax on pipeline property (HB 598) however, sharing scheme was converted in the House to one based on economic impact -real or imagine-non-conducive to providing revenues on a sustained basis to meet the costs of public services at the local level. |

# IX

# REQUESTS RELATING TO BOROUGH FORMATION

## RECORD OF INQUIRIES MADE OF THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS RE BOROUGH INCORPORATION

During the 1970's there have been numerous inquiries into the process of devloping borough government from communities in the unorganized borough.

Most of these inquiries were simply that -- with no action being pursued by the community. Most were initiated in response to a particular need which it was perceived local government might meet.

Admiralty Island Angoon expressed interest in borough government. Primary motivation behind interest appeared to be concern about controlling any timber development that took place on Admiralty Island. When there appeared to be no immediate threat of timber development occurring, and the Community realized that they might have a difficult time satisfying the financial requirements of a regional government, interest waned.

Cordova At the time Cordova area was seriously being considered as the southern terminus of a North Slope gas line, that area seemed very interested in borough government. Once the gas pipeline became a non-reality for the Cordova area, so did the issue of borough government.

Kobuk A petition of incorporation was received in 1974, but no follow-up action was taken to remedy deficiencies in the petition. The primary motivating factor for the request appeared to be local control of schools.

Kotzebue NANA region expressed interest in regional government 1974-75. Primary interest seemed to be the exercise of the planning power, both in the sense of controlling development within the region and controlling State and Federal activities that were taking place, at that time, on a rather random basis. NANA Regional Strategies Proposal was developed and appears to have satisfied many of the planning requirements of that particular region.

Newson Island This is a small island located in the Calista Region, which has on it the communities of Nightmute, Toksook Bay and Tununak. In the early 1970's, there was some talk of these three communities uniting and forming a small borough. The person who was the primary mover, a consultant, disappeared and so did the enthusiasm for regional government.

Nome Nome has inquired into regional government, although the only interest the Community appears to have in borough government is how they might use it as a defense mechanism to keep themselves out of any other borough.

Prince of Wales Island Strong interest was expressed in the early 1970's. The local residents' thoughts appeared to be that they could obtain additional revenues through realization of stumpage fees for forestry activities taking place on the Island, as well as have more of a say in how timber development would affect them. An additional factor for at least one community on the Island was that they desired to remove themselves from the State-operated School System. However, in the end, the independent nature of the Communities of Craig, Hydaburg, Klawock and Thorne Bay rendered the situation such that they could simply not agree on the class of borough, the powers it would exercise and how the assembly ought to be composed.

# X

# SERVICE DELIVERY TO THE UNORGANIZED BOROUGH

X

# SERVICE DELIVERY
# TO THE UNORGANIZED BOROUGH

The Alaska State Constitution states:

> "The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough."
>
> Article X, Section 6

There are presently three legislatively-mandated service areas:

1. Aquaculture Service Areas
2. Coastal Resource Service Areas
3. Regional Educational Attendance Areas (REAAs)

## AQUACULTURE SERVICE AREAS

In 1979, the Legislature amended AS 16, the Aquaculture Program, with FCCS HB 359 (Ch. 59, SLA 1979) granting the Commissioner of Commerce and Economic Development the authority to declare qualified regional associations, incorporated as non-profit corporations, as "service areas" within the unorganized borough for the purpose of providing salmon enhancement services.

Under this provision, a regional aquaculture association, comprised of associations representative of commercial fishermen and other representatives within the region, whose board of directors includes no less than one representative of each member user group, which has incorporated as a nonprofit corporation, becomes a service area within the unorganized borough with the authority to tax designated species of salmon caught commercially within the region and apply the proceeds to salmon enhancement programs.

On July 13, 1979, Judge Allen Compton, Superior Court, declared that the state may not dedicate a tax on the harvest of a natural resource of the state to a specific purpose by the device of declaring the tax for the purpose of providing a service within a so-called service area in the unorganized borough. Further, it was the Court's view that an incorporated nonprofit association may not become a "service area," either by inference or express legislative declaration. (No. 1JU-78-191 Civil Memorandum of Decision and Order - Judge Allen Compton, Superior Court.)

The Southern Southeast Regional Aquaculture Association will appeal Judge Compton's ruling.

## COASTAL RESOURCE SERVICE AREAS

Coastal Resource Service Areas are authorized by the Alaska Coastal Management Act of 1977 to plan for the coastal areas. Each regional educational attendance area containing a part of the coastal area may be organized for this purpose or two or more REAAs may be consolidated as a single coastal resource service area. Implementation of the plans which are developed is the responsibility of the state.

At the present time, residents of two areas in the unorganized borough have voted to create coastal resource service areas. The Northwest Coastal Resource Service Area, comprising the area covered by REAA 1, has elected its seven-member board and will develop a coastal management plan.

On May 15, 1979, residents of REAA 3 and 4 voted to create the Yukon/Kuskokwim Delta Coastal Resource Service Area and will elect its board members on September 11, 1979. The City of Bethel opted to be excluded from this service area. In the Yukon/Kuskokwim area, the Department of Community and Regional Affairs entered into an agreement with Nunam Kitlutsisti, Inc. (Protectors of the Land,) the environmental planning area of Association of Village Council Presidents (AVCP) to provide a public outreach program presenting organizational options and procedures for coastal management in the area.

There have been expressed concerns related to how the state, through the appropriate state agencies, will actually implement an approved district coastal management program in the unorganized borough. Under AS 38.05.037, the Division of Lands has a general grant of authority to exercise zoning powers within the unorganized borough. Until recently, this has not been a problem because the zoning power was never used. However, where land-use controls are involved in coastal resource service areas, zoning will have to be established and administered by the Division of Lands.

On this subject, Mr. Vic Fischer in a memorandum to Mr. Steve Reeve, DNR, (February 2, 1979) recommends:

> "If the state is deemed to have an overriding interest that requires it to exercise zoning authority in the unorganized borough, or at least within its coastal areas, neither ADL (Alaska Division of Lands) or DNR (Department of Natural Resources) appear to be the appropriate agency to manage the zoning program, with its strictly localized zoning, adjustment, appeals, and other aspects of continuing zoning administration. If the state is to engage in zoning, by far the most appropriate agency for the exercise of the function is the Department of Community and Regional Affairs (DCRA did not exist at the time ADL was granted zoning authority many years ago.)
>
> In general, states have played only a minor role in the exercise of zoning authority beyond authorizing its use by local governments. The only exception is Hawaii, where general zoning classification is handled by the state, supplemented by local government; i.e., county, regulations in urban and other development areas. Elsewhere, zoning has been applied as a local government police power.

COASTAL RESOURCE SERVICE AREAS (Cont'd)

> Except for the special authority given ADL, zoning in Alaska has traditionally been a power of cities and, more recently, of boroughs. Zoning would not have to be exercised by the state at all if provisions were made for (1) reorganization of the unorganized borough into a series of organized boroughs with planning and zoning authority (and this could be done without forcing them to tax or even manage schools) or (2) delegating the planning and zoning power to service areas within the unorganized borough, much as was done by the legislature in the case of coastal management planning."

REGIONAL EDUCATION ATTENDANCE AREAS (REAAs)

REAAs were created in 1975 as the mechanism through which the Legislature delegates to regional school boards the authority to operate the public schools using the boundaries or sub-boundaries of the regional corporations established under the Alaska Native Settlement Act or a combination of such boundaries.

Because the REAAs represent a major effort in regionalization, local control and decentralization of service delivery in the unorganized borough, the boundaries of which are also to be used for coastal zone management purposes, an in-depth history and analysis of the REAAs is included for your review.

During the early 1970's, the Center for Northern Educational Research was requested by the Department of Education to initiate a study of the delivery of educational services in the unorganized borough and the Interim Legislative Committee on Pre-Higher Education of the Eighth Legislature identified decentralization of the Alaska State-Operated Schools as the subject it wanted to study. The final report published in 1974, entitled "Pre-Higher Education in the Unorganized Borough: Analysis and Recommendations," included a wide range of recommendations. A primary point was the recognition of the need for local control of education and the relationship of that local control with local government creation.

> "In order that any plan be more than temporary, the authority for controlling education should be aligned with the development of local governmental units as envisioned by Alaska's Constitution. If local control can be defined as that measure of control which a state delegates to local units of government, then the issues of local control of education cannot be treated separately from the broad issue of the creation of local units of government. And local government units formed around the delivery of education can provide the vanguard for local control over delivery of other governmental services. Therefore, the structure created to serve educational needs must be formed in anticipaion of increases in appetites for control of other governmental functions. To ignore the need for legislative support to move toward creating local government units will only blunt the emerging desire of local citizens to assume the reigns and responsibility for their own destiny." p. 34

REGIONAL EDUCATIONAL ATTENDANCE AREAS (REAAs) (Cont'd)

The Center approached this subject with a note of caution; however,

> "Local control of education in many regions is the main reason for creating local government units. All such creations, however, must await the readiness and desire of local people to assume control over them....the main sources of constituent resistance to local government stem from 1) lack of self-confidence, understandable, in the light of past history 2) groundless fear that the local tax base must be the primary source of local government, especially school funding, and 3) an acute shortage of trained personnel to handle what must seem like the endless march of administrative details.." p. 35

BOUNDARIES OF THE REGIONAL EDUCATIONAL ATTENDANCE AREAS

AS 14.08.031 (a) provides that REAA boundaries follow regional boundaries set under the Alaska Native Claims Settlement Act unless by referendum a community votes to merge wth another community contiguous to it but within the boundaries or sub-boundaries of another regional corporation. The use of regional lines was not intended to be exclusive as shown by AS 14.08.031 (b) prescribing certain characteristics for REAAs.

> "As far as practicable, each regional educational attendance area shall contain an integrated socio-economic, linguistically and culturally homogeneous area. In the formation of the REAAs, consideration shall be given to the transportation and communication between communities that comprise the area. Wherever possible, municipalities, other governmental or regional corporate entitles, drainage basins and other identifiable geographic features shall be used in describing the boundaries.."

Taken together, these two sections suggest that REAA boundaries are to follow, rather than cross, regional corporation boundaries where they contict them and conform to natural or other predetermined boundaries. This is how the State Department of Community and Regional Affairs, which was charged with administering the act in consultation with the State Department of Education, interpreted it in a series of informational meetings in rural areas around the state in July and August, 1975. Later they began implementing it similarly when hearings were held in numerous bush locations regarding proposed boundaries. The result of the hearings was a division of the state into some 21 REAAs. Originally 20 REAAs were created by C&RA, but after a meeting of residents of REAA 17 and the Governor, REAA 21 (including Whittier and Tatitlek) was created on September 24, 1975, dividing REAA 14 along the boundary between the Chugach and Ahtna Regional Corporations.

Frecuent mention has been made of the fact that the statutory characteristics for boundary selections of the REAAs are similiar to the standards for borough incorporation.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

ADMINISTRATION OF THE REAAs

REAA voters elect a board of from 5-11 members who are voted on "at large." In addition to the elected board for each REAA, every community (or military reservation) with a school has a community school committee. The Statute merely charges them to "review and make recommendations to the board" of the REAA "concerning the curriculum, program and general operation of the local school. They may, however, be delegated other functions by the school board.

Matters of employment, salaries, purchasing, and disbursement of funds are lodged with the REAA boards. Although the power to "adopt regulations governing organization, policies and procedures for the operation of the schools" and to "develop a philosophy of education, principles and goals for the schools" is a board responsibility, the Commissioner of Education is given overriding control of school operations.

FINANCING REAAs

All funds for REAAs are furnished by the State Legislature. They receive "basic need," as used in computing foundation aid to districts, plus an amount equal to the average per pupil local tax contributions in city and borough districts. Thus, they are relieved of local effort requirements, but the amount they can receive from the state over and above basic need is indirectly determined by city and borough decisions regarding their local tax effort. (AS 14.08.12)

Among the local financial concerns of the REAAs, even as they began their first year of operation with full state support, were the following: (See Summary of Findings Alaska School Finance Study Workshops October-November 1976, published February 1977)

1. Public School Foundation Program. While few wished to change the basic funding method, concern was expressed about the ability of the formula to provide sufficient funds to meet operating costs, especially those of small attendance centers. The validity, accuracy and amounts of instructional unit allotments (regional cost differentials) were questioned. The ability of "basic need" dollars to meet the REAAs' "basic program need" was of great concern. (Two important legislative changes made in the Public School Foundation Program in 1977 responded to the financial concern of the REAAs. One recognized the plight of the very small attendance centers and provided for an increased minimum of instructional units. The second change modified the instructional unit allotments (regional cost differentials) to be more in line with the cost of doing business in rural and isolated areas of the state.)

2. School Construction. The amount of funds available for new construction, as well as the manner in which it is provided, received extensive criticism. Even as the FY 1978 building program got underway, REAAs expressed additional concern about the proportion of bond issue building funds being retained by the supervising state agencies for administrative purposes.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

FINANCING REAAs (Cont'd)

3. Equity. REAAs, with no local source of revenue, have limited ability to operate discretionary programs beyond what is possible with the amount in lieu of local taxes available to each. The possibility that legislation might be enacted to tax property in REAAs was of concern.

4. Operation and Maintenance of School Facilities. Extreme operational costs often result from inheriting substandard or poorly designed facilities. Costs of operating facilities are unpredictable, and in some cases were expected to consume as much as one-third of the operating budget. Inherited utility contracts was singled out as an item of great concern.

5. Other Financial Concerns. State and federal categorical programs were items of much concern, partly because obtaining some of these funds depends upon the grant writing ability of the REAA. High costs of travel and meeting expenses for school boards and superintendents were expected to cause problems. Inadequate funding for school food service programs was also identified as a major concern. The acceptance and operation of former BIA schools was of concern because of the possibility that current funding methods might not be adequate to provide funds necessary to operate the schools. Costs of teacher housing was a problem in some REAAs.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

CHRONOLOGY OF EVENTS: DECENTRALIZATION OF THE ALASKA STATE-OPERATED SCHOOL SYSTEM - 1974-1976

January 1974. Center for Northern Educational Research (CNER) releases its report, PreHigher Education in the Unorganized Borough: Analysis and Recommendations, produced at the request of the Eighth Alaska State Legislature's Interim Committee and of native leaders.

January - May 1974. Eighth Alaska State Legislature meets and reviews CNER report in committee, but does not act on the recommendations of the report concerning rural education.

July 14-16, 1974. The Alaska Federation of Natives (AFN), having assessed the Legislature's inactivity, calls an Education Strategies Conference in Fairbanks to review CNER's recommendations, to prioritize issues addressed in the report, and to determine whether and how to bring CNER recommendations to the attention and action of the new State Legislature.

August 15, 1974. Mr. Gordon Jackson, Executive Vice-President for Human Resources, at the AFN presents the recommendations and strategies from the July conference to the State Board of Education and receives their unanimous support of those items.

October 14-16, 1974. The AFN Annual Convention endorses through resolutions the PreHigher Education's recommendations and strategies. The Human Resource Committee of AFN, meeting during the convention, endorses those principles and directs staff to include those concerns into the formal AFN Education Position Paper to be presented to the newly elected State Legislature.

January 1975. The Ninth Alaska State Legislature convenes, with several bills related to the CNER/AFN recommendations prefiled. These bills include Senate Bill (SB) 35, House Bill (HB) 24, and SB 94 and SB 136.

June 4, 1975. Governor Hammond signs into law (Chapter 124, SLA 75) the Free Conference version of SB 35 and HB 24. An interim administrative structure, AUBSK, is created for the transitional year.

September-October 1975. Representatives of DOE and DCRA hold formal hearings for REAAs; public hearings are held in 21 communities in the unorganized borough; 796 people attend, representing 83 communities.

July 1, 1976. Twenty-one Regional Educational Attendance Area school boards take responsbility for education in their regions.

# SB 35 AND REGIONAL GOVERNMENT *

Patrick K. Poland

The transfer of the major operational responsibilities for rural Alaska's schools from the State of Alaska (Alaska Unorganized Borough School District) to regional school districts (Regional Educational Attendance Areas) with locally elected school boards was accomplished by Ch 124, Session Laws of Alaska, 1975 (popularly referred to as Senate Bill 35).

To a great extent, the ultimate impact of Senate Bill 35 is just beginning to be realized. However, there are already several definite implications for municipal government that have arisen from the implementation of Senate Bill 35. The purpose of this discussion is to underscore these implications as they relate to the development of municipal government in the Unorganized Borough. For purposes of this discussion, municipalities consist of boroughs and first-class cities; that is, municipalities having the education function.

## Regional Identification

While rural Alaska's initial encounter with the concept of regionalism came about with passage of Public Law 92-746, the Alaska Native Claims Settlement Act (ANCSA), there is no doubt that Senate Bill 35 went far beyond the implications of the ANCSA in terms of developing regional identification. In the view of the Department of Community and Regional Affairs this was a positive step towards developing regional government in the Unorganized Borough. Prior to the passage and implementation of this particular act there were no real tests of the regional concept of service delivery taking place in the Unorganized Borough;[1] and while there were many advocates of this particular mechanism of service delivery, it remained, by and large, untested. However, with the mandate of regionalization created by Senate Bill 35, rural residents have, in a sense, been forced to test the concepts of regionalism in Alaska's vast Unorganized Borough.

Surprisingly, there seemed little if any real resistance to the idea of regional school districts. On the contrary, most rural residents seemed eager to embrace the concept. Much of this was undoubtedly due to the dissatisfaction many rural residents felt with the former State-Operated School System. Perhaps the strongest demonstration of this desire to participate in a regional approach to service delivery was the change in municipal status executed by the City of Selawik. In that particular instance, the City of Selawik, formerly a city of the first class in the Unorganized Borough and therefore having school responsibilities, petitioned the Local Boundary Commission[2] and convinced them of the need for the city to be dissolved and "reincorporated" as a second class city so that it might become a part of the particular Regional Educational Attendance Area (Northwest Arctic). Among

the arguments presented in support of Selawik's reclassification was a strong statement by residents concerning their desire to be a part of the Regional Educational Attendance Area and to receive benefits they perceived as being available only to constituents of the REAA.

The Department of Community and Regional Affairs, noting the relatively warm embrace being given regionalization by Unorganized Borough residents, early in 1976 initiated a study of the acceptability of general purpose regional governments in the Unorganized Borough. That study,[3] which consumed some six months, came to a number of conclusions, the most important of which appears to be the fact that rural residents are still wary of any form of government that has the authority to levy and collect taxes. Additionally, many residents expressed concern about moving too fast; while they embraced the idea of regional school districts, they felt that the concept required the test of time before jumping to yet a new form of government. Nevertheless, the department has had inquiries from several regions (most notably the Fort Yukon, Bethel, Glennallen, and Valdez regions) concerning possible borough incorporation. To date, none of those discussions has evolved into an actual petition for borough incorporation, although it does appear that many areas are getting close to taking that step. There is no doubt that formal consideration by these regions of regional government was precipitated by the establishment of REAAs.

An additional development which, to some degree, appears to be an offshoot of the regional approach fostered by Senate Bill 35, was the passage of Ch 84 SLA 1977, which established a mechanism for regions of the Unorganized Borough to establish coastal zone management (CZM) service areas for the purpose of CZM planning. Under the provisions of that particular act any Regional Educational Attendance Area, upon determination by the local electorate, may establish itself as a coastal zone management planning district. While the legislation permits consolidation of two or more Regional Educational Attendance Areas into a CZM planning district, it does not allow individual REAAs to be subdivided into smaller districts for the purposes of planning. This is an interesting development and one that seems to further reinforce the concept of delivery services on a regional basis.

Finally, in terms of regionalization, it is interesting to note the provisions of Senate Bill 35 which deal with the boundaries of Regional Educational Attendance Areas. Specifically, the bill provides that:

> As far as practicable, each Regional Educational Attendance Area shall contain an integrated socio-economic, linguistically and culturally homogenous area. In the formation of Regional Educational Attendance Areas, consideration shall be given to the transportation and communication network to facilitate the administration and communication between communities that comprise the area.

Very similar statutory language exists at AS 29.18.030, which is the statutory provision establishing standards for borough incorporation. The similarity of the standards goes a long way towards defining appropriate boundaries for potential regional governments. In fact, to some observers, the boundaries of the newly created Regional Educational Attendance Areas (with some exceptions) generally conform to good borough boundaries. This has been a little alarming to many rural residents, since no small number of them are still concerned that the state is going to "foist" boroughs upon them.

## Finance

The second major subject area that has been the topic of much discussion as a result of Senate Bill 35 is that of local government finance. As presently constituted, Regional Educational Attendance Areas, in comparison to municipal school districts, have an advantageous funding schedule. In addition to 100 percent Public School Foundation Program funding, Regional Educational Attendance Areas also receive from the State an amount equal to the average local contribution per pupil in municipal school districts multiplied by the number of students in the Regional Educational Attendance Area. This advantageous funding schedule for REAAs versus municipal districts remains a hindrance rather than an enticement for REAAs to seek organized borough status.

Since most REAAs are property poor (hence, no ability to generate tax revenues), the thought of forming municipal school districts to provide services which are currently provided by Regional Educational Attendance Areas is almost out of the question. For example, the poorest existing borough has about $20,000 worth of taxable property per capita. On the other hand, some of the Regional Educational Attendance Areas could probably expect to have considerably less than $5,000 worth of taxable property per capita. Realistically, it is impossible to provide basic municipal services without adequate funding.

The major exceptions to this discussion, of course, are those areas surrounding "the pipeline." The regions surrounding Fort Yukon, Delta Junction, Glennallen, Copper Center, and Valdez have taxable property per capita values that could easily support borough government.

Partially in response to these obvious funding inequities, the Department of Community and Regional Affairs, as a part of its final conclusions reached in its study of regional government, recommended that a new system of financing regional governments be found. Basically, the system suggested was one that placed a state-wide property tax on all property associated with the exploitation of natural resources and then, in turn, distributed those tax revenues on the basis of population and services being provided by individual boroughs. It was determined that additional study of that particular proposal

areas as needed before the feasibility of it could be determined.

Nevertheless, this particular area is still a popular subject among legislators as demonstrated by current House Bill 202 and Senate Bill 35 introduced in the first session of the 1977 Legislative Session. Both those bills would levy real property taxes on developed land in the Unorganized Borough. Hearings on House Bill 202 were held this October (1977) in Fort Yukon, Delta Junction, and Tok.

Finally, one last area of financing that again discriminates between the municipal versus REAA school district is that of school construction. Presently municipal districts must pay for 50 percent of school construction while REAAs contribute no local effort towards construction of new facilities. This is seen as a significant impediment to the development of regional government for the purpose of assuming local control of education, particularly in areas which are "poor" or are marginally deficient in terms of a real property tax base.

## Constitutionality

I mention this issue simply because it is one of concern to many involved with municipal government. Because REAAs are not units of local government they cannot be given taxing authority nor can they provide "local government" services.[4] While the legality of the current REAAs has not been challenged on the grounds of Article X, Section 2, of the Constitution, there is reason to believe that if additional REAA-type entities are established they will be challenged and may, on the basis of Article X, Section 2, be declared unconstitutional.

On the other hand, those defending the constitutionality of the REAAs cite Article X, Section 6, of the Constitution which authorizes the Legislature to provide services in the Unorganized Borough ostensibly through the service area mechanism. However, the significant degree of autonomy given REAAs, particularly with respect to their abilities to independently contract and incur debt, makes the argument that REAAs are service areas, and hence an arm of the Legislature, highly suspect.[5]

## Summary

In summary, it can be said that formation of the Regional Educational Attendance Areas can be viewed as a positive step towards the formation of regional government in rural Alaska. In particular the newly created service areas have provided a greater amount of local control over a local municipal-type service, maintained and strengthened existing regional identifications, and provided boundaries that will be useful for the establishment of boroughs in the future.

The principal negative aspect of Senate Bill 35 has been the funding formula which maintains a disincentive to formation of municipal governments and fails to properly address the extremely poor tax base of much of rural Alaska.

Ultimately, the passage of Senate Bill 35, if for no reason other than the fact that it has generated discussion and interest, is going to have had a significant effect (probably the most significant since the passage of the 1964 mandatory borough act) towards developing regional government in this state.

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## Notes

1. Admittedly, certain state and federal agencies have been administering a few programs on a regional basis. However, these agencies have had the benefit of vast government financial and technical resources to assist them. In the opinion of this writer, the availability of these resources makes any comparison between the state/federal regional approach and the REAAs invalid.

2. The Local Boundary Commission is composed of five members and is responsible for reviewing and approving or disapproving all municipal incorporation, dissolution, and boundary change proposals.

3. While a final report was not issued at the end of the study, several comprehensive memorandums summarizing various aspects of the study are available from Community and Regional Affairs. As an additional result of the study, legislation calling for a Local Government Commission to study and make recommendations to the Legislature on all aspects of state/local relations is being introduced by Governor Hammond in the second session of the Tenth State Legislature (January 1978).

4. Alaska Constitution, Article X, Section 2. All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only.

5. For further information, the reader may wish to consult David Getches, Law and Alaska Native Education, pp. 32-34.

*Article reprinted from New School Districts in Rural Alaska: A Report on the REAAs After One Year, Center for Northern Educational Research, University of Alaska, 1978, pp. 137-142.

**This percentage was reduced to 20 percent by the Legislature with the passage of Sec 2 Ch. 147 SLA 1978.

# XIV

# STATUTORY INDUCEMENTS AND DISINCENTIVES RELATED TO BOROUGH GOVERNMENT INCORPORATION

XIV

## STATUTORY INDUCEMENTS AND DISINCENTIVES RELATED TO BOROUGH GOVERNMENT INCORPORATION

Organizational Grants (AS 29.18.180) To defray the cost of transition to borough government status and to provide for its development and interim governmental operations, each newly created borough is entitled to an organizational grant of $25,000 or $10 per voter voting in the incorporation election, whichever is greater.

The organizational grants have not been a statutory incentive to encourage borough incorporation because the grant is not adequate and is not intended to pay for the entire cost of borough organization. Although there are no guidelines for the use of the organizational grants, a newly incorporated borough may use the funds to defray the cost of hiring a borough administrator, paying for a local assessment of real and personal property, obtaining office space, etc.

In order to provide an incentive to borough incorporation, an organizational grant would have to be at least $75,000 to $100,000 plus the initial cost involved in conducting a feasibility study on borough incorporation, and an amount equal to the cost of conducting the initial assessment and appraisal of real and personal property.

Land Selections (AS 29.18.203) A newly created borough may select ten percent of the total acreage of vacant, unappropriated, unreserved land within its boundaries on the date of incorporation. In the selection of land under the Statehood Act, it has been the policy of the State to make available to boroughs and cities the maximum land area from which to make selections consistant with the State's best interest.

The municipal land selection process is an incentive to borough incorporation to the extent that the boundaries proposed for a borough would probably include the maximum allowable vacant, unappropriated, and unrestricted lands from which to select its ten percent. However, the boundaries of a proposed borough must conform to natural geography and include all areas necessary for full development of local services.

State Revenue Sharing Program (AS 43.18.010-045) The State Revenue Sharing Program annually distributes grants to cities and boroughs based on the number of local residents in a municipality, the eligible powers exercised by each local government, the cost of living allowance used in computing total grant entitlements and the total appropriation approved for the grant program.

During each fiscal year, the Department of Community and Regional Affairs distributes State Revenue Sharing Funds to eligible cities or organized boroughs which provide specific services, and exercise the powers as follows:

| Municipal Service | Rate of Entitlement |
|---|---|
| Police Protection | $12. per capita |
| Military | $ 6. per capita |
| Fire Protection | $ 7.50 per capita |
| Water or Air Pollution | $ 2. per capita |
| Land-Use Planning | $ 2. per capita |
| Parks and Recreation | $ 5. per capita |

| Municipal Service (Cont'd) | Rate of Entitlement (Cont'd) |
|---|---|
| Military | $ 1.25 per capita |
| Transportation Facilities | $ 5.00 per capita |
| Military | $ 2.50 per capita |
| Road Maintenance | |
| - Public Roads | $ 1,500. per mile |
| - Ice Roads | $ 900. per mile |
| Health Facilities | $ 4,000. per fac. OR |
| | $ 1,000. per bed |
| Health Services | $ 2. per capita |
| Hospitals | $75,000. per host. OR |
| | $25,000. per hosp. OR |
| | $ 1,000. per bed |
| State Construction Aid | $ 2,500. per bed |

State Revenue Sharing has had an increasing impact on municipalities since its enactment in 1969. The program funding has increased from $2.0 million in 1970 to $18.6 million in FY 1979, and municipalities have become increasingly dependent on these grants. However, due to the limited amount of funding made available for the program each year, municipalities have not received 100 percent of their grant entitlements. Last fiscal year municipalities received only 88.7 percent of their total grant entitlements and next fiscal year the Department of Community and Regional Affairs expects the program to be funded at approximately 85 percent of all the grant entitlements.

The current formula is intended to encourage existing local governments to provide financial incentives to exercise powers, improve upon existing services provided and reduce any local taxes.

Local Service Road and Trail Program (LRS&T) (AS 19.30.111-251) The Local Service Roads and Trail Program provides state assistance in the development of roads and trails on routes that are not eligible for Federal-aid highway funds. These funds are intended to provide local service roads, year-around foot trails, winter trail staking, bicycle paths, erosion control, foot bridges, boardwalks, etc.

This program is 100 percent State-funded through State bond issues. Under the program, funds are allocated to organized boroughs and home-rule cities according to a strict area/population formula. Each local government receives its allocation by submitting a three-year program with project priorities noted to the Regional Highway Engineer by October 1 of each year. A portion of the fund is also allocated to the unorganized boroughs; this money is administered by DOTPF. The communities within the unorganized boroughs receive funding based on priority and need. Each community selects its project and submits it to the Department for consideration.

The Department of Transportation and Public Facilities (DOTPF) is responsible for maintaining, causing to be maintained, or constructing any project under the LSR&T Program. However, a project constructed within the boundaries of a local government which exercises the power of streets and sidewalks may be transferred to a local government upon the approval of DOTPF and acceptance by the local government.

Local Service Road and Trail Program (LRS&T) (AS 19.30.111-251) (Cont'd)

A road, street or highway transferred to a local government under this process can be eligible to receive State Revenue Sharing funding equal to $1,500 a mile for each eligible mile for streets or highways maintained by the local government.

Although a borough stands a greater chance of being awarded local service roads and trails projects under the area/population formula, and although roads, streets and highways may be transferred to a municipality, the LSR&T Program has not been a sufficient incentive to encourage borough incorporation.

Regional Education Attendance Area (REAAs) REAAs were created with the passage of Chapter 124, Session Laws of Alaska, 1975 (popularly referred to as Senate Bill 35,) thus transferring the major operational responsibilities for rural Alaska schools (Alaska Unorganized Borough School District) to regional school districts (REAAs.) Although the REAAs created have provided a greater amount of local control over local municipal-type services, strengthened the existing regional identification of these areas, and provided boundaries that are useful to establishing future boroughs, the State funding formula has been a disincentive to the formation of borough government, and it fails to properly address the extremely poor tax base for much of rural Alaska. In addition to receiving funding for 100 percent of the Public School Foundation Program and 100 percent of the cost for new school construction, REAAs receive from the State an amount equal to the average local contribution per pupil in municipal school districts multiplied by the number of students which will approximate $710 per student this year. The Public Foundation Program will be funded approximately at 100 percent this year, and the State school construction cost will only be funded at approximately 80 percent this year. The advantageous funding schedule mentioned above for REAAs still remains a disincentive to the formation of organized boroughs unless the borough school districts can obtain additional funding to offset the increased level of funding for REAAs.

State-Shared Taxes State-shared taxes are specific taxes levied and collected by the State of Alaska (Department of Revenue) and are, in part, refunded to cities and boroughs providing municipal services. State-shared taxes refunded to municipalities include the following:

Amusement and Gaming Taxes (AS 43.35.010-090) Fifty percent of the taxes collected under this program are refunded to the municipality in which the tax is collected. Payments are made automatically, on a semi-annual basis, to all cities and boroughs upon receipt of notice of incorporation.

Aviation Fuel Taxes (AS 43.40.010-040) Sixty percent of the taxes collected under this program are refunded to the municipality in which the tax is collected, if that municipality owns and/or operates a public airport.

Corporate Income Taxes (AS 43.20.010) Effective July 1, 1979, each municipality will receive a refund equal to the amount they received as a refund under the former Business License Tax Program. Refunds are mailed automatically to municipalities, once a year.

Liquor License Taxes (AS 04.10.460) One hundred percent of the amount collected under this tax program is refunded to the municipality in which it was collected if the municipality has a police force and actively enforces State, Federal, and local liquor laws. Refunds are mailed automatically to municipalities semi-annually.

Punchboard Taxes (AS 43.35.100-150) Seventy-five percent of the amount collected under this tax program is refunded to the municipality in which it was collected. Refunds are mailed automatically to municipalities once a year.

Raw Fish Taxes (AS 43.75.130-135) Currently each borough receives twenty percent of the amount of tax revenues collected in the area outside cities and ten percent of the amount of tax revenues collected within cities. Refunds to eligible municipalities are mailed annually.

Telephone and Electric Cooperative Taxes (AS 10.25.570) One hundred percent of the tax collected from telephone and electric cooperatives is refunded to the municipalities in which the cooperative does business. A municipality's entitlement is based upon the amount of gross revenue the cooperative received from operations within the municipality's boundaries. The tax is refunded annually.

With the exception of the raw fish tax refunds, all other State-shared taxes contribute a relatively small amount of revenue to an organized borough and would not provide a statutory inducement to municipal incorporation. Depending on the amount of fish products processed within the boundaries of a proposed borough, the raw fish tax could provide an incentive to borough incorporation; i.e., the Aleutian Islands.

# FISCAL IMPACT OF STATE STATUTES AND REGULATIONS ON MUNICIPALITIES

Part I of the Municipal League's legislative policy statement deals with local taxation and finance. One aspect of local revenue and expenditures which is not treated in the policy statement is the effect of State laws and regulations on the costs of local government.

Two bills introduced last session would have addressed this issue. Senate Bill No. 352 called for the preparation of fiscal notes on local costs of proposed bills by the Department of Community and Regional Affairs. This bill was a result of the work done by the Joint Community and Regional Affairs Committees' interim Local Government Study. The Municipal League was active in its support of this bill. (The companion bill in the House was numbered (Committee Substitute for House Bill) CSHB586.

Senate Bill No. 309 dealt with the local cost of State regulations, and took a somewhat different approach. SB 309 called for the preparation of "fiscal impact statement" for any change of regulations which would affect the revenue available to communities or their required expenditures. Major questions on the original bill centered around the concept of the "fiscal impact statement":

- was it to be a detailed analysis of fiscal effects on local governments or a simple fiscal note similar to that used by the Legislature;

- was it to be done on a municipality-by-municipality basis or by a lump sum figure;

- how technical should it be;

- should only direct fiscal impacts, or should indirect effects also be included;

- should there be a "threshold" level of fiscal impact or should all changes in level of impact be covered; and

- how would the fiscal impact statement process be implemented?

The Community and Regional Affairs Committee amended SB 309 to narrow the scope of fiscal impacts to direct effects on municipal revenues or expenditures. Also the Department of Community and Regional Affairs was written into the process of developing an agency's fiscal impact statement. Before this bill is reintroduced, the legislative intent in regard to the remaining issues must be clarified.

A related bill, SB 292, that required fiscal notes on the impacts of regulations on State agencies did become law. These State level impacts can be more directly estimated in terms of increased appropriations requests by each agency. However, the possible fiscal impacts on local governments are much more varied, and for the most part do not relate directly to state appropriation requests.

The goal is to develop a method of assessing the fiscal impacts of any proposed bill or regulation on local governments. In any case, the fiscal impact statements required in SB 309 and SB 352 must be completed within definite time frames. The introduction of legislation, or the submission of new regulations by a state agency for review and comment, are relatively short-term processes that will influence the nature of the fiscal impact statement process.

Any direction from the Municipal League on the scope and the level of detail that such fiscal statements should include would be greatly appreciated. It would be especially helpful to know what specific types of fiscal impacts you feel need to be addressed in such an analysis.

Senator Arliss Sturgulewski
Presentation to the
Municipal League Legislative Committee

Introduced: 1/21/80
Referred: Community & Regional Affairs and Finance

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL (for the Community and Regional Affairs Committee Interim Joint Local Government Study)

IN THE SENATE

SENATE BILL NO. 352

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act requiring fiscal notes for bills affecting a municipality."

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

* Section 1. AS 24.30.035 is amended to read:

Sec. 24.30.035. FISCAL NOTES ON BILLS. Before a bill is reported from the committee of first referral, there shall be attached to the bill a fiscal note containing an estimate of the amount of the appropriation increase or decrease which would result from enactment of the bill for the ensuing fiscal year and at least two succeeding fiscal years. If enactment of the bill would require an expenditure or appropriation by any municipality, a fiscal note shall be attached to the bill containing an estimate of the amount of the total expenditure or appropriation which would be required during each of the first three fiscal years by all affected municipalities. If [OR, IF] the bill has no fiscal impact, a statement to that effect shall be attached. The fiscal note or statement relating to a state program shall be prepared by the department or departments affected. The fiscal note or statement relating to municipalities shall be prepared by the Department of Community and Regional Affairs, but that department may obtain the assistance of any other state agency in the preparation of the note or statement. If the bill is presented by the governor for introduction in accordance with AS 24.30.060(b) and the uniform rules of the legislature, the fiscal note or statement shall be attached to the bill before the bill is introduced. An amendment or a substitute bill proposed by a commit-

Introduced: 1/21/80
Referred: Community & Regional Affairs and Finance

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL (for the Community and Regional Affairs Committee Interim Joint Local Government Study)

IN THE SENATE

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tee of referral that changes the fiscal impact of a bill shall be explained in a revised fiscal note or statement attached to the bill.

Original sponsors: Hackney, Ziegler and Kelly

Offered: 3/27/80
Referred: Judiciary

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 309

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to adoption, amendment, repeal and filing of regulations and requiring the preparation of a local government fiscal impact statement."

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

* Section 1. AS 44.62 is amended by adding a new section to read:

Sec. 44.62.195. LOCAL GOVERNMENT FISCAL IMPACT STATEMENT. If the adoption, amendment, or repeal of a regulation would result in a change in the amount of revenue available to, or the expenditures required of, a municipality, the department or agency proposing to adopt, amend, or repeal the regulation shall, in cooperation with the Department of Community and Regional Affairs, prepare a fiscal impact statement. In the fiscal impact statement the department or agency shall identify and describe the change in the amount of revenue available to or the expenditures required of the municipality by the adoption, amendment, or repeal of the regulation.

* Sec. 2. AS 44.62.200(a) is amended by adding a new paragraph to read:

(5) a summary of the local government fiscal impact statement required under AS 44.62.195.

* Sec. 3. AS 44.62.320(b) is amended to read:

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 - 24.20.460 together with any fiscal impact statement required to be prepared under AS 44.62.195.

# CREATION OF UNORGANIZED BOROUGHS

Major legislation introduced as a result of the Joint Community and Regional Affairs Committees' interim Local Government Study included Senate Bill 348.

Senate Bill 348 would have divided the present unorganized borough into distinct unorganized boroughs. These unorganized boroughs would be based on the present Regional Education Attendance Area boundaries, with adjustments made by the Department of Community and Regional Affairs. In determining boundaries for the unorganized boroughs, the Department must consider the standards applicable for borough incorporation, Native corporation boundaries and census divisions. SB 348 provided a mechanism for identifying the boundaries of the unorganized boroughs and for instituting a comprehensive planning program for each unorganized borough.

As stated in SB 348, one primary purpose of this legislation was to provide residents of the unorganized borough the opportunity to assist in planning and program development for their own regions.

In addition, State statutes on incorporation would be changed to allow an unorganized borough to incorporate directly as a home-rule borough. A procedure for preparing a home-rule charter and holding an election on the charter was included in the legislation.

Senator Arliss Sturgulewski
Presentation to the
Municipal League Legislative Committee

Original sponsor: Rules/Legislative Council

Offered: 3/26/80
Referred: Finance

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 348

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to unorganized boroughs, establishing unorganized boroughs, establishing a program of financial assistance for the preparation of regional plans by unorganized boroughs, permitting adoption of home rule charters by unorganized boroughs, and directing submission of recommendations concerning adjustment of the boundaries of service areas of the unorganized borough; and providing for an effective date."

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

* Section 1. PURPOSE. The legislature finds that the single unorganized borough of the state has proven unworkable in accommodating demands from its residents for change and recognizes that a more systematic approach to the planning and delivery of services for residents of this area is necessary. In providing, in this Act, for identifying a common set of boundaries by which to subdivide the state's single unorganized borough into multiple unorganized boroughs, it is the purpose of the legislature to extend the opportunity to residents of unorganized boroughs to assist in planning and program development by

(1) preparing regional plans; and

(2) broadening the range of methods by which residents may incorporate a regional government.

* Sec. 2. INTENT. In providing for the division of the state's unorganized borough into unorganized boroughs, it is the intent of the legislature that all future transfers of functions or services from state agencies to

regions within unincorporated areas be made only within the boundaries for unorganized boroughs established under AS 29.03.011 - 29.03.021, added by sec. 3 of this Act.

* Sec. 3. AS 29.03 is amended by adding new sections to read:

Sec. 29.03.011. ESTABLISHMENT OF UNORGANIZED BOROUGHS. Except as the boundaries are adjusted as provided in AS 29.03.021, the geographic area within each regional educational attendance area established under AS 14.08.031 is, effective 180 days after the effective date of this Act, established as an unorganized borough.

Sec. 29.03.021. ADJUSTMENT OF BOUNDARIES BY COMMISSIONER. (a) The commissioner of community and regional affairs may establish boundaries other than the boundaries of a regional educational attendance area for an unorganized borough under AS 29.03.011. Before establishing boundaries for unorganized boroughs under this section, the commissioner shall hold at least one public hearing within each regional educational attendance area. In establishing boundaries under this section, the commissioner shall consider

(1) the standards applicable to the incorporation of boroughs under AS 29.18.030;

(2) the regional boundaries adopted by the Native regional corporations established under the Alaska Native Claims Settlement Act; and

(3) census divisions of the state used for the 1980 census.

(b) The commissioner of community and regional affairs may not establish boundaries so that an unorganized borough includes territory within more than one Native regional corporation established under the Alaska Native Claims Settlement Act.

* Sec. 4. AS 44.47 is amended by adding a new section to read:

Sec. 44.47.085. ASSISTANCE FOR REGIONAL PLANS IN THE UNORGANIZED

BOROUGH. (a) The commissioner may contract with a municipality, a group of municipalities, or one or more regional Native corporations organized as nonprofit corporations under the laws of the state to prepare a regional plan for an unorganized borough.

(b) The commissioner may contract for the preparation of only one regional plan for each unorganized borough. The commissioner may contract only if he is satisfied that the party with whom he contracts is capable of preparing a regional plan that considers the entire population of the unorganized borough.

(c) When a municipality, group of municipalities, or one or more regional Native nonprofit corporations proposes to prepare a regional plan for an unorganized borough, the commissioner shall request proposals for preparation of a regional plan. The residents of an unorganized borough may petition the commissioner to request proposals for preparation of a regional plan, and the commissioner shall request proposals if the petition is signed by a number of qualified voters equal to not less than 15 percent of the number of votes cast in the unorganized borough at the last state general election.

(d) A request for proposal for preparation of a regional plan for an unorganized borough made under (c) of this section shall be advertised. The commissioner shall advertise for a period of not less than 45 days by public notice announcements provided to newspapers and radio and television stations. The advertisement of a request for a proposal for the preparation of a regional plan shall

(1) invite a municipality, group of municipalities or regional Native nonprofit corporation to submit a proposal for the preparation of a regional plan;

(2) outline the work to be completed; and

(3) contain other information which the commissioner believes

will inform the public of the work to be completed under the contract, and which will assist him in evaluating proposals received.

(e) After receiving the proposals for preparation of a regional plan, the commissioner shall evaluate them. In evaluating the proposals, the commissioner may request advice from residents of an unorganized borough for which the regional plan is proposed. The commissioner may refuse all proposals and readvertise, or may accept a proposal and enter into a contract as provided in (f) of this section.

(f) A contract entered into under this section

(1) shall require that the regional plan include

(A) an analysis and recommendations concerning incorporation of a borough government for all or a portion of the unorganized borough;

(B) an evaluation of the economic development potential of the unorganized borough;

(C) a recommendation concerning capital facility needs of the unorganized borough;

(D) an examination of demographic, social and environmental factors affecting the unorganized borough;

(E) an examination of

(i) interrelationships among the regional educational attendance area, the coastal resource service area, and any other regional entity responsible for services in the unorganized borough; and

(ii) the interrelationships between the governments of cities within the unorganized borough and regional entities listed in (i) of this subparagraph; and

(F) a process for implementing the recommendations made as part of the regional plan;

(2) shall provide

(A) a mechanism for securing public participation in the preparation of the regional plan;

(B) that the regional plan be completed not later than the June 30 following the third anniversary of the date of the contract; and

(C) that payment for work performed under the contract is subject to legislative appropriation to the account established in (g) of this section;

(3) may permit the contractor to subcontract parts of the work to be performed to one or more subcontractors.

(g) There is established in the Department of Community and Regional Affairs the unorganized borough regional planning account. The account shall be administered by the commissioner and shall be used to pay for contracts entered into under this section.

(h) During each fiscal year, the commissioner may not pay to a contractor under a contract authorized by this section more than $25,000 plus $25 per capita for each person residing within the unorganized borough for which the regional plan is to be prepared, as determined by the commissioner.

(i) In this section, "unorganized borough" means a subdivision established under AS 29.03.011 - 29.03.021.

* Sec. 5. AS 29 is amended by adding a new chapter to read:

CHAPTER 19. DIRECT INCORPORATION OF A HOME RULE BOROUGH.

Sec. 29.19.010. INCORPORATION. (a) The residents of an unorganized borough established in accordance with AS 29.03.011 - 29.03.021 may apply for the incorporation of a home rule borough. The petition for borough incorporation shall be filed with the Department of Community and Regional Affairs and shall include the information and signatures

required by AS 29.18.050. Petitions for incorporation filed under this section shall be processed, reviewed and determined in accordance with AS 29.18.060 - 29.18.090.

(b) A petition submitted under (a) of this section shall

(1) specify the number of members of the charter commission, but the number of members may not exceed 15; and

(2) describe the manner of election of members of the charter commission; if election is to be by district, a description of the boundaries of each district shall be included in or attached to the petition.

(c) If the petition submitted under (a) of this section requests election of charter commission members on a basis other than at large within the unorganized borough, the manner of election of the members of the commission shall conform to standards applicable to the composition and apportionment of legislative bodies which are imposed by art. I, sec. 1 of the state constitution.

(d) The standards applicable to the incorporation of an organized borough under art. X, sec. 3 of the state constitution and AS 29.18.030 apply to the incorporation of an unorganized borough under this section.

Sec. 29.19.020. CHARTER ELECTION. (a) If the Local Boundary Commission accepts the petition filed under AS 29.19.010, it shall immediately notify the lieutenant governor. Within 30 days after notification, the lieutenant governor shall order an election within the proposed home rule borough to determine whether the voters will elect a charter commission, and to determine the persons elected to serve on the charter commission.

(b) Charter commission candidates are nominated by petition signed by at least 50 registered voters residing within the unorganized borough. The lieutenant governor shall allow not less than 20 or more

than 30 days during which candidates for the charter commission may present nominating petitions.

(c) The election on the question of election of a charter commission and the determination of persons elected to serve on the charter commission shall be held not less than 60 or more than 75 days after the date of the election order.

Sec. 29.19.030. PREPARATION OF CHARTER. (a) If, at the election called by the lieutenant governor under AS 29.19.020, a majority of the voters favors election of a charter commission, the persons receiving the highest number of votes cast at that election constitute the charter commission. The charter commission shall prepare a proposed charter and submit it to the Department of Community and Regional Affairs within one year of the first meeting of the charter commission. The commissioner of community and regional affairs shall review the proposed charter for compliance with laws applicable to home rule municipalities and, if it complies, request the lieutenant governor to submit the proposed borough incorporation petition and proposed home rule charter to residents of the proposed home rule borough. If the proposed charter does not comply with law, the commissioner of community and regional affairs shall return the proposed charter to the charter commission with a statement of the legal deficiencies.

(b) Within 90 days of the receipt of the statement of the commissioner of community and regional affairs indicating that the proposed home rule charter does not comply with law, the charter commission may prepare and submit to the commissioner an amended charter which meets the objections to the original proposed charter.

Sec. 29.19.040. RATIFICATION OF CHARTER. The lieutenant governor shall order an election on the question of whether the unorganized borough shall be incorporated as a home rule borough in accordance with

the charter approved by the commissioner of community and regional affairs. The proposed charter shall be posted throughout the proposed borough by the lieutenant governor before the election is held. The election shall be held not less than 60 or more than 90 days following the election order.

Sec. 29.19.050. RESULTS OF RATIFICATION ELECTION. (a) The votes cast at an election held under AS 29.19.040 shall be tabulated in two classifications. One classification shall consist of all votes cast within cities of the proposed home rule borough. The second classification shall consist of all votes cast in the remaining area of the proposed borough. If a majority of the votes cast in each classification by the qualified voters of the proposed borough favors incorporation of the borough under the proposed home rule charter, the lieutenant governor shall declare that the unorganized borough in which the election was held is incorporated as an organized borough and a municipal corporation in accordance with the provisions of the home rule charter. The lieutenant governor shall provide for the election of the officers provided for in the charter.

(b) The election and qualification of officers under (a) of this section shall be completed by the lieutenant governor in accordance with AS 29.18.120 and the provisions of the home rule charter of the borough.

Sec. 29.19.060. RESUBMISSION OF CHARTER. If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a second proposed charter to the voters in accordance with AS 29.19.030 - 29.19.050. The second proposed charter shall be submitted to the voters within one year of the date of the charter election held under AS 29.-19.040. If the second proposed charter is rejected, the charter commission is dissolved.

Sec. 29.19.070. VOTERS, ELECTIONS, COSTS, AND VACANCIES. (a) A

person is qualified to vote in an election authorized by AS 29.19.010 - 29.19.060 if he is qualified to vote in state elections and if he is a resident of the unorganized borough proposed for incorporation as a home rule borough.

(b) The lieutenant governor shall conduct elections authorized by AS 29.19.010 - 29.19.060 substantially in the manner provided in the Alaska Election Code (AS 15.05 - 15.60), and shall certify the results of all elections under this chapter. Costs of elections under this chapter shall be paid by the office of the lieutenant governor.

(c) Costs of charter preparation under this chapter shall be paid by the Department of Community and Regional Affairs.

(d) The commissioner of community and regional affairs shall appoint a registered voter of the unorganized borough for which a charter is being prepared to fill a vacancy occurring on the charter commission established under this chapter.

Sec. 29.19.080. APPLICABILITY OF TRANSITIONAL PROVISIONS. The provisions of AS 29.18.130 - 29.18.180 apply to home rule boroughs incorporated under this chapter.

Sec. 29.19.090. STATUS OF HOME RULE BOROUGHS. (a) A home rule borough incorporated under this chapter shall exercise all powers required of a borough under AS 29.33.

(b) For purposes of acquisition of areawide powers, the provisions of AS 29.38.010 apply to a home rule borough incorporated under this chapter unless otherwise specifically provided in the charter of the borough.

* Sec. 6. AS 29.03.010 and 29.03.020 are repealed.

* Sec. 7. UNORGANIZED BOROUGH SERVICE AREAS. (a) The commissioner of education shall recommend to the legislature, not later than January 31, 1981, whether changes should be made in the boundaries of a regional

educational attendance area organized under AS 14.08 to conform the boundaries of the regional educational attendance area to an unorganized borough of which it is a part.

(b) The Alaska Coastal Policy Council shall recommend to the legislature, not later than January 31, 1981, whether changes should be made in the boundaries of an existing coastal resource service area organized under AS 46.40 to conform the boundaries of the coastal resource service area to an unorganized borough of which it is a part.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.-070(c).

# STATE AGENCY COORDINATION

The purpose of Senate Bill 350 was to coordinate State agency program management and service delivery. SB 350 required all state agencies to adopt a common set of geographic districts for the purposes of program planning and for data collection and publication of statistics and reports. The units were to be boroughs, home-rule municipalities, and the set of unorganized boroughs created by SB 348. REAA's would take the place of unorganized boroughs if SB 348 did not pass.

A major purpose of this legislation was to standardize the delivery of state services along a common set of districts. The legislation specifically directed State agencies to develop and implement agency plans (and coordinate their plans with other agencies) on the basis of these common geographic units.

A second intent of this legislation was to make an analysis of State service delivery easier by having all information based on the same geographic units. In addition, a variety of supporting data--such as income levels, population, health statistics, unemployment statistics, and so on--would be available for the same geographic units.

Information on both agency programs and socio-economic measures would then be available for a specific geographic area. The legislative response, in terms of agency budget requests and needed appropriations for projects or capital improvements, should become more direct and effective with this information base.

While this bill speaks primarily in terms of the unorganized borough, there are benefits to organized municipalities as well. The establishment of a common set of State agency program planning districts based on borough boundaries should prove to be a very powerful tool. In addition, the formal designation of boroughs and unorganized boroughs as "State planning districts" would affect federal program planning and service delivery districts as well. Overall, the existing boroughs and unified municipalities should gain in their ability to influence State and Federal agency programs because information on all agency plans can be coordinated and compared. The inter-relation of agency plans can be seen more directly, and can be responded to more efficiently. Finally, the availability of socio-economic data on a borough-by-borough basis will make it easier for local governments to respond to a variety of data requirements used in State and Federal agency programs.

Your comments on the desirability of having State agencies adopt a common set of program planning and service delivery boundaries would be helpful.

Senator Arliss Sturgulewski
Presentation to the
Municipal League Legislative Committee

Original sponsor: Rules/Legislative Council

Offered: 3/26/80
Referred: Finance

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 350

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the responsibilities of executive departments of state government for certain state programs; and providing for an effective date."

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

* Section 1. AS 44.17 is amended by adding new sections to read:

ARTICLE 2. PLANNING AND MANAGEMENT OF STATE SERVICES.

Sec. 44.17.100. PROGRAM DATA AND INFORMATION. (a) A principal department of the executive branch of state government, including a board or commission assigned to a department for administrative purposes, shall use the home rule and general law boroughs, unified municipalities, and regional educational attendance areas as the geographic units by which to collect and report data and information and process and analyze statistics about each of its programs.

(b) The information, data and statistics required to be collected and reported by this section include but are not limited to

(1) information which may be required by the division of policy development and planning in the Office of the Governor to describe the geographic distribution of the state's population, economic activities, and public services; and

(2) information about the program, including

(A) the estimated number of persons needing a service;

(B) the number of persons served by the program;

(C) the costs of the services provided by the program; and

(D) the conditions addressed or corrected by a service provided by the program.

(c) A department, board or commission may request an exemption from this section. An exemption granted under this subsection expires on June 30, 1982. The request for exemption shall be submitted to the governor, who may grant the exemption if he finds that additional expense, increased workload, or decreased efficiency in the operation of a program or development of a new program would be substantially greater than the public interest in compliance with this section. A department, board or commission requesting an exemption under this subsection shall submit to the governor a written statement

(1) naming the program for which an exemption is requested;

(2) describing the problems which would be encountered if the department, board or commission were required to conform to this section; and

(3) evaluating the effect of an exemption granted under this subsection on the collection and reporting requirements of (a) of this section for other programs administered by the department, board or commission.

* Sec. 2. AS 44.17 is amended by adding new sections to read:

Sec. 44.17.110. PROGRAM PLANNING AND MANAGEMENT. (a) A principal department of the executive branch of state government, including a board or commission assigned to a department for administrative purposes, shall use the home rule and general law boroughs, unified municipalities, and regional educational attendance areas of the state as the geographic units by which to develop and implement plans for providing services and to coordinate program planning and administration with the plans and programs of other agencies, municipalities and the federal government.

(b) A department, board or commission may combine one or more home rule boroughs, general law boroughs, unified municipalities, and regional educational attendance areas to define the geographical area within which a program is provided.

Sec. 44.17.120. REPORTING OF SERVICE COSTS. (a) A principal department of the executive branch of the government, including a board or commission assigned to a department for administrative purposes, shall provide information giving the direct cost of providing services to each municipality and regional educational attendance area used by the department under AS 44.17.110(a) for the management and administration of its programs. The information shall be available to

(1) the division of budget and management in the Office of the Governor, for its use in making recommendations for the program budget of a department, board or commission;

(2) the legislature, for its use in consideration of the state budget and other legislation relating to state services; and

(3) the public, upon request to the department, board or commission.

(b) In this section, "direct cost" means a cost which is related to providing a service, exclusive of general administrative and support costs.

Sec. 44.17.130. EXEMPTION. The provisions of AS 44.17.110 - 44.17.120 do not apply to

(1) a program of an executive department, board or commission which provides only professional or technical support services for another state department, board or commission, as determined by the governor; and

(2) a program for which exemption is specifically requested by the department, board or commission, and granted by the governor

because

(A) the program concerns the conservation or development of a natural resource; and

(B) the application of AS 44.17.110 - 44.17.120 would cause a substantial impediment to the performance of duties by the department, board, or commission.

Sec. 44.17.140. DEFINITION. In AS 44.17.100 - 44.17.140, "regional educational attendance area" means a subdivision of the part of the state not within an organized borough as determined by the commissioner of community and regional affairs under AS 14.08.031.

* Sec. 3. AS 44.17 is amended by adding new sections to read:

ARTICLE 2. PLANNING AND MANAGEMENT OF STATE SERVICES.

Sec. 44.17.100. PROGRAM DATA AND INFORMATION. (a) A principal department of the executive branch of state government, including a board or commission assigned to a department for administrative purposes, shall use the home rule and general law boroughs, unified municipalities, and unorganized boroughs as the geographic units by which to collect and report data and information and process and analyze statistics about each of its programs.

(b) The information, data and statistics required to be collected and reported by this section include but are not limited to

(1) information which may be required by the division of policy development and planning in the Office of the Governor to describe the geographic distribution of the state's population, economic activities, and public services; and

(2) information about the program, including

(A) the estimated number of persons needing a service;

(B) the number of persons served by the program;

(C) the costs of the services provided by the program;

and

(D) the conditions addressed or corrected by a service provided by the program.

(c) A department, board or commission may request an exemption from this section. An exemption granted under this subsection expires on June 30, 1982. The request for exemption shall be submitted to the governor, who may grant the exemption if he finds that additional expense, increased workload, or decreased efficiency in the operation of a program or development of a new program would be substantially greater than the public interest in compliance with this section. A department, board or commission requesting an exemption under this subsection shall submit to the governor a written statement

(1) naming the program for which an exemption is requested;

(2) describing the problems which would be encountered if the department, board or commission were required to conform to this section; and

(3) evaluating the effect of an exemption granted under this subsection on the collection and reporting requirements of (a) of this section for other programs administered by the department, board or commission.

* Sec. 4. AS 44.17 is amended by adding new sections to read:

Sec. 44.17.110. PROGRAM PLANNING AND MANAGEMENT. (a) A principal department of the executive branch of state government, including a board or commission assigned to a department for administrative purposes, shall use the home rule and general law boroughs, unified municipalities, and unorganized boroughs of the state as the geographic units by which to develop and implement plans for providing services and to coordinate program planning and administration with the plans and programs of other agencies, municipalities and the federal government.

(b) A department board or commission may combine one or more home rule boroughs, general law boroughs, unified municipalities, and unorganized boroughs to define the geographical area within which a program is provided.

Sec. 44.17.120. REPORTING OF SERVICE COSTS. (a) A principal department of the executive branch of the government, including a board or commission assigned to a department for administrative purposes, shall provide information giving the direct cost of providing services to each municipality and unorganized borough used by the department under AS 44.17.110(a) for the management and administration of its programs. The information shall be available to

(1) the division of budget and management in the Office of the Governor, for its use in making recommendations for the program budget of a department, board or commission;

(2) the legislature, for its use in consideration of the state budget and other legislation relating to state services; and

(3) the public, upon request to the department, board or commission.

(b) In this section, "direct cost" means a cost which is related to providing a service, exclusive of general administrative and support costs.

Sec. 44.17.130. EXEMPTION. The provisions of AS 44.17.110 - 44.17.120 do not apply to

(1) a program of an executive department, board or commission which provides only professional or technical support services for another state department, board or commission, as determined by the governor; and

(2) a program for which exemption is specifically requested by the department, board or commission, and granted by the governor

because

(A) the program concerns the conservation or development of a natural resource; and

(B) the application of AS 44.17.110 - 44.17.120 would cause a substantial impediment to the performance of duties by the department, board, or commission.

Sec. 44.17.140. DEFINITION. In AS 44.17.100 - 44.17.140, "unorganized borough" means a subdivision of the part of the state not within an organized borough as determined by the commissioner of community and regional affairs under AS 29.03.011 - 29.03.021.

* Sec. 5. RESPONSIBILITIES OF THE DIVISION OF POLICY DEVELOPMENT AND PLANNING. The division of policy development and planning in the Office of the Governor shall

(1) by December 31, 1980, evaluate the cost and suitability of data and information reference systems and recommend the use of a system by the principal departments of the executive branch of the state government, including boards and commissions assigned to those departments for administrative purposes; the data and information system recommended by the division shall

(A) permit cross-referencing of data and information by the executive departments, boards and commissions; and

(B) classify data and information on the basis of the geographic units used by a department, board or commission for program management and cost reporting under AS 44.17.110 - 44.17.120.

(2) report to the legislature by July 1, 1983, alternatives and recommendations for improving coordination of programs which provide direct services to people, which are not exempt under AS 44.17.130.

* Sec. 6. Sections 3 and 4 of this Act take effect and secs. 1 and 2 of this Act are repealed only if a version of an Act entitled "An Act relating

to unorganized boroughs, establishing unorganized boroughs, establishing a program of financial assistance for the preparation of regional plans by unorganized boroughs, permitting adoption of home rule charters by unorganized boroughs, and directing submission of recommendations concerning adjustment of the boundaries of service areas of the unorganized borough; and providing for an effective date", becomes law.

* Sec. 7. Sections 1 and 3 of this Act take effect July 1, 1981.

* Sec. 8. Sections 2 and 4 of this Act take effect July 1, 1982.

* Sec. 9. Sections 5 and 6 of this Act take effect immediately in accordance with AS 01.10.070(c).

# CAPITAL PROJECTS FOUNDATION FUND

A Capital Projects Foundation Fund would have been established by CSSB546. This Fund would provide capital construction and maintenance funds to all areas of the State. The allocation of funds, based on a formula incorporating both population and land area, would guarantee that funds are available annually to each area of the State.

To be eligible for Foundation funds, each area--whether it is a borough, unified municipality, home-rule municipality or REAA (or "unorganized borough" if created under SB 348)--must have a capital improvements program (CIP). Projects funded must appear on the local CIP, but need not be funded in order. Foundation funds would not lapse, but could be held over from one year to the next to fund a major project. Foundation funds can also be used as local match required for other State and Federal grant programs.

The attached information sheets summarize the provisions of SB 546 in more detail.

The Municipal League gave its support to SB 546 during a statewide teleconference hearing held on April 16, 1980. The key issues brought out at that hearing centered around: the allocation formula; the role of first and second class cities within boroughs and to the regional planning councils established for REAA's (or unorganized boroughs if applicable); and whether the Foundation was intended to replace or simply supplement existing state capital programs. The Municipal League also expressed concern about the make-up of the regional planning councils.

The committee substitute for SB 546 attempted to satisfy the concerns expressed on these issues. Most importantly, the allocation formula was changed to give more weight to an area's population, while still maintaining some sensitivity to the scale of improvements required in areas with a small population dispersed over a wide area. The present formula provides that 70% of the annual appropriation will be distributed on the basis of population, and 30% on the basis of land area. Under this formula, for example, Anchorage would receive about 30% of the total appropriation, which is comparable to the proportion of the state's total general and special capital appropriations the Municipality received for fiscal year 1980. This revised formula should help reassure Alaska's larger communities that they are not, in actuality, giving up potential capital funds to other areas of the State.

The second major issue addressed in the revision of SB 546 was the relation of first and second class cities to boroughs and to the regional planning councils in the unorganized borough. CSSB546 specifically allows first and second class cities to undertake funded projects on their own, if they exercise the authority to operate the facility to be funded. In those cases where a city is located within a borough that also exercises the same authority, the city and borough can agree on how the responsibility for constructing and operating a facility is to be divided. In the unorganized borough, project responsibility may be transferred by DOT/PF to the city, upon concurrence of the city council.

First and second class cities are also guaranteed representation on the regional planning councils established in the unorganized borough. Each first class city will be represented on the planning council by at least one elected city official. Other members of the regional planning council will be drawn from elected officials of second class cities within the region, and from unincorporated communities.

Finally, the Capital Projects Foundation Fund was intended to supplement the present grant programs for specific capital projects that are administered by various State agencies. In fact, CSSB546 specifically states that Foundation Funds may be used as match for State and Federal grant programs. The intent was to partially institutionalize the present system of general and special capital appropriations to communities, rather than replace existing State grant programs.

In summary, the Capital Projects Foundation Fund is a very important piece of legislation in terms of municipal capital planning and financial management. The Municipal League's support of this concept was greatly appreciated. Any suggestions on how this idea can be improved would be helpful and receive serious consideration. Your continued support of this idea will be critical during the next legislative session.

Senator Arliss Sturgulewski
Presentation to the
Municipal League Legislative Committee

# Alaska State Legislature

## Senate

### Committee on Community & Regional Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811


March 24, 1980

Senator Arliss Sturgulewski

Information Sheet

CAPITAL FOUNDATION FUND

The Capital Foundation Fund will, by appropriation, provide funds to all areas of the State for certain capital improvements. To expend funds, each area will need to develop an areawide capital improvement plan, approved by the local assembly when there is one. and developed with the Department of Transportation and Public Facilities when there is no local government.

Organized and unorganized boroughs are encouraged to conduct regionwide planning to avoid costly duplications of capital projects and to prioritize, on the local level, needs among communities, rather than leaving this process to state level government.

Each area, so long as appropriations are made, is certain of a source of funding for local projects. Each area will receive a formula share of the appropriation. This stability will be advantageous to local governments for planning purposes. Additionally, unlike the current situation, areas may have greater ability to use capital projects for anti-cyclic economic benefits by being in control of fund expenditures. Annual funds do not lapse and may be accumulated for locally determined purposes.

Capital Foundation Funds may be used as the local match required for certain state and federal projects. This will be particularly significant in rural areas which do not now have a source of local match.

Funds are eligible for both construction and maintenance costs. This means that local governments will be encouraged to consider life-cycle costs and encouraged to maintain buildings and other improvements in order to maximize the efficiency of their capital dollars.

Local governments, under the Capital Foundation Fund program, will be assured of a steady supply of state funds for capital improvements that will be directed toward locally determined project needs and can be expended at a locally determined pace.

CS SB 546

Section 1: Statement of Intent

Section 2: Gives regulation adoption authority to DOTPF

Section 3: Description of the Capital Foundation Fund to provide assistance for local construction projects to organized and unorganized boroughs, home rule municipalit and municipalities.

The amount of appropriation established at not less than $400 times the state population

Sec. 44.42.110 lists eligible projects, that is, projects of local interest and not part of statewide capital plans. (b) states that projects may only be built in local governments that have adopted the appropriate powers (ex. park facilities require aoption of park powers).

Sec. 44.42.120 Regional councils are established for unorganized boroughs for capital improvement planning. Board composition is specified.

Sec. 44.42.130 Requires a capital improvement plan as a condition of entitlement receipt. Plans must be at least for five years. Plans for unorganized areas must include specific considerations.

Sec. 4. 44.42.140 Describes the allocations and distribution of entitlements. Direct distribution to organized boroughs which may distribute to cities. Commissioner keeps an account for unoragnized boroughs and may enter into an agreement to distribute funds to cities in the unorganized boroughs, if project is identified for construction in that year.

Formula specified : 7/10 on basis of population, 3/10 on basis of area.

Sec. 5. 44.42.150 Use of Entitlements. For projects specified in the cip. Ownership (title) discussed, especially in relationship to local government powers.

Entitlements may be used to match state and federal grants.

44.42.160 Definitions are provided.

Sec. 6 and Sec. 7. Effective dates: the planning process starts July 1,1980, but the funding does not begin til July 1, 1981

Original sponsor: Community and Regional Affairs Committee

Offered: 5/15/80
Referred: Finance

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to state aid for local capital projects; establishing the capital projects foundation fund; and providing for an effective date."

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

* Section 1. It is the purpose of AS 44.42.100 - 44.42.160 to create a program which can provide a source of money which will be equitably distributed throughout the state to be used, alone or with money from other sources, to finance capital projects. It is the intent of the legislature that planning for capital projects reflect local needs and priorities and that, whenever possible, political subdivisions of the state have sole responsibility for the expenditure of state money provided through the program. Nothing in AS 44.42.100 - 44.42.160 is intended to restrict the legislative authority to appropriate money.

* Sec. 2. AS 44.42.020 is amended by adding a new paragraph to read:

(14) adopt regulations for management of the capital projects foundation fund established under AS 44.42.100 and administer that fund.

* Sec. 3. AS 44.42 is amended by adding new sections to read:

ARTICLE 2. CAPITAL PROJECTS FOUNDATION ENTITLEMENTS.

Sec. 44.42.100. CAPITAL PROJECTS FOUNDATION FUND AND ENTITLEMENTS. (a) There is established in the department a capital projects foundation fund for the purpose of providing state assistance for improvement, maintenance and new construction costs of local capital projects. Within the limits of appropriations for the purpose, the department shall make entitlements for capital projects to organized boroughs, to

home rule municipalities as defined in AS 29.08.010, and to municipalities unified under AS 29.68 which have capital improvement plans.

(b) Within the limits of appropriations for the purpose, the department shall make and manage entitlements for capital projects for unorganized boroughs if a version of an Act entitled "An Act relating to unorganized boroughs, establishing unorganized boroughs, establishing a program of financial assistance for the preparation of regional plans by unorganized boroughs, permitting adoption of home rule charters by unorganized boroughs, and directing submission of recommendations concerning adjustment of the boundaries of service areas of the unorganized borough; and providing for an effective date" is enacted. If that bill is not enacted, the department shall make and manage entitlements for capital projects for each regional educational attendance area organized under AS 14.08.031.

(c) The amount of appropriation authorized for the capital improvements foundation fund for each fiscal year is not less than $400 times the state population as annually determined by the Department of Labor.

Sec. 44.42.110. ELIGIBLE FACILITIES. (a) An entitlement from the capital projects foundation fund may be used for improvement, maintenance, or construction costs of the following facilities

(1) libraries;

(2) community and emergency detention facilities;

(3) fire halls, including the purchase of fire vehicles;

(4) community parks and recreational facilities;

(5) water and sewer facilities;

(6) health facilities;

(7) community centers;

(8) cultural facilities;

(9) transportation facilities which do not duplicate state facilities and which are not inconsistent with the state transportation plan under AS 44.42.050 as determined by the department, including

(A) service roads;

(B) trails;

(C) harbors and docks for small boats;

(D) seaplane floats;

(E) public transit facilities, including the purchase of transit vehicles;

(F) emergency and recreational airstrips for small aircraft.

(b) A facility is eligible for an entitlement under this section only if it is identified in a capital improvement plan formulated under AS 44.42.130.

(c) If a facility is located in or to be located in a home rule or unified municipality or organized borough, it is not eligible for an entitlement under this section unless the borough or municipality

(1) has or will have title to the facility; and

(2) has authority under AS 29 to operate the facility.

Sec. 44.42.120. REGIONAL COUNCILS. (a) A regional council shall be established for each unorganized borough if a version of an Act entitled "An Act relating to unorganized boroughs, establishing unorganized boroughs, establishing a program of financial assistance for the preparation of regional plans by unorganized boroughs, permitting adoption of home rule charters by unorganized boroughs, and directing submission of recommendations concerning adjustment of the boundaries of service areas of the unorganized borough; and providing for an effect date." is enacted. If that bill is not enacted, a regional council shall be established for each regional educational attendance area. A regional

council shall be composed of no more than 11 members as follows:

(1) at least one person from each first class city which is located within an unorganized borough or regional educational attendance area, or which is included in an unorganized borough's capital improvement plan or a regional educational attendance area's capital improvement plan under (b) of this section and who is an elected city official selected by the city council;

(2) additional members selected by the governor from persons nominated by the Department of Community and Regional Affairs who are from second class cities and unincorporated communities within an unorganized borough or regional educational attendance area; members from second class cities shall be elected officials.

(b) A first class city which has not adopted a home rule charter and which is outside of an organized borough and outside of a regional educational attendance area shall be represented on the regional council of a regional educational attendance area or an unorganized borough which borders the city and shall be included in the capital improvement plan.

Sec. 44.42.130. CAPITAL IMPROVEMENT PLANS. (a) With assistance from the department, each regional council established under AS 44.42.120 shall formulate a capital improvement plan. A capital improvement plan formulated in accordance with this section shall be a five-year plan updated annually, and shall

(1) identify all capital projects needed in the unorganized borough or regional educational attendance area;

(2) assign a priority to each capital project identified;

(3) include cost estimates for each capital project identified;

(4) include a list of needed capital projects which are not

eligible for an entitlement from the capital improvement foundation fund;

(5) identify possibilities for capital projects involving facilities having more than one use;

(6) consider the feasibility of waste heat utilization and other energy-saving measures for capital projects;

(7) provide for site acquisition for capital projects; and

(8) provide for needed public access and utilities.

(b) A capital improvement plan and revisions to a capital improvement plan for an unorganized borough or regional educational attendance area shall be adopted by the regional council after a public hearing and submitted to the department.

(c) To qualify to receive an entitlement from the capital projects foundation fund, an organized borough, home rule municipality, or unified municipality shall formulate and annually update a capital improvement plan which covers at least a five-year period. A capital improvement plan and revisions to a capital improvement plan for an organized borough, home rule municipality, or unified municipality shall be submitted to the city council or borough assembly. After a public hearing, and after approval by the council or assembly, the capital improvement plan shall be submitted to the department.

* Sec. 4. AS 44.42 is amended by adding a new section to read:

Sec. 44.42.140. ALLOCATION AND DISTRIBUTION OF ENTITLEMENTS. (a) Entitlements from the capital projects foundation fund shall be distributed annually by the department to each organized borough, home rule municipality, and unified municipality which has submitted a capital improvement plan as required by AS 44.42.130(c). An organized borough may agree that a city in the borough may receive and use money from an annual entitlement for the borough which is for a facility located in

the city, if the city has authority under AS 29 to operate and hold title to that type of facility.

(b) Entitlements from the capital projects foundation fund shall be distributed annually to accounts established by the department for each unorganized borough or for each regional educational attendance area which has submitted a capital improvement plan as required by AS 44.42.130(a) and (b). The commissioner shall enter into an agreement with a city in an unorganized borough or regional educational attendance area which elects to receive and use money from an annual entitlement to the unorganized borough or regional educational attendance area which is for a facility located in the city, if the city has authority under AS 29 to operate and hold title to that type of facility.

(c) Entitlements shall be annually allocated from the capital projects foundation fund as follows:

(1) seven-tenths on the basis of the population of the organized borough, home rule municipality, unified municipality, or unorganized borough or regional educational attendance area; and

(2) three-tenths on the basis of the area of the organized borough, home rule municipality, unified municipality, or unorganized borough or regional educational attendance area.

* Sec. 5. AS 44.42 is amended by adding new sections to read:

Sec. 44.42.150. USE OF ENTITLEMENTS. (a) An entitlement from the capital projects foundation fund distributed to an organized borough, home rule municipality, or unified municipality may be used only for projects identified in a capital improvement plan submitted to the department. Each recipient shall determine which project or projects to finance with the entitlement received each year under AS 44.42.140(a).

(b) A facility for which an entitlement from the capital projects foundation fund is received which is located in an organized borough but

outside of a city shall be owned, operated and maintained by the borough. A facility for which an entitlement from the capital projects foundation fund is received which is located in a city within an organized borough shall be owned, maintained and operated

(1) by the borough, if the borough has the authority under AS 29 to operate and hold title to that type of facility;

(2) by the city, if the city has the authority under AS 29 to operate and hold title to that type of facility; or

(3) by either the borough or city as they may agree, if both the city and the borough have authority to operate and hold title to that type of facility.

(c) An entitlement from the capital projects foundation fund for a project in a first or second class city which is part of the capital improvement plan of an unorganized borough or a regional educational attendance area may be distributed to the city with the concurrence of the city council subject to the following terms:

(1) that the city will secure, retain and protect title to the site of an existing facility or to the site on which a new facility is to be constructed; for purposes of this paragraph it is sufficient that title is obtained in fee or by a lease which provides that the city enjoys exclusive use of the site and any improvements for the estimated life of the facility;

(2) that the city will assume responsibility for the operation of the facility to be financed with the entitlement, and the feasibility of the discharge of this obligation shall be demonstrated to the satisfaction of the commissioner before the payment of the entitlement.

(d) If it appears that the cost of a capital project financed by an entitlement from the capital projects foundation fund to an organized borough, home rule municipality, or unified municipality will vary

substantially from the cost estimated at the time the entitlement was made for the capital project, the recipient is responsible for obtaining the additional money needed to complete the project. If a capital project financed by an entitlement from the capital projects foundation fund to an organized borough, home rule municipality, or unified municipality costs less to complete than estimated at the time the entitlement was made, the recipient may use the excess entitlement for other capital projects in its capital improvement plan.

(e) Each regional council shall annually determine which projects in its capital improvement plan to finance with entitlements from the capital projects foundation fund to an unorganized borough or regional educational attendance area. The department is responsible for the design and construction of the projects selected by a regional council under this subsection and shall carry out the projects in accordance with AS 35 unless the commissioner allows a city to receive and use an entitlement in accordance with AS 44.42.140(b).

(f) An entitlement from the capital projects foundation fund may be used to match state or federal grants.

Sec. 44.42.160. DEFINITIONS. In AS 44.42.100 - 44.42.160

(1) "area" means the area in square miles of a home rule municipality, unified municipality, organized borough, or unorganized borough or regional educational attendance area which has a capital improvement plan;

(2) "population" means the population, as annually determined by the Department of Labor using the latest figures of the United States Bureau of the Census, of a home rule municipality, unified municipality, organized borough, or unorganized borough or regional educational attendance area which has a capital improvement plan;

(3) "improvement" means renovations and additions to an

existing facility which allow for better service than the facility provided in its original condition;

(4) "improvement, maintenance or construction costs" includes, in addition to costs directly related to the project, the total of all costs of financing and carrying out the project; these include, but are not limited to, the costs of surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property;

(5) "maintenance" means restoration and repair needed to keep a facility as close as possible to its original condition.

* Sec. 6. Sections 1 - 3 and 5 - 7 of this Act take effect July 1, 1980.

* Sec. 7. Section 4 of this Act takes effect July 1, 1981.

# PROPERTY TAX LEGISLATION

Part I-B of the Municipal League's 1980 Legislative Policy Statement addresses the local property taxing system and the place of state mandated property tax exemptions and reimbursements.

There were a number of specific property tax exemption bills introduced during this legislative session. A summary of that legislation in a letter to Dave Walsh was included with your agenda for this committee meeting. In some cases, that legislation did not provide for state reimbursement of revenues lost by local governments.

Item I-B-1 and I-B-2 both call for reimbursement of lost tax revenues by the State. This policy could receive more legislative support through the passage of a bill such as SB 352, requiring a fiscal note on the local costs of proposed bills. The clear presentation of the costs of legislative action to local governments would make lawmakers more aware of the effect of property tax exemption on local government.

There are a number of other taxation issues not directly addressed in the League's Legislative Policy Statement that are worthy of consideration. These policy questions include the following:

1) The long-term effects on state revenues and expenditures.

   As Alaska's population and economy grow, the value of the exempted property will also grow. Senior citizen's homeowner tax exemptions, for example, have increased from $197,050 in 1973 to $1.8 million for fiscal year 1979. (Part of this increase was due to lifting the $10,000 maximum allowable exemption in 1974.)

   State analysts project a decrease in state oil and gas revenues starting in 1990, dropping by 5% to 10% annually thereafter. Creating a number of mandatory property tax exemptions, including such exemptions as business inventory, the first $25,000 assessed residential property values, and so on, will simply add to the future drain on state revenues. This situation will become critical when total revenues decline to present levels and below.

   The long-term concern is that communities will be left without reimbursement for property tax exemptions if state revenues decline. Will the Legislature continue to fund exemptions? Will tax laws be revised to eliminate various mandatory exemptions in the future? Or will local governments simply be left with smaller tax bases?

   Local property taxes are potentially a major component of state income. As of January 1, 1979, locally assessed property was valued at $13 billion, while state assessed oil and gas property was valued at another $12 billion, of which $7.6 billion was located within local taxing jurisdictions.

2) The equity of mandatory exemptions.

Mandatory exemptions raise a number of equity questions. As the list of mandatory exemptions grows, the local tax burden falls on an increasingly narrow portion of the local population. This is especially critical for exemptions which result in loss of local revenue which is not reimbursed by the state. Even if local revenue losses are made up by the state, the equity question is still pertinent, as some other, non-local source of revenue is paying for local services from which it may not benefit.

3) A Rational Exemption System.

Can there be any rational system developed for deciding which groups of taxpayers should be relieved of a property tax burden. The Department of Community and Regional Affairs suggests that an exemption must result in a clear public benefit, in order to justify an increased burden for other taxpayers.

There is at present no set of guidelines on how this "public benefit" is to be measured or assessed, or no policies of how deserving groups within the population should be identified or treated. A number of "worthy" groups were identified in last session's legislation, including disabled veterans, surviving spouses of senior citizens that had received property tax exemptions, and so on. Is there any way that the desirability of tax exemptions for these groups can be distinguished from disabled persons and veterans, as a whole, or other deserving segments of Alaska's population.

4) Corporate U.S. Residential Property.

What is the relation of exemptions for business property to exemptions for the real and personal property used for residential purposes. A bill introduced last session would have exempted business inventory from taxation, with state reimbursement to municipalities for lost revenues. Would this type of exemption create sufficient public good to justify shifting this tax burden to the State general fund?

5) Part I-C of the League's 1980 Legislative Policy Statement focuses on local taxing powers. A bill introduced last session (SB 299) would have reduced the maximum rate of taxation from 3% of assessed value (30 mills) to 0.9% of assessed value (9 mills). This limitation would seriously constrain local ability to raise revenue.

6) Renters and Property Owners.

Balancing the property tax exemption benefits of property owners and renters presents another equity question. A property tax equivalency payment is currently made to senior

citizens who rent their homes. Legislation passed this session raised the level of payment that will be made to renters that are senior citizens.

Will the State adopt similar equivalency payments for other types of property tax exemptions in the future? This is especially important in the case of general property tax exemptions. Senate Bill 296 would have mandated that the first $25,000 of assessed value of owner-occupied homes be exempted from taxation. Should such an exemption be also applied to all renters, and how could it be done equitably?

In summary, there are far-reaching questions on the purpose, nature and benefits of property tax exemptions. These questions need more thought and understanding.

There will undoubtedly be a major effort during the next legislative session to reduce or eliminate the property tax liability of various groups and interests. The Municipal League is the organization that most directly reflects the combined opinions and desires of the state's municipal governments. It would certainly be in the Municipal League's best interests to develop a thorough policy statement on the overall question of property tax exemptions, and on the nature of property tax legislation most acceptable to local governments in Alaska.

Senator Arliss Sturgulewski
Presentation to the
Municipal League Legislative Committee

Cover and title page only left in file. Complete copy of report available from other sources

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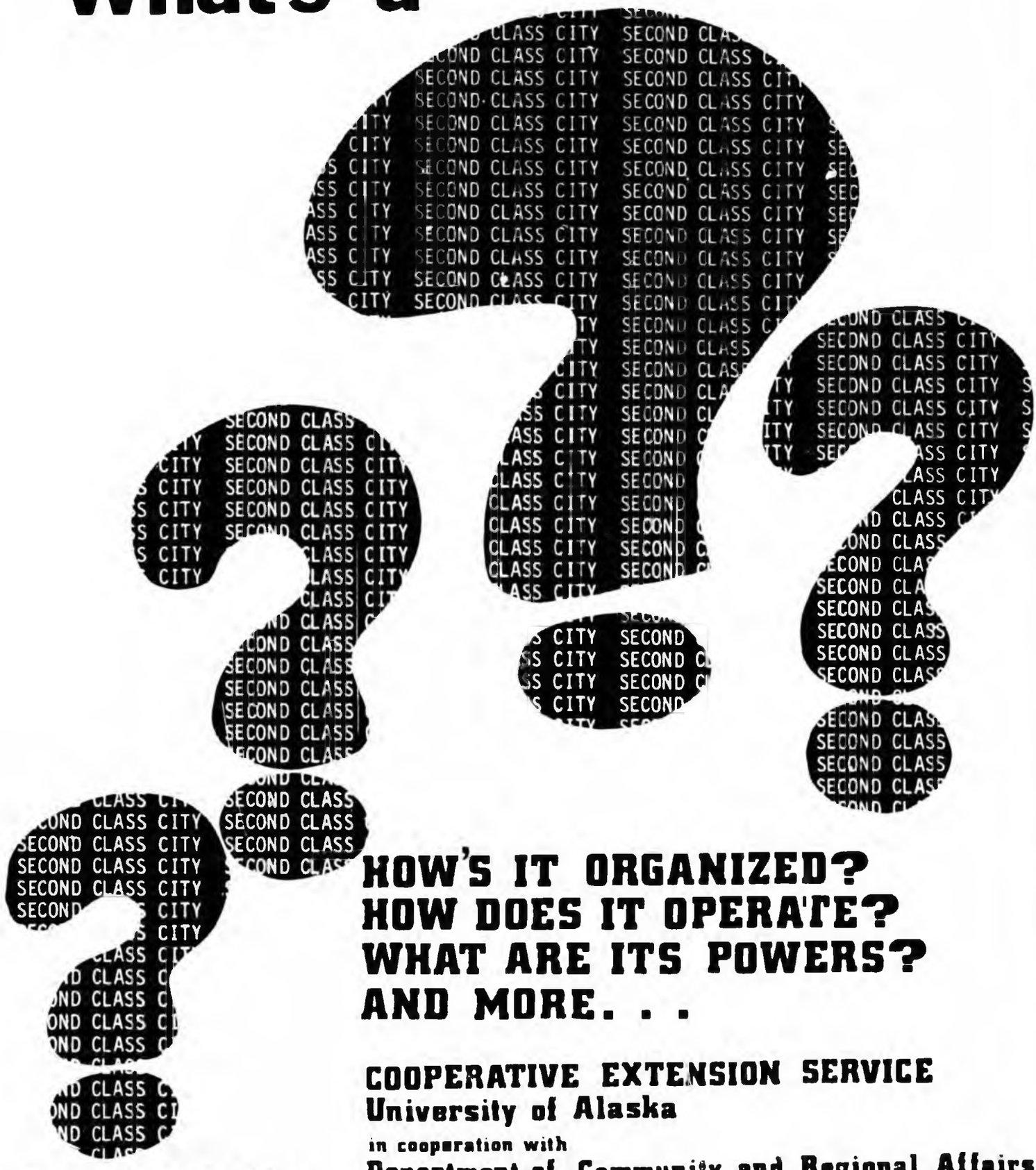


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## WHAT ARE ITS POWERS?
## AND MORE. . .

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in cooperation with
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**STATE OF ALASKA**

Revised February 1978
Pub. No. RP-16

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An Information manual for operation of
second class cities under Alaska Statutes Title 29

This publication originally was largely federally
financed under TITLE I, HEA, 1965, P.L. 89-329.

David Hendrickson, Coordinator
Local Government Program
Cooperative Extension Service
University of Alaska
and U.S.D.A. Cooperating

Revised Feb. 1978

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Remarks:

This is some descriptive material on an innovative form of land use regulation that can be used as an alternative to zoning.

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BY David Dye DATE 9/15/80

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# THE PERMIT SYSTEM

## WORKSHOP MATERIALS

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# BRECKENRIDGE, COLORADO:

# AN EXPERIMENT IN

# REGULATORY SIMPLIFICATION

By

Kirk Wickersham, Jr.

## INTRODUCTION

It has been my experience that land developers will acceed to almost any demand on the part of public planners -- even unreasonable and illegal demands -- if in doing so they can move their project forward or make its approval more certain. This observation underlies the basic philosophy of this essay. Substantive controls can be as rigorous and comprehensive as any community could reasonably wish without serious protest from development interests, so long as the decision-making process is quick, cheap, straightforward, fair and predictable.

There are some interesting corollaries which flow from this thesis:

- If we do not clean up the procedural aspects of land use decision-making, we run the risk of losing the substance of land use, environmental and growth controls in a popular backlash to over-regulation and bureaucratic meddling.
- Procedural reform need not reduce the substantive requirements for performance by the developer.
- Some of the developers' savings from procedural reform can be passed on to the future residents of the project in the form of lower initial prices or increased amenities, or to the public through an increase in the amount or quality of dedicated public improvements.

Procedural simplification is in the best interests of everyone involved in the development process: developers, future residents, concerned citizens, staff, and elected and appointed officials.

This essay begins with an analysis of the gradual development of complex regulations, and proceeds to a series of specific proposals for uncorking the regulatory bottleneck. It then describes an application of these ideas in the recently adopted Breckenridge, Colorado, Development Code.

# THE EVOLUTION OF COMPLEX DEVELOPMENT REGULATIONS

## Traditional Controls

The simplest form of land use regulation always has been, and still is, the use-by-right under traditional zoning. It usually consists of only a perfunctory check of the plans by the zoning administrator, and involves no notice, hearing or discretionary decision.

Subdivision regulations were first adopted to ensure that lots close, that streets were of the proper width and alignment, and that the tax assessor was apprised of the new ownership configuration. Because these issues are handled by elected officials at a public hearing, they became the vehicle for enforcing an ever-increasing number of public concerns with development. Today, subdivision regulations are the most common form of "impact assessment" and discretionary control over development.

Traditional controls are not just procedurally simple, they are also substantively simple. That is, they address only a few of the myriad impacts of new development and redevelopment on the community, and by present standards, the traditional controls have not served their purpose. The old elements of the urban environment which we cherish, and now seek to preserve and restore, were developed prior to any land use controls. Yet much of what we consider ugly, banal, stale, and wasteful -- tract housing, strip commercial development, high-rise redevelopment and the auto-dominated, landscape -- has been developed pursuant to traditional zoning and subdivision regulations.

## Discretionary Controls

The demand, from both developers and consumers, for variety and innovation in the design of new development has led to the widespread use of two types of discretionary controls: the special review use and the planned unit development. Both are a direct outgrowth of the traditional functions of the board of adjustment. They recognize that planning and design considerations, and not just "hardship", are proper grounds for variances from rigid use, density and setback requirements.

Special review uses (sometimes called "conditional uses") are uses which may be compatible with surrounding development, depending on the circumstances. They are granted in the discretion of the governing body on the basis of an impact analysis.

Planned unit development is a technique which permits variation in rigid requirements, and encourages good site design, in medium to large scale projects. It, too, is granted in the discretion of the governing body, on the basis of an analysis of the site design.

## Single Purpose Controls

During the late 1960's and early 1970's, general prosperity, easy credit and the formation of new households by children of the post-war baby boom combined to create massive new development pressure. At the same time, all levels of government became more actively involved in the development process.

On the one hand, the federal government passed, in rapid succession, a series of financial incentive programs designed to revitalize decaying inner cities and rural areas. Each of these programs, of course, fostered its own blinding maze of eligibility and compliance requirements to be met by the applicant.

Simultaneously, federal, state and local governments all responded to the public demand for an end to mindless degradation of the environment and waste of irreplaceable resources. At the federal level, the prominent programs included legislation on air pollution, water pollution (sewage treatment), management of coastal areas, and, of course, the National Environmental Policy Act. Many states passed their own environmental policy acts, and laws loosely modeled after the American Law Institute's Model Land Development Code, which called for more stringent regulation of critical areas and major development projects.

Generally, local governments or local councils of government bore the burden of implementing and administering this federal and state legislation on a daily basis. In addition, local government was expected to revitalize core areas, protect established neighborhoods, and control growth in fringe areas.

Within the span of a few short years, the development review process passed from a rather perfunctory check of an engineer's subdivision drawings to a years-long, multi-faceted, adversary process, involving dozens of public hearings before as many different local, regional, state, and federal bodies; massive, multi-volume technical evidentiary and impact-analysis materials; and a star-studded multidisciplinary, synergistic cast of lawyers, planners, engineers, ecologists, sociologists, geologists, and intergalactic philosophers.

Each law passed during this period addresses only a single issue, but has its own unique set of substantive and procedural requirements. The responsibility for juggling all these requirements falls completely and exclusively on the developer, since a defeat on any major permit or financial incentive program can doom an entire project. Thus:

> If N is the number of independent requirement for getting ultimate permission to develop, then the number of steps necessary to coordinate these requirements is roughly $N^2$; therefore, as governments add development requirements arithmetically, problems for developers increase exponentially.

Almost everyone will agree that the substance of this recent patch quilt of regulation has resulted in better designed and engineered development, has protected sensitive natural areas and encouraged inner-city revitalization, has begun to clean up our air and water, and has forced us to carefully examine our assumptions of [illegible] all

generally to the public benefit. However, the procedural aspects of this regulation have raised the cost, lengthened the time and heightened the uncertainty of the land development process. This, in turn, has driven many small- and medium-sized developers out of business, and apparently has significantly increased the price of housing to the ultimate consumer.

At this time, the attack on regulation of the land development process is part of the general public reaction to inept and excessive government, and public servants are defensive. It is possible that, if the procedural problems with development regulation are not solved, the general backlash to bureaucratic red tape will reduce or eliminate the substantive gains which were achieved in this recent legislation.

## The Hassle Theory of Managing Growth

There is an implicit assumption in the above discussion that communities do not intend to saddle developers with excessive and repetitive procedural requirements. This is not true in some cases, where local officials or citizen groups have perverted procedural requirements to create outrageous evidentiary requirements or processing times, or to contrive a Catch-22. The purpose of this is to bankrupt the developer or to so discourage him that he will abandon the project before a decision is made on the merits.

In such communities, procedure has become substance. Although responsible management of the rate, location or ultimate amount of new growth is now recognized as a valid public concern, accomplishing that goal by hassling developers is insidious for a variety of reasons:

First, it is fundamentally deceitful, since it implies something which is not true: that permission to develop will be granted upon compliance with all stated rules.

Second, it defeats all principles of proper planning, since tenacious, litigous, rich developers can prevail, while smaller, more civilized, developers will be defeated regardless of the merits of their respective projects.

And last, it produces bad value for the consumer since the costs incurred in fighting the local government must be passed on to the ultimate purchaser, even though they add no substantive value to the development.

## THE BASIS FOR A SOLUTION

Before we begin the analysis of the principles of reform as contained in the Breckenridge Code, there are some general considerations to be mentioned:

1. There is a distinction to be observed between substantive requirements and procedural requirements. At this time "simplifying" the substantive requirements for development is not in the overall public interest in most communities. Indeed, most communities continue to be built poorly, with little regard for the social, environmental, economic, fiscal, aesthetic or energy impacts of redevelopment and

development. These communities might benefit from additional controls (or at least better controls) in these substantive areas.

2. The only valid purpose for the procedural requirements in processing a development proposal is to ensure that it complies with the community's previously adopted substantive requirements.

By way of comparison, here are some invalid purposes:

- To kill the proposal or create a "chilling effect" on making other proposals.
- To provide employment for lawyers, planning consultants and other "experts".
- To provide employment for the planning staff.
- To give the public sector time to dream up new rules to apply to the project.

With these two principles in mind, we can turn to some specific aspects of procedural reform.

## REFORMING THE RULES

To maximize the decision-making utility of the community's plan, draft one section of it as specific rules to be applied to development proposals and adopt those rules directly into law.

### Be Comprehensive

One way to simplify the development regulation process is to make it predictable, so that everyone involved knows that, if the developer complies with the rules the project will be approved and if he does not it will not be approved. This requires that all the rules be stated up front.

In most cases all the true concerns of the community are not set forth in the written rules, because the community has conflicting goals, or because some lawyer told the city council that there is no precedent for such a rule or because the planning process did not uncover the public concern. None of these are good excuses for failure to articulate the concern or adopt the rule.

Generally, the true concerns of the community are applied to development proposals regardless of whether they are set forth in the adopted rules. When an "unwritten" rule is applied against a developer he feels ambushed. When one is applied over the protests of the citizenry, they feel betrayed.

Since the unwritten rule will probably be applied anyway, why not write it down and adopt it?

## Be Accurate

Another element of predictablility is the accurate use of language in the rules.

The homogeneity and banality of much of our postwar development has been blamed in part on rigid performance requirements, like the twenty five foot front setback. The modern response from planners often has been to write performance "standards" that read like a list of buzz words. The application of such "standards" is left completely to the discretion of the decision-makers, or even to staff. Understandably, the results of the process are unpredictable.

We should, and can, demand better. By this, I do not advocate a return to rigidity, but the simple, clear articulation of the community's values and what the developer is expected to do about them. Rules should speak to root problems, not superficial or cosmetic treatments, and they should set forth the desired final condition. The technique or method for achieving that condition should be left to the ingenuity and creativity of the designer, working with the peculiarities of the site, the project and the developer's financial resources.

If performance requirements are desired, they should be set forth, not as immutable law, but as presumptive evidence that the desired results will be achieved. Thus, for instance, a twenty-five foot setback should not be a legal requirement, but merely presumptive evidence that the house will be located a safe and comfortable distance from the street.

## Use the Imperative Tense

Perhaps because of the language in the National Environmental Policy Act, it has become common to ask developers what their impact will be, then to make a decision on the basis of the evidence provided. Such open-ended requirements result in great cost, time delays and uncertainty for developers, staff and others involved in the process. The evidence is usually not arrayed in a useful format for decision-making, and there is often simply too much of it to be digested by a volunteer lay decision-maker such as a planning board member. The multiple volumes of self-serving justification produced to meet such regulatory requirements are not necessary to produce quality projects.

Tell the developer what result, or impact, the community wants, then ask him how he or she will achieve that result. The clear statement of the community's goals gives the developer the direction required to be successful, cuts the evidentiary requirements, and structures the public participation and community decision.

Of course, not all community concerns can be stated as absolute rules: prohibiting this feature or requiring that one. Most of them will be expressed in terms of encouraging and discouraging, or in terms of making tradeoffs between conflicting community goals. Weighted point systems can be used to encourage or discourage features, and to structure the tradeoff between

conflicting goals. To achieve a set of rules which enables tradeoffs to be made, the actual tradeoff must be designed and put forward by the developer, considering the unique characteristics of the site the use, and the design, and applying the particular weighted value and mix of the encourage/discourage rules, but in the development proposals. Thus, each community concern should be subject of a separate rule, and each rule should address only one community concern.

## Monitor and Update Regularly

Communities change. In fact, it seems that the rate of change in both technology and political attitudes is increasing. If the rules for new development do not keep pace with the changing values and conditions in the community, the written rules will become obsolete and irrelevant, and new unwritten rules will probably be substituted. Thus, any system which aspires to completeness and accuracy must include an ongoing survey of conditions and attitudes, and a periodic updating of the development rules.

# REFORMING THE DECISION-MAKING PROCESS

Once the community has established a comprehensive set of rules for developers to follow, it can begin instituting the procedural reforms which cut the time, expense and uncertainty of the development review process.

## Be Comprehensive

"Comprehensive", when referring to the set of rules, means adopting rules to address each community concern. When referring to the decision-making process, it means:

1. Combining all the different permissions required of the development into one all-inclusive permit. This cuts the hearing requirements and staff review time, so the process is quicker and cheaper for staff and the developer and easier to manage for concerned citizens and lay volunteer decision-makers. It also has a valuable "substantive" benefit: Only where all concerns are combined into one decision can tradeoffs between conflicting community policies be addressed and resolved. A single comprehensive decision should be a more accurate reflection of the community's values and opinions than the sum of the decisions on dozens of single-issue permits.

2. Making every development proposal subject to the rules, regardless of its size or complexity. The only projects which should not be scrutinized (i.e., which should be uses-by-right) are those which we know will not have any offsite impact, good or bad. Moreover, we must know this from only a plat plan, and we must know this to a legal certainty.

Rather than attempting to live with the risk of failure in this regard, it would be easier to make all, or virtually all, proposals subject to review. This can be made politically acceptable by instituting the procedural reforms set forth in this essay.

## Standardize the Evidentiary Requirements

Use of rules drafted in the imperative tense enables significant savings in the time and cost of assembling and reviewing the evidence on the project. A one-page standardized form for each rule can be developed, which contains space for:

1. The text of the rule and the source of data, studies or other information available to the public regarding that rule.

2. Space for the developer to describe what he has done to comply with, or implement the rule.

3. Space for staff comment, which might be limited to only boxes for the staff person to check "agree" or "disagree" with the developer's evidence.

4. Space for noting comments made by the public at the hearing.

5. Space for the planning board to record its decision.

These forms are bound together and, along with the required maps, renderings, etc., comprise the complete application and file on the project. Although this type of evidentiary package is bulky, it results in significant savings in time and expense and (because it serves as a checklist) it ensures that all community concerns are properly addressed in the project.

## Use the Staff

In many communities, especially in rural areas where the planning profession has not developed a very good reputation, the staff is limited to gathering data and engineering analysis, and it is not allowed to express professional opinions or to apply community policy. This is a waste of professional staff resources.

A comprehensive, accurate set of rules is essential to the proper delegation of the authority to make judgemental decisions to the staff. Once this is done, however, it results in a saving of time and expense for the public, and in the community's wise use of its precious volunteer resources in public bodies.

## Reduce Lead Time

Lead time is the advance warning given to participants in the process to enable them to adequately prepare. The most common lead-time requirements in the development review process are the period given for comment by referral agencies or groups, and the notice of a public hearing.

In many cases, lead times were established years ago in the community's organic planning documents, when both planning and communications technology required lengthy response times. Today, however:

- Many referral agencies use computerized engineering and demographic models, checklist procedures, and standardized requirements, which cut their actual review time from weeks to hours.

- To an increasing extent, sophisticated neighborhood organizations with ongoing responsibilities, and perhaps even staff support, have replaced the ad hoc coalition of activists as the medium of citizen comment.

- Official public notices can be placed on cable TV or posted on community bulletin boards much quicker than they can be published in the newspaper.

To the extent that these advances in planning, technology and political sophistication enable the community to reduce lead times without materially sacrificing the quality of public or agency participation in the process, they should be implemented.

## Eliminate Dry Runs

A "dry run" is a hearing at which no substantive progress is made toward the decision. The most prevalent example is the advisory planning board hearing. It generally requires a long lead time for notice and full attendance by volunteer members of the board; complete presentations by staff, the developer, and concerned citizens; elaborate findings; and conditions on approval. But then what happens?

Nothing. The governing body calls another hearing, again with long lead times for notice. Full attendance is required. Complete presentations are made by staff, the developer, and concerned citizens. Elaborate findings are made and conditions are drafted up and then the actual decision is made on the proposal.

Of course, many controversial projects are subject to multiple continued public hearings before each body.

One of these sets of hearings is irrelevant. If all the participants in the process -- staff, developer, citizens and officials -- have done their homework, there is no need to hold two hearings. If they have not done their homework, there should not be a scheduled public hearing simply to find that out.

There are two keys to eliminate dry runs of the type just described:

1. Quasi-judicial process. At the present time, most discretionary land-use decisions are rezonings and subdivision approvals which are treated as legislative matters which are required, by state statute, to be made by the governing body. The more streamlined and predictable approach is to adopt the rules for land development proposals directly into law, and then to apply those rules to proposals as they come in. The drafting and adoption of such rules is a legislative act and must be accomplished by the governing body; the interpretation and application of those rules to a particular proposal, however, is a quasi-judicial decision which can be made by an administrative body -- in this case, the planning board. Thus, the use of a permit system instead of a rezoning system results not only in more uniform decisions (due to the application of pre-set standards), but also enables the elimination of an entire set of hearings before the governing body. Of course, it may take more than one hearing date for the planning board to take all the evidence it needs to make the decision. Also a call-up or appeal to the governing body should be available to correct mistakes in the application of the rules by the planning board.

2. Confidence. Public hearings are used to establish and maintain confidence in the decision-making process: to ensure that the decision is fair and that all of the substantive requirements have been met. Public hearings are neither efficient nor convenient, however, and multiple hearings might be reduced if the substantive merit of the decision will not be affected. To achieve this, the following must take place:

   - The governing body must have enough confidence in the planning board to delegate to it the interpretation and application of the rules (subject, of course, to an appeal).

   - There must be sufficient confidence in the staff to allow it to analyze the proposal and draw conclusions.

   - Both the developer and the concerned citizens must believe that the pre-stated rules will be the only basis for the decision, and that the only way they can affect the outcome is to argue their case on the merits.

   These matters of confidence can become self-fulfilling prophecies. In communities where the planning board is given the authority to make final decisions on development proposals, it generally attracts first-rate people who can handle that responsibility. Likewise, first-rate professionals are attracted to communities which allow them to exercise their professional judgment.

## Minor Projects

The impact of a project is generally proportional to its size or cost. This presents an opportunity for even further reduction in the procedural requirements for minor projects. The normal list of referral and review agencies can be reduced, as can the time limit for receiving their comments. Instead of elaborate publication in an obscure section of the newspaper, public notice might be effected by handbills distributed in the immediate neighborhood. The final decision might be made by the staff director or a hearing officer, but again with an appeal to or call up by the planning board and governing body.

Since all minor projects do not have minor impacts, staff must be given the discretion to refuse an application under such "fast-track" procedures and insist on a full review of the project.

## Review and Appeal

Many elected officials would consider it a dereliction of their public responsibilities to delegate final decision-making authority to staff or an appointed planning board. They will monitor such processes closely, especially at the beginning.

If the developer or concerned citizens are given the absolute right to appeal the planning board's decision to the elected officials, the loser in any contested proceeding will of course do so. This will eliminate many of the intended advantages of the procedural reforms described above, although many decisions are not contested.

A better way of monitoring is to establish a "call up" procedure: a person who feels that the lower decision was made incorrectly has the right to make that argument before the elected officials. If a majority of the elected body agree, they can vote to "call up", or rehear, the lower decision. At first, the elected body may wish to review every decision to ensure that the system is working properly. Later, it will limit its review to substantial questions of interpretation of the rules. Of course, the governing body acts as an administrative body (just like the planning board) when it rehears a proposal in this fashion.

## THE BRECKENRIDGE DEVELOPMENT CODE

Breckenridge, Colorado is a small Victorian mining community at 9,600 feet in the Colorado Rockies. Development of a ski area and large man-made lake spurred massive recreation development pressure in the 1960's. This pressure was intensified in 1974 with the opening of a tunnel through the mountains which made the community more accessible to the Denver metropolitan area and its international airport. During this period the town has experienced several severe cyclical swings in construction activity. In 1974 the community embarked upon an ambitious comprehensive planning program

which included analysis and policy development on a broad range of social, economic, environmental, public facilities, demographic, historical/cultural and urban design factors. The work culminated in March of 1978 with the adoption of the Development Code and supporting administrative materials. Although, at this writing the Code has been in effect for only one building season, it has been used to process over $115 million worth of new residential, commercial and recreational development. The twin principles of this essay -- rigorous substantive requirements coupled with procedural simplicity -- were employed in the development and adoption of the Code and the administrative materials used with it.

## Description of the Code

The Code is one of the first known instances of the exclusive use of the Permit System to regulate all aspects of development. Under it, there are no uses-by-right and virtually no prohibited uses, no prescribed density or intensity of use, and no bulk or setback requirements. These matters, as well as the full range of social, economic, public facilities, environmental, and design considerations in the various Plan documents, refined for each neighborhood, are set forth in a complete set of development rules, or "policies", contained in the Code. There are three types of policies:

- Absolute Policies -- which require or prohibit certain features. Failure to implement an absolute policy defeats a development proposal.

- Relative Policies -- which encourage or discourage features by allocating positive or negative points to the proposal based on its performance. Relative policies are assigned a "multiplier": a number between one and five which indicates the policy's relative importance. The proposal's score on each policy, then, consists of its performance points multiplied by the importance factor for that policy. The development must achieve a total score, for all the relative policies, of zero or better.

The policies governing land use set forth, for each neighborhood, uses which are presumed to be compatible, uses for which the compatibility must be proven by the developer, "pre-emptive" uses which (although they may be compatible with existing development) may discourage certain kinds of future growth in the area, and uses which are presumed to be incompatible (although they are not prohibited). The only use-by-right is the existing use on the property.

- Density Policies -- Density bonuses are awarded to projects which perform above the minimum necessary to get by, in the following manner:

  An optimum density is set forth for each neighborhood, and increases in density above the optimum are penalized with increasingly heavier point deductions. An excellent project will score way above zero points, the minimum necessary to obtain a permit. These "excess" points may be traded off against negative points assigned for excess density designed into the project. In this way, the developer is rewarded

with increased units for good design, amenity, or public benefit.

There are three different decision-making procedures, depending on the magnitude of the project:

- Type C Development -- Minor changes in existing buildlings, which sometimes does not even require a buildling permit (remember that Breckenridge is a sensitive historic community set in a beautiful, but fragile natural environment). The application is very brief, and the decision is made by the staff within five days of application.

- Type B Development -- Minor subdivisions, and buildings of a value under $100,000. Applications for Type B development may be referred to selected public agencies for comment prior to staff review of the project. A public hearing and decision are made by the staff within ten days of the application.

- Type A Development -- All other development activity in the community. The application is subject to full referral and review by public agencies and utilities, and a complete staff report is prepared. The public hearing is conducted by the Planning Commission, and a final decision is made within forty days of the application.

In all instances, the Planning Commission may rehear a staff decision and the elected Town Board may rehear a Planning Commission decision. A variety of covenants, bonding requirements, dedications and other conditions may attach to a permit to ensure that the policies are implemented as represented.

## The Code in Operation

The entire Breckenridge planning staff consists of two professionals and a secretary. As mentioned above, over $115 million worth of new development has been processed under the Code during the first building season. Although significant controversies have arisen on some projects, all decisions have been made within the time limit specified.

Processing and decision on the application focuses on the developer's "evidentiary package" which consists of the application form, plans, drawings and renderings, and one-page evidentiary forms (one for each policy) completed by the developer. Because of the small professional staff and severe time constraints written into the ordinance, a developer is not permitted to submit more evidence than can be contained on the few lines provided on each evidentiary form without the permission of the Director of Community Development.

Most referral agencies have been able to respond in the short time allowed under the Code. If they do not, they are presumed to have no comment; not to have approved the project. Thus, if a response comes in late, the "no comment" presumption is rebutted. This may cause a problem for staff, which must integrate a late comment into its report with no extension of its own processing deadlines.

Breckenridge is served only by a weekly paper, which comes out the day after the Planning Commission meets, and which has a deadline several days before publication. This posed serious problems for reducing the lead times for public hearings. Breckenridge, however, is a small community with a sophisticated and politically active citizenry. Therefore, it was determined that notice for the public hearings on minor projects would be posted on community bulletin boards rather than published in the paper. This simple expedience has cut the decision-making time for minor projects in half with no apparent decrease in the quality of the decision.

On major projects, the staff report consists of commenting on the sufficiency or quality of the developer's evidence, plus its recommendation for assignment of points. The staff report is available for review by the developer and the citizenry prior to the public hearing, and the format of the evidentiary package provides a good framework for negotiation. Most public hearings have been free of rancor, and the Planning Commission generally ratifies the staff's recommendation for assignment of points and issuance or denial of the permit. In those instances where serious disagreement has arisen between the developer and the staff or the public, the debate has proceeded one policy at a time. At the end of the evidence on each policy, the Planning Commission has assigned points and moved on to the next policy. On one recent major project, this process took almost six hours. It is possible, however, that if the decision had been made pursuant to normal rezoning procedures, it could have taken numerous hearings over a period of a year or more, and then ended in litigation.

Before each Planning Commission meeting the Director of Community Development reports on the permits he has granted and denied in the interim. The Planning Commission then hears requests for "call up", from developers or the public. Although it has reviewed staff decisions, very few instances where the Planning Commission has reversed a staff recommendation or decision have occurred. And while it monitors the permit activity of the staff and Planning Commission, the Town Board has not yet called up a lower decision.

Policies and procedures in the Code are to be reviewed annually after the building season, on the basis of what was permitted and actually built; changed conditions, if any, which have resulted from the new growth; and changes in political attitudes.

## CONCLUSION

So far, two major questions have arisen about the ideas expressed in this essay, as they have been applied in the Breckenridge Code:

> Does a community need an elaborate, expensive plan before it can implement a Breckenridge-type system?

The various studies and reports which comprise the Breckenridge Plan are the analytical foundation for the policies contained in the Code, and without them many policies could not have been adopted, or could not now be implemented. According to the principles of this essay, if a rule is not adopted into law, it should not be applied to development proposals. Thus, comprehensive planning and periodic updating are essential to the adoption and implementation of the reforms described in this essay. However, an extensive, high quality program such as that undertaken in

Breckenridge is not required. In fact, the resources which most communities presently devote to comprehensive planning, if redirected to provide the foundation for a decision-making system such as the one described in this essay, would probably be more than sufficient.

## What About Discretion?

Some people believe that this type of system achieves regulatory reform only by unduly constricting the discretion of elected public officials. This is not true. The system does not constrain the exercise of discretion by elected officials. It simply structures it, making decisions more uniform and predictable.

With the exception of the taking of private property without compensation, racially exclusionary practices, and other constitutional considerations, there are practically no constraints on the contents of the rules which can be adopted to govern development (and any constraints, of course would apply to zoning decisions as well). If all of the community's concerns with development are adopted as rules, then there can be no valid additional consideration or "hidden agenda". In other words, the elected officials are not giving up the right to impose any rule they choose, but only the "right" to invent new rules, or change existing ones, while a proposal is being processed.

Given a reasonable alternative, most communities (even those where environmental quality and limited growth are paramount concern) would reject the arrogant assertion of such unbridled power on the part of their elected officials.

Developers have responded positively to the Code, and the developers of larger projects have generally attempted to obtain density bonuses through provision of superior design and increased amenities. As a result, many projects approved since the Code has been in effect are clearly superior to their predecessors, and the community has expressed satisfaction -- and even pride -- with its new development.

The principles used in the Code are broadly transferrable to communities of all sizes, and with a wide range of physical conditions, human values, and growth pressures (or lack thereof) so long as the principles are modified to reflect those unique conditions. For instance, in larger cities the system should be refined to reflect the unique characteristics of each neighborhood, as well as overall community policy. Also, incentives other than density bonuses may be necessary in less dynamic communities, or communities with large amounts of vacant, developable land. Somtimes state law prevents consolidation of permits at any one level of government, or sets forth particular notice requiremnets and lead times. But if these or other issues thwart the adoption of one or more reforms, the entire effort should not be abandoned. The Permit System, as well as its constituent parts, can be used to advantage by almost all communities with development pressure.

* * *

Kirk Wickersham, Jr. is an attorney and president of Wickersham and Associates, Inc., a planning consulting firm in Boulder, Colorado and other cities. He writes and lectures on the subject of innovative land use and growth management controls, and was principal author of the Breckenridge Development Code, which was awarded the 1978 Meritorious Program Award by the American Institute of Planners. He is chairman of the Division of Planning and Law of the American Planning Association.

# A Lot More Than Just An Ordinance: The Breckenridge Development Code

**Kirk Wickersham, Jr.**

Breckenridge, Colorado, was founded as a gold mining community in the 1860s. Like all mining communities, it was located for proximity to ore, not necessarily in a place conducive to human habitation. It lies 9,600 feet in the Colorado Rockies, nestled between 14,000 foot peaks. While the mines (and later on, gold dredges) were operating, the town prospered—there are many fine examples of "Mountain Victorian" architecture still evidenced in the community. However, when the mines and dredges closed down, the community became a virtual ghost town, and remained so until the Breckenridge ski area opened in the 1960s.

In the late 1960s and early 1970s the community experienced a series of boom-and-bust cycles which created severe environmental, public facilities, financial, and social problems. As a result, in 1974, the community hired a local consultant to develop data, policy, and impact analysis techniques for all growth factors of concern to the community. The study began with a thorough articulation of the social, economic, environmental, and public facilities goals of the community, eventually including professional planning reports on each subject. The final planning document analyzed land use and intensity in each of 34 neighborhoods. The policy information contained in the analysis documents applied to each neighborhood, articulating its desired pattern, intensity, design, and phase of development or redevelopment. The resulting Breckenridge Development Code then extracts policy principles from the neighborhood plan documents, adopts them directly into law, and uses the studies and reports as reference materials.

What emerges is a land use and growth decision-making system which is unique to Breckenridge. In essence, it is the ultimate permit system. However, it uses principles of policy planning and impact analysis techniques not uncommon in many progressive communities. Therefore, although the policies described below may not be particularly transferrable to other communities, the ideas and principles behind the policies may be adopted by any community or neighborhood faced with development/redevelopment pressures.

Under the Breckenridge Development Code there are no uses-by-right and virtually no prohibited uses, no prescribed density or intensity of use, and no bulk or setback requirements. These matters, as well as social, economic, public facilities, environmental, and design considerations for each neighborhood are regulated by compliance with *policies* adopted as part of the code.

There are three types of policies in the code:

*Absolute Policies*—which require or prohibit certain features. Failure to implement an absolute policy defeats a development proposal. The town may grant variances from strict compliance with absolute policies in hardship situations.

*Relative Policies*—which encourage or discourage features by allocating positive or negative performance points (from +2 to −2, including 0) to the development proposal. Relative policies are assigned a number (from 1 to 5) which indicates the policy's relative importance. The development proposal's score for each policy, then, consists of its performance points multiplied by the importance factor for the policy. A proposal must achieve a total score of zero or better for all the relative policies.

*Density Policies*—set forth for each neighborhood the density or intensity of use presumed to be compatible with the natural environment, existing public facilities, and existing development character of that neighborhood (although this is not a density-by-right). Performance better than the minimum of zero required by the code on all the relative policies taken together is rewarded with an increase in density. In this way, increased public benefit means increased private benefit—more units or net leaseable space.

## The Decision-Making Process

For decision-making purposes, development under the Breckenridge Development Code is divided into three types:

**Type C**—minor changes in existing buildings or lot line adjustments. This decision is made by the staff within 5 days of the application.

**Type B**—minor subdivisions, and building permits under $100,000. The application is referred to selected public agencies for review, and then a public hearing is conducted by the staff. Decisions are made within 2 weeks.

**Type A**—all other kinds of development. The application is subject to full referral and review by affected outside agencies and a complete staff report on the proposal's compliance with the policies. The public hearing is conducted by the planning commission, and the decision is made within 40 days of the application.

In all instances the planning commission may rehear a staff decision and the town board may rehear a planning commission decision. A variety of conditions may attach to a permit to ensure that the policies are implemented as represented.

The genesis of the Breckenridge code was, in many respects, the dual frustration felt by many communities faced with significant growth pressure: the need for thorough and rigorous consideration of all impacts of a development proposal of community concern, coupled with growing public outrage at the cost, delay, and uncertainty of the land use decision-making process.

## The Physical Environment

Breckenridge enjoys a unique environmental setting.

- It receives over one hundred inches of snow per year.
- It enjoys unsurpassed natural beauty and vistas, dense stands of timber, and delightful flowers (although vegetation grows very slowly at such altitudes, and disturbance can result in permanent loss of these ecological, economic, and visual resources).
- Pollutants—chiefly auto emissions and fireplace smoke—can be trapped over the town for days by cold air inversions.
- An elk herd lives in and migrates through portions of the plan area.
- Portions of the plan area are subject to severe flooding, avalanches, and other natural hazards.
- The river which runs through the town was once dredged for gold, and thus the riverbanks today consist of a 200-yard wide swath of gravel—an environmental and visual disaster (but good for building foundations).
- Ground water pollution, soil erosion, noise pollution, and glare are other environmental concerns in Breckenridge.

Policies to address each of these matters directly reflect the values of the community. For instance, snow storage areas are required by policy, and development in avalanche chutes is prohibited. Most policies are performance-oriented, mandating the use of creative, flexible solutions to the problem. For example, development must not affect the elk herd, although it is not prohibited in the area, and development must permit the passage of the 100-year flood, although it is not prohibited altogether in the floodway. Positive points are awarded for preserving mountain views from public places, preserving existing vegetation, providing bus pullouts and other inducements toward alternative transportation, and for reclaiming dredge tailings. Points may be deducted for soil disturbance or the construction of fireplaces, although most new construction will still involve these items regardless of negative points.

## Economic and Social Factors

Breckenridge's economy is heavily dependent on skiing, resulting in an overreliance on one industry and an underutilization of community resources off-season. In addition, severely inflated housing costs place a burden on the relatively low-paid workers in the industry—waiters and waitresses, maids, lift operators, and the like.

Moreover, the community realizes that it is at a severe disadvantage when competing for non-recreational economic development—there is very little space left in its plan area to accommodate alternative economic activities. For this reason, a large number of points is available to a developer of non-recreational employment opportunities or off-season economic activities that would flatten the annual economic cycle. Of course, any development project may provide summertime construction jobs, a boon to the Breckenridge economy. A large number of points is awarded for the development of housing at affordable prices for people who work in the ski and related industries. On the other hand, points may be deducted for ski-related development on some of the last land available for diversified industry.

The community would also hope that growth will provide a socio-cultural and demographic diversification of the population, which is predominantly young, white, and upper middle class at the present time. Although such a goal is an extremely difficult one for a private developer (and may be of questionable constitutional validity), establishing a diversity of cultural experiences within the community is possible. Thus, for instance, points would be awarded for opening a Moroccan, but not an Italian, restaurant, since the community already has several excellent outlets for Italian food.

## Public Facilities

The community has developed an ongoing capital improvements program similar to the one in Ramapo, New York, designed to phase growth into new areas. Development in conformance with the capital improvements program is heavily encouraged through the awarding of both positive and negative points. Locating on public water and sewer mains is required. In addition, the community has developed a fiscal impact analysis model and has adopted a schedule of development fees designed to adequately cover the capital cost of incremental new development. A positive fiscal balance is encouraged, but not required.

Normal public improvements must be constructed to the town's standards before they are dedicated; this applies to all development, not just subdivisions. In addition, many residential projects have included recreational amenities such as tennis courts, swimming pools, exercise rooms, tot lots, and so on. Providing for the recreational needs of new residential development is rewarded with positive points, but these points are vastly increased if the recreation facilities are also made available for public use. In the intensifying downtown core, on-site parking is prohibited and membership in the

### Preapplication

The developer in Breckenridge bears the burden of proving that he meets the requirements of the various absolute policies; he must earn enough points under the relative policies to proceed. As the town commits itself to a 10 day/40 day time limit described earlier, issues unresolved by the date of the hearing work to the developer's detriment. This, in turn, gives unprecedented importance to the preapplication negotiating process, allowing the planning director to work with the developer and his design team in the crucial stages of project conceptualization.

### The Evidentiary Form

The actual development application consists of the usual identification and legal information, site plans and renderings, and evidentiary forms—one for each policy—completed by the applicant. Each evidentiary form begins with the text of the policy, the number of positive and negative points which may be awarded pursuant to it, the policy's importance factor or "multiplier," and a listing of plan documents or other reference materials used by the town in making its decision. Next, the form contains a small space for the applicant to indicate the number of points he believes he deserves pursuant to that policy, and the reasons why.

Next, there is space for comment on the developer's evidence by referral agencies if applicable, or by the staff. The staff reserves the right to disagree with the developer's assessment of the project, stating its reasons for disagreement. Next, there is space for the decision maker to note comments offered at the public hearing. Finally, the bottom of the form contains "yes" and "no" check boxes for absolute policies, and space for the raw score and computed "weighted" score for a relative policy.

When assembled in a loose-leaf book, the evidentiary forms then contain not only the developer's evidence, but also an entire record of the decision on the application and reasons for it. By limiting the amount of evidence a developer can submit and forcing him to address the issues squarely, front end costs and the public cost of reviewing the application are cut significantly.

### The Hearing and Decision

The use of the forms also focuses public comment on the adequacy and accuracy of the developer's evidence and the staff's comment. Structuring a land use decision in this way tends to ensure that it will be based on adopted policies as applied to the best available factual information; it minimizes the possibility that extraneous, irrelevant issues, or emotionalism, will influence the decision.

Because the code establishes a quasi-judicial (or administrative) type of decision, an administrative body or planning director is empowered to hold hearings on minor proposals. For major proposals, the staff issues its recommendations but the hearing and decision are handled by the planning commission. The land use decision is rendered after one, all-inclusive hearing (although, if debate is extended or the agenda is too long, the hearing might be continued another evening). Thus, the developer, staff, and interested citizens are forced to marshall their arguments for the one hearing. Having just one hearing also eliminates the need for notice and a repeat of the hearing before the town board.

### Review

By majority vote, the planning commission may decide to rehear any decision made by the planning director at its next meeting. Thus, a developer or concerned citizen who feels aggrieved by the planning director's decision may take his argument to the planning commission, trying to convince them to hear the evidence. There is no appeal by right, however. The planning commission may determine to rehear the decision, limit its rehearing only to certain contested policies, or start over from scratch. In the same fashion, the town board may call up any decision of the planning director or the planning commission.

This process is extremely expedient. The planning director holds his public hearing and makes his decisions on minor developments every second Tuesday afternoon. The planning commission meets that evening, and any request for call-ups must be made at that time. The town board meets the following Thursday evening to decide whether to call up any action from the previous Tuesday.

If the planning commission or town board does determine to rehear a lower decision, the rehearing takes place at the next regular meeting of that body, rather than at the same meeting at which the rehearing decision was made. This provision simply allows the proper scheduling of agenda items.

Since the code has been in effect, the planning commission has regularly scrutinized but never reversed the planning director's decisions on minor proposals. Informed of the permits issued by the planning director and the planning commission, the town board has thus far never called up a decision by either of them. Under Colorado law, court review to determine whether there is minimal evidence to support a decision is limited to the documentary evidence and record made in the hearing. The court's work is made easier by the administrative techniques and devices of the Breckenridge code.

### Enforcement

All representations made by the developer upon which the town relies in making its decision can be secured through a variety of sophisticated bonding requirements, covenants, front end fees, dedication requirements, and similar provisions which ensure developer compliance. Inspections of the property are conducted by a county inspector. No certificate of occupancy is issued a project until the town certifies com-

formance with the permit. If changes in the project occur after construction is completed, the owner or occupant can be cited and convicted of an offense under the municipal code.

## Conclusion

The ideas contained in the Breckenridge Code will prove applicable to a wide variety of growing communities and redeveloping neighborhoods of the future. Although Breckenridge was fortunate in having a thorough and highly professional set of planning documents to support the policies in the code, this is not necessarily a prerequisite to the adoption of a permit system. Indeed, a permit system is modular: policies can be added, deleted, or changed as new information becomes available, as community values change, as conditions within the community change, or as new technology becomes available. A continuously updated process assures that the best information and the most recent expression of community political values are applied to new development proposals.

The development code process can and should be used by communities in the following circumstances:

- older, redeveloping neighborhoods where the design and intensity of new development and renovation should harmonize with preexisting traditional structures;
- rapidly expanding suburban areas where urban sprawl and strip commercial development have created dependance on the automobile and cultural homogeneity;
- rural areas where common sense dictates that zoning is an utterly inappropriate land use regulatory technique;
- boom towns; and
- communities with an active and involved citizenry that greatly values managing the rate, amount, and quality of new growth and development.

The Code should also be of special interest to developers who have been frustrated by the cost, delay, and uncertainty of the land development process; to citizens who are unable to amass the necessary resources to participate in a major community development decision; and to public officials who are interested in upgrading the quality of community development and the uniformity, fairness, and objectivity of the decision-making process.

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Kirk Wickersham, Jr., is an attorney and planning consultant in Boulder, Colorado. He is the principal author of the EPA-funded book which developed the permit system, and of the Breckenridge Development Code. The code, along with the other elements of the Breckenridge community's comprehensive planning program, was awarded the 1978 American Institute of Planners Meritorious Planning Program Award. It was cited for thorough, comprehensive substantive provisions, for procedural simplicity, and for transferability to other communities. Wickersham is chairman of the Division of Planning and Law for the American Planning Association.

## SAMPLE POLICIES

### ENERGY CONSERVATION

Absolute Policy

A project is required to meet or exceed the minimum energy conservation standards adopted for new construction by the local building department.

_____ YES  _____ NO

Relative Policy

A project is encouraged to employ non-fossil fuel sources of energy, such as solar, wind or geothermal.

| (+2/0) | x | 4 | = | _____ |
|---|---|---|---|---|
| PERFORMANCE | | IMPORTANCE | | SCORE |

NOTE: See the Policy Evaluation expalantion on page 22.

## SAMPLE POLICIES

### PROJECT DESIGN

Absolute Policy

At least 30 per cent of the site must be planted and maintained in live vegetative cover.

_____ YES  _____ NO

Rela ive Policy

Adequate snow storage areas out of the public right of way and adjacent to public and private vehicular and pedestrian ways are encouraged. (This might be a policy in a ski resort town.)

| (+2/-2) | x | 5 | = | _____ |
|---|---|---|---|---|
| PERFORMANCE | | IMPORTANCE | | SCORE |

NOTE: See the Policy Evaluation explanation on page 22.

# POLICY EVALUATION

## Absolute Policies

The project either meets the absolute policy requirement or it doesn't. Failure to meet an absolute policy requires the project permit to be denied.

## Relative Policies

A project is measured against relative policies based on two factors: the PERFORMANCE by the developer in his effort to comply with the policy and the IMPORTANCE placed on that policy by the community. The PERFORMANCE rating multiplied by the IMPORTANCE factor results in the SCORE on that particular policy.

PERFORMANCE ratings can range from +2 to -2. They may vary from policy to policy, as indicated like this: (+2,0), which means that policy's range covers a +2, a or a 0 PERFORMANCE rating. The community assigns the PERFORMANCE rating based on how well the developer attempts to meet the policy: +2 means he did an excellent job of meeting the policy, +1 means he did a good job, 0 means he did a satisfactory job, -1 means he did a poor job and -2 means he made no effort at meeting the policy. Another way to look at it is that projects scoring a +1 or +2 will leave the community better off in the future, while projects with scores of -1 or -2 will leave the community worse off.

IMPORTANCE factors reflect the priority placed on each relative policy by the community. An IMPORTANCE factor of 5 means the policy is of the utmost importance to the community, while a factor of 1 means it's not so important. Factors of 2, 3 or 4 prioritize policies between those two extremes.

SAMPLE EVIDENTIARY FORM

(With Review Comments)

Relative Policy — ENERGY CONSERVATION

A project is encouraged to employ non-fossil fuel sources of energy, such as solar, wind or geothermal. IMPORTANCE FACTOR: 4.

DEVELOPER'S EVIDENCE: Glass-enclosed pool area on South end of building will provide a substantial amount of "passive" solar gain. This heat can be used to warm other parts of the building. I request an award of +2 points.

STAFF COMMENT: Glass is single paned mounted on metal sash which will allow for for a lot of heat loss. Project contains no plans for system to circulate air from pool area to rest of building. Also, a large number of windows (cheap, aluminum frame and single paned glass) on the north side of building will account for large and unnecessary heat losses. Recommend 0 points.

PUBLIC COMMENT (Made at Public Hearing):

0 x 4 = 0

(PERFORMANCE) (IMPORTANCE) (SCORE)

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SERVICES

## DEVELOPMENT OF A PERMIT SYSTEM

## WHAT A COMMUNITY WILL RECEIVE

There are six steps in the development of a Permit System:

1. Formatting the community's data for use in decision-making.
2. Drafting the policies.
3. Drafting the procedural and definitional elements of the regulations (that is, the Permit System Ordinance).
4. Designing the administrative materials and procedures needed to operate the Permit System.
5. Training everyone involved in the use of the System.
6. Following through with the community and fine tuning the System during the first building season it is in use.

# WICKERSHAM AND ASSOCIATES, INC.

## PRICING

The cost of developing a Permit System will vary from one community to the next. Here are the principles we use in determining the price of our services:

| CLIENT | BASE PRICE |
|---|---|
| Rural county with moderate growth | $20-25,000 * |
| Town or city under 5000 | $15,000 * |
| City of 5000 to 20,000 | $15-20,000 |
| City of 20,000 to 50,000 | $15-25,000 |
| City over 50,000 | $30,000 + |
| Towns and counties served by a regional agency | $25,000 + * |

* Smaller communities can join with neighboring jurisdictions, or use the services of a regional agency, to develop several Systems simultaneously. This can reduce the cost to as low as $5000 to $7000 per community.

THE BASE PRICE WILL INCREASE IF THE COMMUNITY:

- Is hard to reach from one of our regional offices.
- Is experiencing "boom" growth.
- Has little or no staff time to devote to the development of the System.
- Is experiencing significant political or social problems.
- Is in a complex natural environment.

THE BASE PRICE WILL DECREASE IF THE COMMUNITY:

- Is very accessible from one of our regional offices.
- Can combine its project with that of other communities in the area.
- Has significant professional resources available to devote to development of the System.

# WA WICKERSHAM AND ASSOCIATES, INC.

## OUR GUARANTEE

The services of Wickersham and Associates are guaranteed. As long as the community keeps working, we keep working with it until the system is adopted and operational, no matter how much effort is required. There is no additional cost.

## OTHER SERVICES

### WORKSHOPS

- Full day workshops on the Permit System for public officials, staff, business and community leaders cost approximately $1000 to $2000.

### PLAN IMPLEMENTATION WORKSHOPS

- Transferrable Development Rights
- Open Space Programs
- Tax Incentives and Disincentives
- Land Banking
- Traditional Controls

### DATA DEVELOPMENT

- Land Capability Analysis
- Demographic Analysis
- Fiscal Impact Analysis
- Goal Identification

### COMMUNITY CAPACITY BUILDING

- Grants
- Administrative Assistance
- Growth Management Systems
- Housing
- Recreation
- Capital Improvements Programs

### PLAN CHECKING SERVICES FOR SMALLER COMMUNITIES

### HISTORIC PRESERVATION

### DOWNTOWN AND NEIGHBORHOOD IMPROVEMENT PROGRAMS

### PROJECT DESIGN AND ADVOCACY FOR THE PRIVATE SECTOR

### PLANNING AND DECISION-MAKING ASSISTANCE TO STATE AND FEDERAL AGENCIES

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Official Business

# Alaska State Legislature

JOINT SENATE AND HOUSE
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
LOCAL GOVERNMENT STUDY

Co-Chairmen
Senator Arliss Sturgulewski
Representative Bill Parker

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A FINAL REPORT PREPARED BY THE
JOINT SENATE AND HOUSE
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE
LOCAL GOVERNMENT STUDY

Submitted to the
LEGISLATIVE COUNCIL
JANUARY, 1980

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## EXHIBIT A

I. Borough Incorporation Standards as Interpreted by Local Boundary Commission
Marjorie Gorsuch, Administrative Assistant, House Community & Regional Affairs, August, 1979

II. Bureau of Indian Affairs and Comprehensive Employment and Training Assistance Contracting Procedures, August, 1979
Jim Sanders, Graduate Student Intern

III. Distribution of Flow of Funds in Alaska, June, 1979
Elke Kallab, Policy Analyst, Division of Legislative Research Services, Legislative Affiars Agency

IV. Financial Disincentives to Borough Formation, November, 1979
Milt Barker, Fiscal Analyst, Legislative Finance Division

V. Legislative Proposals related to Organization and Financial Equalization in the Unorganized Borough, August, 1979
Jack Chenoweth, Legislative Counsel, Legislative Affairs Agency

VI. Local Government Study - Report of Local Government Symposium, 9/20/79

VII. Pipeline Boroughs, January, 1980
Vic Fischer, Consultant

VIII. Property Tax Revenues of Pipeline Boroughs, November, 1979
Milt Barker, Fiscal Analyst, Legislative Finance Division

IX. Requests relating to Borough Formation, August, 1979
Pat Poland, Local Government Specialist, Department of Community and Regional Affairs

X Service Delivery to the Unorganized Borough, August, 1979
Majorie Gorsuch, Administrative Assistant, House C&RA

XI. Services and Programs Provided by the Non-Governmental and Quasi-Governmental Organizations in the Unorganized Borough, August, 1979
Jim Sanders, Graduate Student Intern

XII. State/Federal A95 Review Process, August, 1979
Lamar Cotten, Graduate Student Intern

XIII. State Municipal Land Trustee Program, August, 1979
Lamar Cotten, Graduate Student Intern

XIV. Statutory Inducements and Disincentives re Municipal Government Incorporation, August, 1979
Eric Simpson, Director, Division of Community Services, Department of Community and Regional Affairs

XV. Taxing Capacity of the Unorganized Borough, June, 1979
Alexander Hoke, Jack Kreinheder, Research Analysts Division of Research Services

XVI. Traditional, Non-Traditional and Quasi-Governmental Native Methods of Organization, August, 1979
Lamar Cotten, Graduate Student Intern

# I

# BOROUGH INCORPORATION STANDARDS
# AS INTERPRETED BY LOCAL BOUNDARY COMMISSION

## LOCAL BOUNDARY COMMISSION INTERPRETATION OF BOROUGH INCORPORATION STANDARDS

A review of the requests for borough incorporation which have been denied is helpful for the insight it gives into the Local Boundary Commission's interpretation of incorporation standards.

Article X Section 3 of the State Constitutuion outlines the standards for borough incorporation as follows:

> "The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law."

These standards are further refined in the statutes.

> AS 29.18.030 Organized boroughs An area may incorporate as an organized borough if it conforms to the following standards:
> (1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;
> (2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full develcoment of local services;
> (3) the economy of the area includes the human and financial resources capable of porviding local services; evaluation of an area's economy includes land use, property valuation, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;
> (4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

It is the role of the Local Boundary Commission to determine if a proposed boroough meets the standards for incorporation. (AS 29.18.090 (a))

In 1973 the Local Boundary Commission had requests for borough incorporation from the Anchorage area (Cook Inlet Borough petition) and the Kenai area including the City of Kenai and the North Kenai Fire Service area (Nikiski Borough petition). The two were rejected on similar grounds.

The Department of Community and Regional Affairs, in its May 11, 1972 report to the Commission, made reference to the underlying principles which prompted the framers of the state constitution to provide for the borough system of government. It reviewed the concept of borough government as an approach to areawide and regional government, functionally adaptable throughout the State as variation in geography, economy and other circumstances required. The report emphasized that the boundaries of a city are not fixed -- that the constitutional framers directed that the boundaries might be altered and the power of a city extended in response to growth and development outward from the central core.

The Department recommended that the petition be denied unless the borough boundaries were expanded to include Tetlin, Tanaccross, Dot Lake, Northway --the entire area between Delta Junction and Tok-as the proposed borough stating, "We find no reason why the entirety of the valley, an area geographically distinct, economically sound, and having the requisite transportation facilities sufficient to foster communication and interrelationship of people in their activities should be divided into separate units." (Department of Community and Regional Affairs report to Local Boundary Commission on the Deltana Borough proposal, p. 33)

In its final decision on July 12, 1974, the Local Boundary Commission found that even if the boundaries were expanded, that based on the testimony received from the residents of the area, the boundaries of the area would not comply with the provisions of AS 29.18.030 (1)"as the population of the area was not interrelated and integrated as to its social, cultural, and economic activities..."

In its statement of decision on the petiton for detachment of the Chugiak-Eagle River area from the Greater Anchorage Area Borough and for incorporation of a second class borough in the Chugiak-Eagle River area (March 15, 1976), the Commission cited the following reasons for rejecting the petition.

1. The proposed petition fails to meet statutory and regulatory standards for detachment and incorporation contained in AS 29.18.030 and AAC 19.15.230 in that the area is an integral part of the municipality of Anchorage culturally, socially, and economically.
2. There are no natural boundaries separating the area from the remainder of the Anchorage municipality.
3. The detachment would be inimical to the interest of the State in that the constitutional mandate of a minimum of local government units and tax levying jurisdictions would be violated.
4. The area is not stable enough to support orgnaized borough government in that the Eagle River-Chugiak tax base is not large enough to support necessary services without the support of the larger tax base of the entire Anchorage area.

The interpretation of the incorporation standard related to boundaries (AS 29.18.030 (2) again became an issue with the formation of the North Slope Borough. The appellants in Mobil Oil Corporation v. Local Boundary Commission argued that neither the geography nor the transportaton standards had been satisfied and that the Local Boundary Commission had erred in granting borough status to the North Slope.

In the Supreme Court decision on the case (January 16, 1974), the Court made reference to Article X Section 1 of the Constitution and stated:

> "We read this to favor upholding organization of borougns by the Local Boundary Commission whenever the requirements for incorporation have been minimally met."

The Court further found that the inclusion of Naval Petroleum Reserve No. 4 was desirable for integrated local government so that it might fall within the new borough's planning and zoning power. The record gave evidence of the Reserve's importance to the subsistance lifestyle of area residents and this evidence justified such inclusion.

# IV

# FINANCIAL DISINCENTIVES TO BOROUGH FORMATION

IV

# STATE OF ALASKA

**THE LEGISLATURE**
BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF–STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

November 15, 1978

M E M O R A N D U M

TO: Arliss Sturgulewski, Chairman
Senate Community & Regional Affairs Committee

FROM: Milt Barker, Fiscal Analyst MB
Legislative Finance Division

SUBJECT: Financial Disincentive to Borough Formation

In this memo the net change in state aid and local effort for all REAA's upon their conversion to organized boroughs is estimated. The date of the assumed conversions is July 1, 1977; the period of state aid is fiscal year 1978. The following principal elements are considered:

1. public school foundation support (AS 14.17)
   (a) in-lieu funds for REAA's (AS 14.08.121)
   (b) basic need
   (c) required local effort (AS 14.17.071)

2. municipal revenue sharing under the terms of HB 192

3. shared corporate income taxes (AS 43.20.016)

Foundation Support

Current state funding for REAA's is at 100% of basic need under the foundation program as well as a state contribution equal to the number of REAA pupils times the average local tax contributions per pupil in the organized school districts during the prior fiscal year, which in this case was $688 per pupil for FY 77 (AS 14.08.121).

Upon conversion to borough status, an REAA loses this latter "in-lieu" contribution of $688 per pupil. For all REAA's, the loss of this support would have amounted to

"In-Lieu" ($7,610,656)

for FY 78.

Also upon conversion, the new borough would have received less than 100% of basic need, the actual percentage depending on the new borough's assessed value per ADM relative to the average assessed value per ADM for all districts in the state, but in no case being less than 97% (ADM is average daily membership of pupils).

For FY 78 foundation support, the "Alaska Taxable", January 1, 1976, assessed valuation of municipalities of $9,805,715,960 was used. Using a method described in Appendix I, I estimate assessed value of outside municipalities at $110,714,000 for a total statewide valuation of $9,916,429,960 excluding oil and gas property in the unorganized borough.

With 83,274 pupils in ADM for FY 78 according to the Department of Education's "Statistical Report 1978-79", this would have been a statewide average assessed value per ADM of $119,082. As further described in Appendix I, the average assessed value per ADM for an REAA with no oil or gas property would have been $19,895.

Plugging these assessed values per ADM into the formula for determining state support (AS 14.17.021(c)) yields a level of state aid equal to 99.5% of basic need for REAA's that would have become boroughs.

From the attached statement of REAA FY 78 revenues prepared by the Department of Education, we see that total basic need for all REAA's is $47,530,826, this being the sum of amounts under the headings "federal 874" and "foundation" since PL 81-874 funds are deducted from foundation support for both REAA's and organized school districts (AS 14.08.121(a)(1) and AS 14.17.021(a)). Thus, the decrease in foundation support would be $47,530,826 times .5% or

Basic Need ($237,654)

for all REAA's in total.

Finally, the assumption of borough status by an REAA would have required local effort for the first time. The required local to state match would have been 1 to 199 for all newly formed boroughs on average.

The state contribution would have been the $47,530,826 in basic need reduced by the $237,654 equilization amount and by the $17,485,871 in PL 81-874 funds or $29,807,301. This would have required a local match of

Local Effort ($149,785)

Thus, the total financial disincentive under the school foundation program for borough formation is

($7,998,095)

and is due almost entirely to loss of the "in-lieu" funds. The additional loss is about 5% on top of the "in-lieu" funds. A glance at the DOE table on REAA FY 78 revenues allows one to estimate the disincentive for any particular REAA.

It must be cautioned that these estimates are in terms of averages and that the results could differ for individual REAA's. However, the differences should not be that significant, especially for non-pipeline REAA's; even at the minimal level of 97% state support (which only pipeline REAA's would come close to) the loss of foundation support for all REAA's would have been at most $1,425,924, with required local effort decreasing to $44,100 because the match ratio drops to a minimum of 1:32. Thus, the total loss to any individual REAA would probably have been no more than 19% on top of the "in-lieu" loss.

More likely to affect these estimates are changes overtime in the contributions per ADM of organized school districts that determine "in-lieu" funds. The continued increases in the statutory level of basic need (an increase of 10% is scheduled for FY 80 -- AS 14.17.056) should not be significant since the loss due to the equalization factor was only $237,654 to start with.

Municipal Revenue Sharing

Under the method proposed in HB 192, municipal revenue sharing funds would be distributed based on a formula that takes account of population and local effort in relation to assessed valuation per capita (proposed AS 29.88.010). 1/

---

1/ For purposes of the revenue sharing formula, a municipality's assessed valuation may not be less than 15% of the average statewide assessed value per capita. Using the $9,916,429,960 statewide assessed value derived above and the "Alaska Taxable 1977" January 1, 1977 statewide population estimate of 398,983, we have average per capita of $24,854 of which 15% would be $3,728 per capita. However, estimated unorganized borough valuation per capita is $6,096. (from Appendix I)

If we use the Appendix I population and valuation per capita figures for the unorganized borough excluding oil and gas property (50,451 persons and $6,096 per capita) and assume the only local effort is the required school foundation match ($149,785), the total revenue sharing to all new boroughs would be only

HB 192 revenue sharing

$64,130

on the assumption that the appropriation for all revenue sharing is $27,000,000, the level at which HB 192 becomes effective. 2/

The $149,785 level of local effort is the equivalent of .49 mills. If the new boroughs increased their local effort above the minimum .49 mills required for school foundation aid, they would receive revenue sharing support as follows: 3/

| Mills | Local Effort | HB 192 Revenue Sharing |
|---|---|---|
| 5 | $1,528,418 | $ 654,387 |
| 10 | 3,056,836 | 1,308,775 |
| 20 | 6,113,673 | 2,617,551 |
| 30 | 9,170,510 | 3,926,326 |

If the revenue sharing appropriation were roughly $63,000,000 it would on average provide a 1 to 1 match of entitlement to local effort for new boroughs (other than pipeline boroughs).

Depending on the average mill rate in the new boroughs, the appropriation would have to be much larger to offset $7,610,656 "in-lieu" disincentive under the foundation program:

| Mills | Revenue Sharing Appropriation Required to Offset "in-lieu" |
|---|---|
| 5 | $377,000,000 |
| 10 | 220,000,000 |
| 20 | 141,000,000 |
| 30 | 115,000,000 |

2/ Sec. 11 of HB 192 provides a minimum entitlement of $25,000 plus a COLA during the first fiscal year the act is effective. Thus, if the act takes effect before a new borough formation, this floor is of no value to new boroughs and would not in any event provide increased support beyond the first year.

3/ See next page for footnote

Thus, at common borough millages of 5 or 10 and the trigger appropriation level, HB 192 revenue sharing would provide insignificant revenues to any individual non-pipeline, newly-formed borough since the total support to 21 old REAA's would have been from $65,000 to $1,300,000.

Shared Corporate Income Taxes

AS 43.20.016 distributes the appropriation for shared corporate income taxes in an amount equal to that received by boroughs in FY 78, or for newly-formed boroughs in amount equal to the FY 78 receipts of the borough closest in population, pro-rated if the appropriation is insufficient to fund these base levels. If it is greater, the excess is distributed per capita.

FY 78 total distribution was $10,571,500. FY 80's appropriation was just a little above that, $11,400,000. If appropriation levels remain sufficient to only fund base amounts the entitlements of newly-formed boroughs would be:

| REAA | Population 4/ | Base Entitlement |
|---|---|---|
| Adak | 3,200 | $ 7,275 |
| Alaska Central Railbelt | 1,095 | 13,985 |
| Alaska Gateway | 788 | 13,985 |
| Aleutian Region | 2,375 | 7,275 |
| Annette Island | 962 | 13,985 |

(con't on p. 6)

3/ These estimated new Chapter 88 revenue sharing entitlements are based on a pro-ration factor of 2.61 shown on the attached Legislative Affairs computer simulation of HB 192 dated February 19, 1979. As the new boroughs took a bigger bite of the pie the pro-ration factor would decrease. Thus, the estimates for the higher millages become progressively greater than they should be. However, the estimates still give a rough idea of entitlements and a more accurate picture of the relative fiscal effect if only one or two REAA's should actually convert to boroughs.

4/ Estimated by applying ratio of total population to ages 5 through 18 from appropriate 1970 census divisions to Department of Education pupil ADM figures for FY 78 and adding population of city school districts from "Alaska Taxable 1978". The total population differs from that in Appendix I because of the inclusion of Valdez and one year later data.

| REAA | Population | Base Entitlement |
|---|---|---|
| Bering Strait | 4043 | 7,275 |
| Chatham | 3178 | 7,275 |
| Chugach | 7438 | 1,220,920 |
| Copper River | 1925 | 7,275 |
| Delta/Greely | 3051 | 7,275 |
| Iditarod | 731 | 13,985 |
| Kuspuk | 880 | 13,985 |
| Lower Kuskokwim | 7420 | 1,220,920 |
| Lower Yukon | 2615 | 7,275 |
| Northwest Arctic | 3660 | 7,275 |
| Pribilof | 973 | 13,985 |
| Southeast Island | 9408 | 208,145 |
| Southwest | 2620 | 7,275 |
| Lake & Peninsula | 923 | 13,985 |
| Yukon Flats | 1004 | 13,985 |
| Yukon Koyukuk | 2828 | 7,275 |
| Total | 61,117 | $2,834,615 |

The pattern here presents a crazy-quilt of aid in which some larger communities get less than smaller ones, with Chugach and the Lower Kuskokwim to receive substantially more than any of the others because their populations were near that of the North Slope Borough which had, of course, large business license tax receipts for FY 78.

Although the administration's estimates for the corporate petroleum income tax have remained at $160 million a year (the calendar 1978 level), legislative finance estimates the petroleum income taxes alone, disregarding non-petroleum corporate income taxes, will mount to around $600 million by FY 81. If distributions were at 10% of this level, $60,000,000, the excess of roughly $50,000,000 over base entitlements would bring $7,500,000 to newly-formed boroughs on a per capita distribution, more nearly offsetting the other financial disincentives to borough formation.

The Lower Kuskokwim should clearly gain from borough formation as should Chugach if Valdez is incorporated into the borough, even at current appropriation levels.

Other Considerations

This analysis has not considered the further decline in state support to REAA's that become boroughs that would occur for school construction. Under AS 43.18.100, the state would pick up 80% of the debt service for new borough's school construction debt whereas the state now builds entirely at its own expense the necessary school facilities for REAA's.

Of course, with the "Hooch" case settlement new boroughs school construction needs may not be that significant for some time.

One incentive not considered is the value of municipal land selections a new borough would be entitled to under AS 29.18.203. However, it may be an incentive to postpone formation since a new borough receives 10% of state lands within its boundary at the time of incorporation. So until Alaska's land status is resolved, there are disincentives here too, considering opportunity costs.

## APPENDIX I
## UNORGANIZED BOROUGH ASSESSED VALUES

The potential average assessed value of real and personal property in the unorganized borough is estimated in a roughshod way here, using data from several points in time, partially because that is the way the Department of Education does it for the foundation formula, and partially to not pretend to insupportable exactitude.

The FY 78 REAA pupil ADM was 10,729 according to the Department of Education's "1978-1979 Statistical Report" The average ratio of total population to school population (ages 5 through 18) for all census divisions outside organized cities or boroughs in the 1970 consensus was 3.01:1. Thus, total REAA population for FY 78 is estimated at 32,294. For purposes of estimating property values, we deduct 666 persons from this figure for Selawik and Eagle, which levy property taxes and have assessed value figures in "Alaska Taxable", but are part of REAA's.

Using some assumptions from Darbyshire & Associates, August 1979 Yukon Flats Regional Government Study (see attached page 139 from that study) -- namely, 3.5 persons per household, restricted deeds on 50% of residential property, $20,000 average value per non-restricted dwelling, and $2,000 taxable personal property per household -- I estimate assessable values outside taxing jurisdictions at $110,714,000. This is conservative in that no commercial or industrial values are inputed; such properties are assumed to be in the taxing cities in the unorganized borough.

Adding this $110,714,000 to the January 1, 1976 assessed value for all cities, except Valdez, which are outside organized boroughs, $196,849,710, we get a total assessable value for the unorganized borough, excluding Valdez and oil and gas property, of $307,563,710.

As of January 1, 1977, total population, excluding Valdez, that resided outside organized boroughs was 32,294 estimated for REAA's, plus 18,157 for school districts outside organized boroughs (from "Alaska Taxable 1977"), or 50,451.

The total pupil ADM for FY 78 was the 10,729 for REAA's plus 4,730 for all school districts, excluding Valdez, outside organized boroughs, or 15,459.

Based on these figures, the average assessed value per ADM would be $19,895 and per capita $6,096 in the unorganized borough for FY 78 excluding oil and gas property.

## RURAL EDUCATION ATTENDANCE AREAS
## REVENUE

### FY-78 Audited

| | Other Federal | Federal 874 | Total Federal | Foundation | Pupil Trans | In Lieu Of | Boarding Home | Other State | Total State | Rental | Interest | Other Local Income | Total Local |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Adak | | 1,469,558 | 1,469,558 | 245,201 | 57,737 | 416,240 | --- | --- | 719,178 | 9,088 | 60,417 | 12,889 | 82,394 |
| Alaska Central | | 355,136 | 355,136 | 1,226,448 | 160,372 | 241,488 | --- | 1,107 | 1,629,415 | 19,402 | 35,816 | --- | 55,218 |
| Alaska Gateway | | 44,531 | 44,531 | 1,551,000 | 163,454 | 290,336 | 482 | --- | 2,005,272 | 2,183 | 23,248 | 7,616 | 33,047 |
| Aleutian | | 187,079 | 187,079 | 1,297,921 | --- | 160,304 | 10,442 | --- | 1,468,667 | 2,278 | 12,890 | 72,638[1] | 87,806 |
| Annette Is. | | 974,909 | 974,909 | 23,125 | 5,645 | 219,472 | | 1,984 | 250,226 | | 24,209 | 2,500 | 26,709 |
| Bering Strait | | 661,549 | 661,549 | 1,981,201 | 21,080 | 304,784 | 305,784 | | 2,612,849 | 30,133 | 11,348 | 2,768 | 44,249 |
| Chatham | | 278,532 | 278,532 | 410,502 | --- | 127,968 | --- | --- | 538,470 | 24,073 | 1,670 | --- | 25,743 |
| Chugach | | 72,804 | 72,804 | 230,032 | --- | 33,024 | --- | --- | 263,056 | --- | --- | 8,903 | 8,903 |
| Copper River | | 343,113 | 343,113 | 1,870,637 | 289,715 | 482,976 | 9,404 | | 2,652,732 | | 19,314 | 21,838 | 41,152 |
| Delta/Greely | | 900,583 | 900,583 | 1,244,417 | 267,219 | 533,200 | 1,760 | | 2,046,596 | | 36,343 | 1,351 | 37,694 |
| Iditarod | | 465,099 | 465,099 | 1,239,901 | | 195,392 | | 61,145[2] | 1,496,438 | 20,829 | 3,101 | --- | 23,930 |
| Kuspuk | 16,880 | 706,247 | 723,127 | 1,363,986 | 31,749 | 233,920 | 4,654 | 33,521 | 1,667,830 | 20,255 | 23,864 | 3,951[4] | 48,070 |
| Kower Kuskokwim | 89,098 | 2,173,269 | 2,262,367 | 3,154,856 | 50,582 | 1,016,176 | 1,070,870 | | 5,292,484 | 95,177 | 75,530 | 142,242[3] | 312,949 |
| Lower Yukon | | 1,480,442 | 1,480,442 | 2,227,933 | | 615,072 | | 51,500 | 2,894,505 | 148,234 | 68,122 | 46,405[4] | 262,761 |
| Northwest Arctic | | 2,316,087 | 2,316,087 | 3,992,413 | | 1,033,376 | 91,811 | 2,711 | 5,120,311 | 169,692 | 50,415 | 22,340 | 242,447 |
| Pribilof | | 439,713 | 439,713 | 467,787 | | 126,592 | | 3,181 | 597,560 | | 20,012 | | 20,012 |
| Southeast Is. | | 896,690 | 896,690 | 720,310 | 12,332 | 294,464 | 23,793 | 3,253 | 1,054,152 | | 29,415 | | 29,415 |
| Southwest | | 1,293,592 | 1,293,592 | 1,649,017 | | 359,824 | | | 2,008,841 | 56,890 | 52,532 | 26,605 | 136,027 |
| Lake & Pen. | | 751,920 | 751,920 | 1,635,080 | 33,708 | 263,504 | 4,275 | | 1,936,567 | 36,250 | 21,541 | 231 | 58,022 |
| Yukon Flats | | 415,576 | 415,576 | 1,328,863 | | 209,152 | 17,432 | | 1,555,447 | | | 4,339 | 4,339 |
| Yukon-Koyukuk | | 1,259,442 | 1,259,442 | 2,184,325 | | 453,392 | | 51,500 | 2,689,217 | 70,505 | 43,400 | 122,574[5] | 236,479 |
| | | 17,485,871 | 17,591,849 | 30,044,955 | 1,093,593 | 7,610,656 | 1,540,707 | 209,902 | 40,499,813 | 704,959 | 613,187 | 499,190 | 1,817,366 |

*1 Sale of Capital Equipment
2 Includes 21,000 Insurance Proceeds
3 Federal Payments
4 Includes Indirect Cost Payments
5 Includes AVEL Subsidy

| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | LOCALLY ASSESSED PROPERTY | | | STATE ASSESSED PROP. | | TOTAL TAXABLE PROPERTY | |
| | | | | | | RESIDENTIAL | | | | INCLUDING | EXCLUDING |
| YEAR | POPULATION | HOUSEHOLDS | PER CAPITA ASSESSED VALUE $ | MAXIMUM OPERATING BUDGET $M | TOTAL PROPERTY $M | EXEMPTIONS $M | NET TAXABLE $M | OIL PIPELINE $M | GAS PIPELINE $M | GAS PIPELINE $M | GAS PIPELINE $M |
| 1980 | 1,667 | 476 | 49,710 | 5,593 | 10,712 | 2,380 | 8,332 | 875,500 | | 883,832 | 883,832 |
| 81 | 1,717 | 490 | 52,190 | 6,049 | 11,030 | 2,450 | 8,580 | 901,850 | | 910,430 | 910,430 |
| 82 | 1,768 | 505 | 54,800 | 6,540 | 18,865 | 2,525 | 16,340 | 929,550 | 155,480 | 1,101,370 | 938,390 |
| 83 | 1,821 | 520 | 57,540 | 7,073 | 19,204 | 2,600 | 16,604 | 957,100 | 368,960 | 1,342,664 | 966,204 |
| 84 | 1,876 | 536 | 60,420 | 7,651 | 17,060 | 2,680 | 14,380 | 985,150 | 522,750 | 1,522,280 | 994,530 |
| 1985 | 1,932 | 552 | 63,440 | 8,273 | 14,920 | 2,760 | 12,160 | 1,014,900 | 526,800 | 1,553,860 | 1,024,560 |
| 86 | 1,990 | 569 | 66,610 | 8,947 | 12,798 | 2,845 | 9,953 | 1,045,500 | 511,000 | 1,566,453 | 1,055,453 |
| 87 | 2,050 | 586 | 69,950 | 9,679 | 13,181 | 2,930 | 10,251 | 1,014,050 | 495,200 | 1,519,501 | 1,024,301 |
| 88 | 2,111 | 603 | 73,440 | 10,465 | 13,570 | 3,015 | 10,555 | 983,450 | 479,390 | 1,473,395 | 994,005 |
| 89 | 2,175 | 621 | 77,120 | 11,322 | 13,976 | 3,105 | 10,871 | 953,700 | 463,580 | 1,428,151 | 964,571 |
| 1990 | 2,240 | 640 | 80,970 | 12,243 | 14,400 | 3,200 | 11,200 | 925,650 | 447,780 | 1,384,630 | 936,850 |
| 91 | 2,307 | 659 | 85,020 | 13,240 | 14,829 | 3,295 | 11,534 | 897,600 | 431,970 | 1,341,104 | 909,134 |
| 92 | 2,376 | 679 | 89,270 | 14,317 | 15,277 | 3,395 | 11,882 | 870,400 | 416,170 | 1,298,452 | 882,282 |
| 93 | 2,448 | 699 | 93,730 | 15,488 | 15,731 | 3,495 | 12,236 | 844,900 | 400,370 | 1,257,506 | 857,136 |
| 94 | 2,521 | 720 | 98,420 | 16,748 | 16,203 | 3,600 | 12,603 | 819,400 | 384,560 | 1,216,563 | 832,003 |
| 1995 | 2,597 | 742 | 103,340 | 18,115 | 16,694 | 3,710 | 12,984 | 794,750 | 368,760 | 1,176,494 | 807,734 |
| 96 | 2,675 | 764 | 108,510 | 19,593 | 17,192 | 3,820 | 13,372 | 770,950 | 352,960 | 1,137,282 | 784,322 |
| 97 | 2,755 | 787 | 113,930 | 21,187 | 17,708 | 3,935 | 13,773 | 748,000 | 337,150 | 1,098,923 | 761,773 |
| 98 | 2,837 | 811 | 119,630 | 22,909 | 18,244 | 4,055 | 14,189 | 725,050 | 321,350 | 1,060,589 | 739,239 |
| 99 | 2,923 | 835 | 125,610 | 24,783 | 18,788 | 4,175 | 14,613 | 703,800 | 305,540 | 1,023,953 | 718,413 |
| 2000 | 3,010 | 860 | 131,890 | 26,797 | 19,350 | 4,300 | 15,050 | 682,550 | 289,740 | 987,340 | 697,600 |

Column 1 - The year of projection.

Column 2 - Population - Base year is 1978 - population 1,571. The annual increase in population is projected to be 3% per year. From Darbyshire & Associates "Technical Report #2 - Data Reconnaissance."

Column 3 - Households - The number of households was estimated by dividing the projected population by 3.5 persons per household.

Column 4 - Per Capita Assessed Value - The average per capita assessed value for the state as published annually by the Department of Community and Regional Affairs. It is estimated the annual increase for the projection period will be 5% per year. From 1978 to 1979 the per capita assessed value for the state increased 12%, excluding oil and gas property. Therefore, the writer estimates a 5% annual increase over the projection period is reasonable to anticipate.

Column 5 - Maximum Operating Budget - The estimated maximum amount of revenue that can be levied through property tax for the operating budget of the proposed borough.

Formula:

Population x 225% Average per Capita Assessed Value x 30 Mills = Maximum Operating Budget.

Example: 1980

1,667 x $49,710 x 2.25 x 0.03 = $5,593,483.48 -- Say $5,593,490.00.

Column 6 - Locally Assessed Property/Total Property - Includes:

Real Property -

A - Residential,

B - Commercial-Industrial

Personal Property -

C - Individual,

D - Commercial-Industrial

A - Real Property/Residential: A survey of deeds issued by the townsite trustee indicates 80% of the residential property is subject to the covenants and restrictions of the restricted deed, and therefore not subject to property tax. It is estimated there is one dwelling unit per household with an average value of $20,000;

Therefore:

Households x 80% x $20,000 = Residential Assessed Value.

Population - As certified by the Commissioner of Community and Regional Affairs on the Assessment Date (A.S. 29.53.045e).

Average Per Capita Assessed Value - A.S. 29.53.045e.

30 Mills - A.S. 29.53.050.

B - Real Property/Commercial-Industrial: It is estimated that there is $2,500/capita invested in commercial and industrial development to support the population of the proposed borough. The growth of commercial and industrial properties will equal the growth of the population.

C - Personal Property/Individual: It is estimated the taxable personal property will average $2,000/household.

D - Personal Property/Commercial-Industrial: It is estimated that there is $600/capita invested in commercial and industrial equipment and inventory to support the population of the proposed borough. Value will increase in direct proportion to the population.

Column 7 - Residential Exemptions - It is assumed 80% of the dwelling units are owner-occupied and the proposed borough will enact the $10,000 single-family owner-occupied exemption allowed under A.S. 29.53. This column gives the projected assessed value that would be exempt from taxation.

Column 8 - Locally Assessed Property/Net Taxable - Column 6 minus Column 7.

# V

# LEGISLATIVE PROPOSALS RELATED TO ORGANIZATION AND FINANCIAL EQUALIZATION IN THE UNORGANIZED BOROUGH

| LEGISLATIVE PROPOSALS UNORGANIZED BOROUGH | SB 101 (1969) | HB 738 (1970) | HB 161 (1971) | HB 122 (1971) |
|---|---|---|---|---|
| POINT OF REGIONAL GOVERNMENT AUTHORIZED | Six unorganized boroughs and service area within unorganized boroughs (Northwestern, Western, Interior, Southwestern, Southcentral, Southeastern) Residents of each unorganized borough represented on elected five-member advisory board. | Regional unorganized boroughs, as a prerequisite to so-called regional boroughs; service areas authorized within regional unorganized boroughs. A regional borough, once established, would be supervised by an elected regional council. | None; service areas of the unorganized borough were authorized. Authority was given to the director of Local Affairs Agency to establish, alter and abolish unorganized borough areas in accordance with standards he developed. Once established, the service areas would be controlled and directed by Regional Service Area Commissions, appointed or elected.whose principal responsibilities were advisory. | Second class boroughs with boundaries corresponding to the boundaries of the 12 geographic areas described by the Alaska Native Claims Settlement Act. the bill made provision for elections to determine the initial powers which the second class boroughs would enjoy and for the choice of initial borough officers. |
| MANNER OF ORGANIZATION | Directive as to the number of unorganized boroughs; discretionary with the legislative Affairs Agency as to the subsequent establishment of service areas. | Boundary determinations for regional unorganized boroughs were mandatory; the first election for the establishment of a regional borough was also mandatory, but subsequent action seeking incorporation of regional boroughs required submission of a petition from area voters. | Discretionary with the director of the Local Affairs Agency. | Mandatory, in accordance with the provisions of the legislation which require mandatory incorporation if no voluntary incorporation occurred before Jan. 1,1977. |
| FISCAL INCENTIVES AND IMPLICATIONS | Authority was retained by the legislature to levy service area taxes, with the Local Affairs Agency authorized to collect any taxes which were levied; the unorganized borough boards were granted the authority to receive and expend funds. | A Regional and Community Affairs fund was established as a source of shared revenues for borough gov'ts. and for regional unorganized boroughs (with a 10% reserve for cities of the unorganized borough), to be distributed on the basis of population ratio and income deficiency. No fiscal estimate was provided. Regional unorganized boroughs might select 10% land entitlement. | No authority was granted to a service area to raise revenues within the region; presumably state grants would be made available for purposes of organization operation and provision of state services. | No incentives; the bill specifically denied to "boroughs incorporated by this act" the benefits of the then applicable ten percent land selection authorization. |

| LEGISLATIVE PROPOSALS UNORGANIZED BOROUGH | SB 122 (1973) | HB 291 (1973) | HB 202 (1977)HB 9 (1979) | Governor's 1977 "Package" HB 596, HB 597, HB 598 |
|---|---|---|---|---|
| FORM OF REGIONAL GOVERNMENT AUTHORIZED | None. This was the predecessor of legislation eventually enacted in 1975 to provide for the decentralization of responsibility for the operation of schools. | Unorganized borough districts. This legislation is quite similar to HB 596 except that the entities are called "unorganized borough districts and it modified the local hearing requirements with respect to the drawing of the boundaries of these districts and requires affirmative legislative approval of the proposed boundaries. | None. | FORM OF REGIONAL GOV'T. Unorganized borough units each of which would have authority to adopt home rule charters. (HB 596) Boundaries would be recommended by the Boundary Commission Voters would chose 11 member advisory council in each borough. |
| MANNER OF ORGANIZATION | Mandatory formation of educational service areas. | (See above and HB 596) | Not applicable. | MANNER OF ORGANIZATION Mandatory formation of unorganized borough units (HB 596) |
| FISCAL INCENTIVES AND IMPLICATIONS | Full state funding of the basic costs of educational services to be provided; no authorization to generate and expend revenues from local sources. | (See above and HB 596) | The levy of a millage rate, the proceeds of which are to be deposited in the General Fund to partially off-set state-funded educational costs, would constitute the first general property tax levy in the unorganized borough. The tax would necessarily fall on the improved commercial property as possibility exists 2nd Class cities would establish residential exemptions. | FISCAL INCENTIVES AND IMPLICATIONS Extension of the property tax levy on a statewide basis (HB 597), with the levy of a premium rate on certain real and personal property of companies engaged in oil and gas activites (HB 598), was, even with the credits & exemptions allowed, expected to be sufficient to meet revenue sharing demands built into the two bills. The sharing of general property tax revenue, involving population and fiscal capacity factors, represented a realistic effort to address economic disparities. Major source of shared revenue was to be 20 mill tax on pipeline property (HB 598) however, sharing scheme was converted in the House to one based on economic impact -real or imagine-non-conducive to providing revenues on a sustained basis to meet the costs of public services at the local level. |

# IX

# REQUESTS RELATING TO BOROUGH FORMATION

RECORD OF INQUIRIES MADE OF THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS RE BOROUGH INCORPORATION

During the 1970's there have been numerous inquiries into the process of developing borough government from communities in the unorganized borough.

Most of these inquiries were simply that -- with no action being pursued by the community. Most were initiated in response to a particular need which it was perceived local government might meet.

Admiralty Island Angoon expressed interest in borough government. Primary motivation behind interest appeared to be concern about controlling any timber development that took place on Admiralty Island. When there appeared to be no immediate threat of timber development occurring, and the Community realized that they might have a difficult time satisfying the financial requirements of a regional government, interest waned.

Cordova At the time Cordova area was seriously being considered as the southern terminus of a North Slope gas line, that area seemed very interested in borough government. Once the gas pipeline became a non-reality for the Cordova area, so did the issue of borough government.

Kobuk A petition of incorporation was received in 1974, but no follow-up action was taken to remedy deficiencies in the petition. The primary motivating factor for the request appeared to be local control of schools.

Kotzebue NANA region expressed interest in regional government 1974-75. Primary interest seemed to be the exercise of the planning power, both in the sense of controlling development within the region and controlling State and Federal activities that were taking place, at that time, on a rather random basis. NANA Regional Strategies Proposal was developed and appears to have satisfied many of the planning requirements of that particular region.

Newson Island This is a small island located in the Calista Region, which has on it the communities of Nightmute, Toksook Bay and Tununak. In the early 1970's, there was some talk of these three communities uniting and forming a small borough. The person who was the primary mover, a consultant, disappeared and so did the enthusiasm for regional government.

Nome Nome has inquired into regional government, although the only interest the Community appears to have in borough government is how they might use it as a defense mechanism to keep themselves out of any other borough.

Prince of Wales Island Strong interest was expressed in the early 1970's. The local residents' thoughts appeared to be that they could obtain additional revenues through realization of stumpage fees for forestry activities taking place on the Island, as well as have more of a say in how timber development would affect them. An additional factor for at least one community on the Island was that they desired to remove themselves from the State-operated School System. However, in the end, the independent nature of the Communities of Craig, Hydaburg, Klawock and Thorne Bay rendered the situation such that they could simple not agree on the class of borough, the powers it would exercise and how the assembly ought to be composed.

# X

# SERVICE DELIVERY TO THE UNORGANIZED BOROUGH

X

# SERVICE DELIVERY TO THE UNORGANIZED BOROUGH

The Alaska State Constitution states:

> "The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or functic in an unorganized borough which the assembly may exercise in an organized borough."
>
> Article X, Section 6

There are presently three legislatively-mandated service areas:

1. Aquaculture Service Areas
2. Coastal Resource Service Areas
3. Regional Educational Attendance Areas (REAAs)

## AQUACULTURE SERVICE AREAS

In 1979, the Legislature amended AS 16, the Aquaculture Program, with FCCS HB 359 (Ch. 59, SLA 1979) granting the Commissioner of Commerce and Economic Development the authority to declare qualified regional associations, incorporated as non-profit corporations, as "service areas" within the unorganized borough for the purpose of providing salmon enhancement services.

Under this provision, a regional aquaculture association, comprised of associations representative of commercial fishermen and other representatives within the region, whose board of directors includes no less than one representative of each member user group, which has incorporated as a nonprofit corporation, becomes a service area within the unorganized borough with the authority to tax designated species of salmon caught commercially within the region and apply the proceeds to salmon enhancement programs.

On July 13, 1979, Judge Allen Compton, Superior Court, declared that the state may not dedicate a tax on the harvest of a natural resource of the state to a specific purpose by the device of declaring the tax for the purpose of providing a service within a so-called service area in the unorganized borough. Further, it was the Court's view that an incorporated nonprofit association may not become a "service area," either by inference or express legislative declaration. (No. 1JU-78-191 Civil Memorandum of Decision and Order - Judge Allen Compton, Superior Court.)

The Southern Southeast Regional Aquaculture Association will appeal Judge Compton's ruling.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

## COASTAL RESOURCE SERVICE AREAS

Coastal Resource Service Areas are authorized by the Alaska Coastal Management Act of 1977 to plan for the coastal areas. Each regional educational attendance area containing a part of the coastal area may be organized for this purpose or two or more REAAs may be consolidated as a single coastal resource service area. Implementation of the plans which are developed is the responsibility of the state.

At the present time, residents of two areas in the unorganized borough have voted to create coastal resource service areas. The Northwest Coastal Resource Service Area, comprising the area covered by REAA 1, has elected its seven-member board and will develop a coastal management plan.

On May 15, 1979, residents of REAA 3 and 4 voted to create the Yukon/Kuskokwim Delta Coastal Resource Service Area and will elect its board members on September 11, 1979. The City of Bethel opted to be excluded from this service area. In the Yukon/Kuskokwim area, the Department of Community and Regional Affairs entered into an agreement with Nunam Kitlutsisti, Inc. (Protectors of the Land,) the environmental planning area of Association of Village Council Presidents (AVCP) to provide a public outreach program presenting organizational options and procedures for coastal management in the area.

There have been expressed concerns related to how the state, through the appropriate state agencies, will actually implement an approved district coastal management program in the unorganized borough. Under AS 38.05.037, the Division of Lands has a general grant of authority to exercise zoning powers within the unorganized borough. Until recently, this has not been a problem because the zoning power was never used. However, where land-use controls are involved in coastal resource service areas, zoning will have to be established and administered by the Division of Lands.

On this subject, Mr. Vic Fischer in a memorandum to Mr. Steve Reeve, DNR, (February 2, 1979) recommends:

> "If the state is deemed to have an overriding interest that requires it to exercise zoning authority in the unorganized borough, or at least within its coastal areas, neither ADL (Alaska Division of Lands) or DNR (Department of Natural Resources) appear to be the appropriate agency to manage the zoning program, with its strictly localized zoning, adjustment, appeals, and other aspects of continuing zoning administration. If the state is to engage in zoning, by far the most appropriate agency for the exercise of the function is the Department of Community and Regional Affairs (DCRA did not exist at the time ADL was granted zoning authority many years ago.)
>
> In general, states have played only a minor role in the exercise of zoning authority beyond autnorizing its use by local governments. The only exception is Hawaii, where general zoning classification is handled by the state, supplemented by local government; i.e., county, regulations in urban and other development areas. Elsewhere, zoning has been applied as a local government police power.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

COASTAL RESOURCE SERVICE AREAS (Cont'd)

> Except for the special authority given ADL, zoning in Alaska has traditionally been a power of cities and, more recently, of boroughs. Zoning would not have to be exercised by the state at all if provisions were made for (1) reorganization of the unorganized borough into a series of organized boroughs with planning and zoning authority (and this could be done without forcing them to tax or even manage schools) or (2) delegating the planning and zoning power to service areas within the unorganized borough, much as was done by the legislature in the case of coastal management planning."

REGIONAL EDUCATION ATTENDANCE AREAS (REAAs)

REAAs were created in 1975 as the mechanism through which the Legislature delegates to regional school boards the authority to operate the public schools using the boundaries or sub-boundaries of the regional corporations established under the Alaska Native Settlement Act or a combination of such boundaries.

Because the REAAs represent a major effort in regionalization, local control and decentralization of service delivery in the unorganized borough, the boundaries of which are also to be used for coastal zone management purposes, an in-depth history and analysis of the REAAs is included for your review.

During the early 1970's, the Center for Northern Educational Research was requested by the Department of Education to initiate a study of the delivery of educational services in the unorganized borough and the Interim Legislative Committee on Pre-Higher Education of the Eighth Legislature identified decentralization of the Alaska State-Operated Schools as the subject it wanted to study. The final report published in 1974, entitled "Pre-Higher Education in the Unorganized Borough: Analysis and Recommendations," included a wide range of recommendations. A primary point was the recognition of the need for local control of education and the relationship of that local control with local government creation.

> "In order that any plan be more than temporary, the authority for controlling education should be aligned with the development of local governmental units as envisioned by Alaska's Constitution. If local control can be defined as that measure of control which a state delegates to local units of government, then the issues of local control of education cannot be treated separately from the broad issue of the creation of local units of government. And local government units formed around the delivery of education can provide the vanguard for local control over delivery of other governmental services. Therefore, the structure created to serve educational needs must be formed in anticipaion of increases in appetites for control of otner governmental functions. To ignore the need for legislative support to move toward creating local government units will only blunt the emerging desire of local citizens to assume the reigns and responsibility for their own destiny." p. 34

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

REGIONAL EDUCATIONAL ATTENDANCE AREAS (REAAs) (Cont'd)

The Center approached this subject with a note of caution; however,

> "Local control of education in many regions is the main reason for creating local government units. All such creations, however, must await the readiness and desire of local people to assume control over them....the main sources of constituent resistance to local government stem from 1) lack of self-confidence, understandable, in the light of past history 2) groundless fear that the local tax base must be the primary source of local government, especially school funding, and 3) an acute shortage of trained personnel to handle what must seem like the endless march of administrative details.." p. 35

BOUNDARIES OF THE REGIONAL EDUCATIONAL ATTENDANCE AREAS

AS 14.08.031 (a) provides that REAA boundaries follow regional boundaries set under the Alaska Native Claims Settlement Act unless by referendum a community votes to merge wth another community contiguous to it but within the boundaries or sub-boundaries of another regional corporation. The use of regional lines was not intended to be exclusive as shown by AS 14.08.031 (b) prescribing certain characteristics for REAAs.

> "As far as practicable, each regional educational attendance area shall contain an integrated socio-economic, linguistically and culturally homogeneous area. In the formation of the REAAs, consideration shall be given to the transportation and communication between communities that comprise the area. Wherever possible, municipalities, other governmental or regional corporate entitles, drainage basins and other identifiable geographic features shall be used in describing the boundaries.."

Taken together, these two sections suggest that REAA boundaries are to follow, rather than cross, regional corporation boundaries where they contact them and conform to natural or other predetermined boundaries. This is how the State Department of Community and Regional Affairs, which was charged with administering the act in consultation with the State Department of Education, interpreted it in a series of informational meetings in rural areas around the state in July and August, 1975. Later they began implementing it similarly when hearings were held in numerous bush locations regarding proposed boundaries. The result of the hearings was a division of the state into some 21 REAAs. Originally 20 REAAs were created by C&RA, but after a meeting of residents of REAA 17 and the Governor, REAA 21 (including Whittier and Tatitlek) was created on September 24, 1975, dividing REAA 14 along the boundary between the Chugach and Ahtna Regional Corporations.

Frequent mention has been made of the fact that the statutory characteristics for boundary selections of the REAAs are similiar to the standards for borough incorporation.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

## ADMINISTRATION OF THE REAAs

REAA voters elect a board of from 5-11 members who are voted on "at large." In addition to the elected board for each REAA, every community (or military reservation) with a school has a community school committee. The Statute merely charges them to "review and make recommendations to the board" of the REAA "concerning the curriculum, program and general operation of the local school. They may, however, be delegated other functions by the school board.

Matters of employment, salaries, purchasing, and disbursement of funds are lodged with the REAA boards. Although the power to "adopt regulations governing organization, policies and procedures for the operation of the schools" and to "develop a philosophy of education, principles and goals for the schools" is a board responsibility, the Commissioner of Education is given overriding control of school operations.

## FINANCING REAAs

All funds for REAAs are furnished by the State Legislature. They receive "basic need," as used in computing foundation aid to districts, plus an amount equal to the average per pupil local tax contributions in city and borough districts. Thus, they are relieved of local effort requirements, but the amount they can receive from the state over and above basic need is indirectly determined by city and borough decisions regarding their local tax effort. (AS 14.08.12)

Among the local financial concerns of the REAAs, even as they began their first year of operation with full state support, were the following: (See Summary of Findings Alaska School Finance Study Workshops October-November 1976, published February 1977)

1. Public School Foundation Program. While few wished to change the basic funding method, concern was expressed about the ability of the formula to provide sufficient funds to meet operating costs, especially those of small attendance centers. The validity, accuracy and amounts of instructional unit allotments (regional cost differentials) were questioned. The ability of "basic need" dollars to meet the REAAs' "basic program need" was of great concern. (Two important legislative changes made in the Public School Foundation Program in 1977 responded to the financial concern of the REAAs. One recognized the plight of the very small attendance centers and provided for an increased minimum of instructional units. The second change modified the instructional unit allotments (regional cost differentials) to be more in line with the cost of doing business in rural and isolated areas of the state.)

2. School Construction. The amount of funds available for new construction, as well as the manner in which it is provided, received extensive criticism. Even as the FY 1978 building program got underway, REAAs expressed additional concern about the proportion of bond issue building funds being retained by the supervising state agencies for administrative purposes.

SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

FINANCING REAAs (Cont'd)

3. Equity. REAAs, with no local source of revenue, have limited ability to operate discretionary programs beyond what is possible with the amount in lieu of local taxes available to each. The possibility that legislation might be enacted to tax property in REAAs was of concern.

4. Operation and Maintenance of School Facilities. Extreme operational costs often result from inheriting substandard or poorly designed facilities. Costs of operating facilities are unpredictable, and in some cases were expected to consume as much as one-third of the operating budget. Inherited utility contracts was singled out as an item of great concern.

5. Other Financial Concerns. State and federal categorical programs were items of much concern, partly because obtaining some of these funds depends upon the grant writing ability of the REAA. High costs of travel and meeting expenses for school boards and superintendents were expected to cause problems. Inadequate funding for school food service programs was also identified as a major concern. The acceptance and operation of former BIA schools was of concern because of the possibility that current funding methods might not be adequate to provide funds necessary to operate the schools. Costs of teacher housing was a problem in some REAAs.

## SERVICE DELIVERY TO THE UNORGANIZED BOROUGH (Cont'd)

CHRONOLOGY OF EVENTS: DECENTRALIZATION OF THE ALASKA STATE-OPERATED SCHOOL SYSTEM - 1974-1976

January 1974. Center for Northern Educational Research (CNER) releases its report, PreHigher Education in the Unorganized Borough: Analysis and Recommendations, produced at the request of the Eighth Alaska State Legislature's Interim Committee and of Native leaders.

January - May 1974. Eighth Alaska State Legislature meets and reviews CNER report in committee, but does not act on the recommendations of the report concerning rural education.

July 14-16, 1974. The Alaska Federation of Natives (AFN), having assessed the Legislature's inactivity, calls an Education Strategies Conference in Fairbanks to review CNER's recommendations, to prioritize issues addressed in the report, and to determine whether and how to bring CNER recommendations to the attention and action of the new State Legislature.

August 15, 1974. Mr. Gordon Jackson, Executive Vice-President for Human Resources, at the AFN presents the recommendations and strategies from the July conference to the State Board of Education and receives their unanimous support of those items.

October 14-16, 1974. The AFN Annual Convention endorses through resolutions the PreHigher Education's recommendations and strategies. The Human Resource Committee of AFN, meeting during the convention, endorses those principles and directs staff to include those concerns into the formal AFN Education Position Paper to be presented to the newly elected State Legislature.

January 1975. The Ninth Alaska State Legislature convenes, with several bills related to the CNER/AFN recommendations prefiled. These bills include Senate Bill (SB) 35, House Bill (HB) 24, and SB 94 and SB 136.

June 4, 1975. Governor Hammond signs into law (Chapter 124, SLA 75) the Free Conference version of SB 35 and HB 24. An interim administrative structure, AUBSK, is created for the transitional year.

September-October 1975. Representatives of DOE and DCRA hold formal hearings for REAAs; public hearings are held in 21 communities in the unorganized borough; 796 people attend, representing 83 communities.

July 1, 1976. Twenty-one Regional Educational Attendance Area school boards take responsbility for education in their regions.

# SB 35 AND REGIONAL GOVERNMENT *

Patrick K. Poland

The transfer of the major operational responsibilities for rural Alaska's schools from the State of Alaska (Alaska Unorganized Borough School District) to regional school districts (Regional Educational Attendance Areas) with locally elected school boards was accomplished by Ch 124, Session Laws of Alaska, 1975 (popularly referred to as Senate Bill 35).

To a great extent, the ultimate impact of Senate Bill 35 is just beginning to be realized. However, there are already several definite implications for municipal government that have arisen from the implementation of Senate Bill 35. The purpose of this discussion is to underscore these implications as they relate to the development of municipal government in the Unorganized Borough. For purposes of this discussion, municipalities consist of boroughs and first-class cities; that is, municipalities having the education function.

## Regional Identification

While rural Alaska's initial encounter with the concept of regionalism came about with passage of Public Law 92-746, the Alaska Native Claims Settlement Act (ANCSA), there is no doubt that Senate Bill 35 went far beyond the implications of the ANCSA in terms of developing regional identification. In the view of the Department of Community and Regional Affairs this was a positive step towards developing regional government in the Unorganized Borough. Prior to the passage and implementation of this particular act there were no real tests of the regional concept of service delivery taking place in the Unorganized Borough;[1] and while there were many advocates of this particular mechanism of service delivery, it remained, by and large, untested. However, with the mandate of regionalization created by Senate Bill 35, rural residents have, in a sense, been forced to test the concepts of regionalism in Alaska's vast Unorganized Borough.

Surprisingly, there seemed little if any real resistance to the idea of regional school districts. On the contrary, most rural residents seemed eager to embrace the concept. Much of this was undoubtedly due to the dissatisfaction many rural residents felt with the former State-Operated School System. Perhaps the strongest demonstration of this desire to participate in a regional approach to service delivery was the change in municipal status executed by the City of Selawik. In that particular instance, the City of Selawik, formerly a city of the first class in the Unorganized Borough and therefore having school responsibilities, petitioned the Local Boundary Commission[2] and convinced them of the need for the city to be dissolved and "reincorporated" as a second class city so that it might become a part of the particular Regional Educational Attendance Area (Northwest Arctic). Among

the arguments presented in support of Selawik's reclassification was a strong statement by residents concerning their desire to be a part of the Regional Educational Attendance Area and to receive benefits they perceived as being available only to constituents of the REAA.

The Department of Community and Regional Affairs, noting the relatively warm embrace being given regionalization by Unorganized Borough residents, early in 1976 initiated a study of the acceptability of general purpose regional governments in the Unorganized Borough. That study,[3] which consumed some six months, came to a number of conclusions, the most important of which appears to be the fact that rural residents are still wary of any form of government that has the authority to levy and collect taxes. Additionally, many residents expressed concern about moving too fast; while they embraced the idea of regional school districts, they felt that the concept required the test of time before jumping to yet a new form of government. Nevertheless, the department has had inquiries from several regions (most notably the Fort Yukon, Bethel, Glennallen, and Valdez regions) concerning possible borough incorporation. To date, none of those discussions has evolved into an actual petition for borough incorporation, although it does appear that many areas are getting close to taking that step. There is no doubt that formal consideration by these regions of regional government was precipitated by the establishment of REAAs.

An additional development which, to some degree, appears to be an offshoot of the regional approach fostered by Senate Bill 35, was the passage of Ch 84 SLA 1977, which established a mechanism for regions of the Unorganized Borough to establish coastal zone management (CZM) service areas for the purpose of CZM planning. Under the provisions of that particular act any Regional Educational Attendance Area, upon determination by the local electorate, may establish itself as a coastal zone management planning district. While the legislation permits consolidation of two or more Regional Educational Attendance Areas into a CZM planning district, it does not allow individual REAAs to be subdivided into smaller districts for the purposes of planning. This is an interesting development and one that seems to further reinforce the concept of delivery services on a regional basis.

Finally, in terms of regionalization, it is interesting to note the provisions of Senate Bill 35 which deal with the boundaries of Regional Educational Attendance Areas. Specifically, the bill provides that:

> As far as practicable, each Regional Educational Attendance Area shall contain an integrated socio-economic, linguistically and culturally homogenous area. In the formation of Regional Educational Attendance Areas, consideration shall be given to the transportation and communication network to facilitate the administration and communication between communities that comprise the area.

Very similar statutory language exists at AS 29.18.030, which is the statutory provision establishing standards for borough incorporation. The similarity of the standards goes a long way towards defining appropriate boundaries for potential regional governments. In fact, to some observers, the boundaries of the newly created Regional Educational Attendance Areas (with some exceptions) generally conform to good borough boundaries. This has been a little alarming to many rural residents, since no small number of them are still concerned that the state is going to "foist" boroughs upon them.

## Finance

The second major subject area that has been the topic of much discussion as a result of Senate Bill 35 is that of local government finance. As presently constituted, Regional Educational Attendance Areas, in comparison to municipal school districts, have an advantageous funding schedule. In addition to 100 percent Public School Foundation Program funding, Regional Educational Attendance Areas also receive from the State an amount equal to the average local contribution per pupil in municipal school districts multiplied by the number of students in the Regional Educational Attendance Area. This advantageous funding schedule for REAAs versus municipal districts remains a hindrance rather than an enticement for REAAs to seek organized borough status.

Since most REAAs are property poor (hence, no ability to generate tax revenues), the thought of forming municipal school districts to provide services which are currently provided by Regional Educational Attendance Areas is almost out of the question. For example, the poorest existing borough has about $20,000 worth of taxable property per capita. On the other hand, some of the Regional Educational Attendance Areas could probably expect to have considerably less than $5,000 worth of taxable property per capita. Realistically, it is impossible to provide basic municipal services without adequate funding.

The major exceptions to this discussion, of course, are those areas surrounding "the pipeline." The regions surrounding Fort Yukon, Delta Junction, Glennallen, Copper Center, and Valdez have taxable property per capita values that could easily support borough government.

Partially in response to these obvious funding inequities, the Department of Community and Regional Affairs, as a part of its final conclusions reached in its study of regional government, recommended that a new system of financing regional governments be found. Basically, the system suggested was one that placed a state-wide property tax on all property associated with the exploitation of natural resources and then, in turn, distributed those tax revenues on the basis of population and services being provided by individual boroughs. It was determined that additional study of that particular proposal

would be needed before the feasibility of it could be determined.

Nevertheless, this particular area is still a popular subject among legislators as demonstrated by current House Bill 202 and Senate Bill 35 introduced in the first session of the 1977 Legislative Session. Both those bills would levy real property taxes on developed land in the Unorganized Borough. Hearings on House Bill 202 were held this October (1977) in Fort Yukon, Delta Junction, and Tok.

Finally, one last area of financing that again discriminates between the municipal versus REAA school district is that of school construction. Presently municipal districts must pay for 50 percent of school construction while REAAs contribute no local effort towards construction of new facilities. This is seen as a significant impediment to the development of regional government for the purpose of assuming local control of education, particularly in areas which are "poor" or are marginally deficient in terms of a real property tax base.

## Constitutionality

I mention this issue simply because it is one of concern to many involved with municipal government. Because REAAs are not units of local government they cannot be given taxing authority nor can they provide "local government" services.[4] While the legality of the current REAAs has not been challenged on the grounds of Article X, Section 2, of the Constitution, there is reason to believe that if additional REAA-type entities are established they will be challenged and may, on the basis of Article X, Section 2, be declared unconstitutional.

On the other hand, those defending the constitutionality of the REAAs cite Article X, Section 6, of the Constitution which authorizes the Legislature to provide services in the Unorganized Borough ostensibly through the service area mechanism. However, the significant degree of autonomy given REAAs, particularly with respect to their abilities to independently contract and incur debt, makes the argument that REAAs are service areas, and hence an arm of the Legislature, highly suspect.[5]

## Summary

In summary, it can be said that formation of the Regional Educational Attendance Areas can be viewed as a positive step towards the formation of regional government in rural Alaska. In particular the newly created service areas have provided a greater amount of local control over a local municipal-type service, maintained and strengthened existing regional identifications, and provided boundaries that will be useful for the establishment of boroughs in the future.

The principal negative aspect of Senate Bill 35 has been the funding formula which maintains a disincentive to formation of municipal governments and fails to properly address the extremely poor tax base of much of rural Alaska.

Ultimately, the passage of Senate Bill 35, if for no reason other than the fact that it has generated discussion and interest, is going to have had a significant effect (probably the most significant since the passage of the 1964 mandatory borough act) towards developing regional government in this state.

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## Notes

1. Admittedly, certain state and federal agencies have been administering a few programs on a regional basis. However, these agencies have had the benefit of vast government financial and technical resources to assist them. In the opinion of this writer, the availability of these resources makes any comparison between the state/federal regional approach and the REAAs invalid.

2. The Local Boundary Commission is composed of five members and is responsible for reviewing and approving or disapproving all municipal incorporation, dissolution, and boundary change proposals.

3. While a final report was not issued at the end of the study, several comprehensive memorandums summarizing various aspects of the study are available from Community and Regional Affairs. As an additional result of the study, legislation calling for a Local Government Commission to study and make recommendations to the Legislature on all aspects of state/local relations is being introduced by Governor Hammond in the second session of the Tenth State Legislature (January 1978).

4. Alaska Constitution, Article X, Section 2. All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only.

5. For further information, the reader may wish to consult David Getches, Law and Alaska Native Education, pp. 32-34.

*Article reprinted from New School Districts in Rural Alaska: A Report on the REAAs After One Year, Center for Northern Educational Research, University of Alaska, 1973, pp. 137-142.

**This percentage was reduced to 20 percent by the Legislature with the passage of Sec 2 Ch. 147 SLA 1978.

# XIV

# STATUTORY INDUCEMENTS AND DISINCENTIVES RELATED TO BOROUGH GOVERNMENT INCORPORATION

XIV

## STATUTORY INDUCEMENTS AND DISINCENTIVES RELATED TO BOROUGH GOVERNMENT INCORPORATION

Organizational Grants (AS 29.18.180) To defray the cost of transition to borough government status and to provide for its development and interim governmental operations, each newly created borough is entitled to an organizational grant of $25,000 or $10 per voter voting in the incorporation election, whichever is greater.

The organizational grants have not been a statutory incentive to encourage borough incorporation because the grant is not adequate and is not intended to pay for the entire cost of borough organization. Although there are no guidelines for the use of the organizational grants, a newly incorporated borough may use the funds to defray the cost of hiring a borough administrator, paying for a local assessment of real and personal property, obtaining office space, etc.

In order to provide an incentive to borough incorporation, an organizational grant would have to be at least $75,000 to $100,000 plus the initial cost involved in conducting a feasibility study on borough incorporation, and an amount equal to the cost of conducting the initial assessment and appraisal of real and personal property.

Land Selections (AS 29.18.203) A newly created borough may select ten percent of the total acreage of vacant, unappropriated, unreserved land within its boundaries on the date of incorporation. In the selection of land under the Statehood Act, it has been the policy of the State to make available to boroughs and cities the maximum land area from which to make selections consistant with the State's best interest.

The municipal land selection process is an incentive to borough incorporation to the extent that the boundaries proposed for a borough would probably include the maximum allowable vacant, unappropriated, and unrestricted lands from which to select its ten percent However, the boundaries of a proposed borough must conform to natural geography and include all areas necessary for full development of local services.

State Revenue Sharing Program (AS 43.18.010-045) The State Revenue Sharing Program annually distributes grants to cities and boroughs based on the number of local residents in a municipality, the eligible powers exercised by each local government, the cost of living allowance used in computing total grant entitlements and the total appropriation approved for the grant program.

During each fiscal year, the Department of Community and Regional Affairs distributes State Revenue Sharing Funds to eligible cities or organized boroughs which provide specific services, and exercise the powers as follows:

| Municipal Service | Rate of Entitlement |
|---|---|
| Police Protection | $12. per capita |
| Military | $ 6. per capita |
| Fire Protection | $ 7.50 per capita |
| Water or Air Pollution | $ 2. per capita |
| Land-Use Planning | $ 2. per capita |
| Parks and Recreation | $ 5. per capita |

| Municipal Service (Cont'd) | Rate of Entitlement (Cont'd) |
|---|---|
| Military | $ 1.25 per capita |
| Transportation Facilities | $ 5.00 per capita |
| Military | $ 2.50 per capita |
| Road Maintenance | |
| - Public Roads | $ 1,500. per mile |
| - Ice Roads | $ 900. per mile |
| Health Facilities | $ 4,000. per fac. OR |
| | $ 1,000. per bed |
| Health Services | $ 2. per capita |
| Hospitals | $75,000. per host. OR |
| | $25,000. per hosp. OR |
| | $ 1,000. per bed |
| State Construction Aid | $ 2,500. per bed |

State Revenue Sharing has had an increasing impact on municipalities since its enactment in 1969. The program funding has increased from $2.0 million in 1970 to $18.6 million in FY 1979, and municipalities have become increasingly dependent on these grants. However, due to the limited amount of funding made available for the program each year, municipalities have not received 100 percent of their grant entitlements. Last fiscal year municipalities received only 88.7 percent of their total grant entitlements and next fiscal year the Department of Community and Regional Affairs expects the program to be funded at approximately 85 percent of all the grant entitlements.

The current formula is intended to encourage existing local governments to provide financial incentives to exercise powers, improve upon existing services provided and reduce any local taxes.

Local Service Road and Trail Program (LRS&T) (AS 19.30.111-251) The Local Service Roads and Trail Program provides state assistance in the development of roads and trails on routes that are not eligible for Federal-aid highway funds. These funds are intended to provide local service roads, year-around foot trails, winter trail staking, bicycle paths, erosion control, foot bridges, boardwalks, etc.

This program is 100 percent State-funded through State bond issues. Under the program, funds are allocated to organized boroughs and home-rule cities according to a strict area/population formula. Each local government receives its allocation by submitting a three-year program with project priorities noted to the Regional Highway Engineer by October 1 of each year. A portion of the fund is also allocated to the unorganized borougns; this money is administered by DOTPF. The communities within the unorganized boroughs receive funding based on priority and need. Each community selects its project and submits it to the Department for consideration.

The Department of Transportation and Public Facilities (DOTPF) is responsible for maintaining, causing to be maintained, or constructing any project under the LSR&T Program. However, a project constructed within the boundaries of a local government which exercises the power of streets and sidewalks may be transferred to a local government upon the approval of DOTPF and acceptance by the local government.

## STATUTORY INDUCEMENTS AND DISINCENTIVES RELATED TO BOROUGH GOVERNMENT INCORPORATION (Cont'd)

Local Service Road and Trail Program (LRS&T) (AS 19.30.111-251) (Cont'd)

A road, street or highway transferred to a local government under this process can be eligible to receive State Revenue Sharing funding equal to $1,500 a mile for each eligible mile for streets or highways maintained by the local government.

Although a borough stands a greater chance of being awarded local service roads and trails projects under the area/population formula, and although roads, streets and highways may be transferred to a municipality, the LSR&T Program has not been a sufficient incentive to encourage borough incorporation.

Regional Education Attendance Area (REAAs) REAAs were created with the passage of Chapter 124, Session Laws of Alaska, 1975 (popularly referred to as Senate Bill 35,) thus transferring the major operational responsibilities for rural Alaska schools (Alaska Unorganized Borough School District) to regional school districts (REAAs.) Although the REAAs created have provided a greater amount of local control over local municipal-type services, strengthened the existing regional identification of these areas, and provided boundaries that are useful to establishing future boroughs, the State funding formula has been a disincentive to the formation of borough government, and it fails to properly address the extremely poor tax base for much of rural Alaska. In addition to receiving funding for 100 percent of the Public School Foundation Program and 100 percent of the cost for new school construction, REAAs receive from the State an amount equal to the average local contribution per pupil in municipal school districts multiplied by the number of students which will approximate $710 per student this year. The Public Foundation Program will be funded approximately at 100 percent this year, and the State school construction cost will only be funded at approximately 80 percent this year. The advantageous funding schedule mentioned above for REAAs still remains a disincentive to the formation of organized boroughs unless the borough school districts can obtain additional funding to offset the increased level of funding for REAAs.

State-Shared Taxes State-shared taxes are specific taxes levied and collected by the State of Alaska (Department of Revenue) and are, in part, refunded to cities and boroughs providing municipal services. State-shared taxes refunded to municipalities include the following:

Amusement and Gaming Taxes (AS 43.35.010-090) Fifty percent of the taxes collected under this program are refunded to the municipality in which the tax is collected. Payments are made automatically, on a semi-annual basis, to all cities and boroughs upon receipt of notice of incorporation.

Aviation Fuel Taxes (AS 43.40.010-040) Sixty percent of the taxes collected under this program are refunded to the municipality in which the tax is collected, if that municipality owns and/or operates a public airport.

Corporate Income Taxes (AS 43.20.010) Effective July 1, 1979, each municipality will receive a refund equal to the amount they received as a refund under the former Business License Tax Program. Refunds are mailed automatically to municipalities, once a year.

Liquor License Taxes (AS 04.10.460) One hundred percent of the amount collected under this tax program is refunded to the municipality in which it was collected if the municipality has a police force and actively enforces State, Federal, and local liquor laws. Refunds are mailed automatically to municipalities semi-annually.

Punchboard Taxes (AS 43.35.100-150) Seventy-five percent of the amount collected under this tax program is refunded to the municipality in which it was collected. Refunds are mailed automatically to municipalities once a year.

Raw Fish Taxes (AS 43.75.130-135) Currently each borough receives twenty percent of the amount of tax revenues collected in the area outside cities and ten percent of the amount of tax revenues collected within cities. Refunds to eligible municipalities are mailed annually.

Telephone and Electric Cooperative Taxes (AS 10.25.570) One hundred percent of the tax collected from telephone and electric cooperatives is refunded to the municipalities in which the cooperative does business. A municipality's entitlement is based upon the amount of gross revenue the cooperative received from operations within the municipality's boundaries. The tax is refunded annually.

With the exception of the raw fish tax refunds, all other State-shared taxes contribute a relatively small amount of revenue to an organized borough and would not provide a statutory inducement to municipal incorporation. Depending on the amount of fish products processed within the boundaries of a proposed borough, the raw fish tax could provide an incentive to borough incorporation; i.e., the Aleutian Islands.

****PLEASE NOTE****

**THE ORGINAL FILE CONTAINS AN OVERSIZED DOCUMENT THAT IS UNSUITABLE FOR FILMING. PLEASE REFER TO THE ALASKA STATE ARCHIVES TO VIEW THE ORIGINAL.**

DESCRIPTION: POSTER FORMAT REPORT

"LOCAL GOVERNMENT STUDY - 1979" FINAL REPORT

ALASKA STATE LEGISLATURE

**PLEASE NOTE**

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# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE COUNCIL

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

629

July 3, 1980

MEMORANDUM

TO: Billy G. Berrier

FROM: Senator George H. Hohman, Jr.
Chairman, Legislative Council

SUBJECT: Title 29 Revision

As Chairman of the Legislative Council, I am allocating $53,800.00 to the Legislative Affairs, Division of Legal Services. These funds are for the implementation of SCR66, revising Title 29 of the Alaska Statutes.

cc: M. R. Charney
Senator Sturgulewski
Representative Parker
Senator Ray

bcc: Dick Berg✓

# STATE OF ALASKA

## THE LEGISLATURE

1980

Source: CSSCR 66

Legislative Resolve No.: 39

Directing the Alaska Legislative Council to revise AS 29 (Municipal Government).

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

WHEREAS Alaska has a system of local government that differs uniquely in constitutional concept and in law from traditional local government; and

WHEREAS the law governing municipalities in Alaska was last reviewed completely in 1972 at which time significant elements of the local government structures were still in a formative stage; and

WHEREAS numerous amendments to the municipal code have been made since its adoption which have not been fully integrated into the code; and

WHEREAS much experience in the Alaska system of local government has been gained since adoption of the municipal code; and

WHEREAS there is a need for a comprehensive revision of the municipal code which will consider the 1972 code, amendments to it, and the experience gained since its adoption;

BE IT RESOLVED by the Alaska State Legislature that under the provisions of AS 24.20.090 and Uniform Rule 48(c) the Alaska Legislative Council is directed to prepare a revision of Title 29 of the Alaska Statutes (Municipal Government) by directing the legal services division of the Legislative Affairs Agency to prepare the revision with the assistance of a policy advisory group representative of the concerned public from all areas of the state and persons experienced in the application of AS 29, and soliciting the advice of the Alaska Code Revision Commission; and be it

FURTHER RESOLVED that the policy advisory group consist of two members of each house of the legislature appointed by the presiding officer of each house; public members of the policy advisory group shall be selected by the presiding officer of each house from persons recommended by legislative members, by the Department of Community and Regional Affairs, the Alaska Municipal League, the Rural Alaska Community Action Program, Inc., the Department of Law, and by the legal services division; and be it

FURTHER RESOLVED that a proposed revision of AS 29 be presented to the legislature during the first 30 days of the First Session of the Twelfth Legislature.

SENATE
JOURNAL SUPPLEMENT

February 16, 1981 Monday No. 10

SB
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# Alaska State Legislature

## Senate

Official Business

MEMORANDUM 12 February 1981

TO: Representative Hugh Malone
Chairman, Legislative Council

FROM: Senator Arliss Sturgulewski
Chairman, Title 29 Revision Policy Advisory Group

As chair of the Title 29 Policy Advisory Group, I am pleased to submit a bill revising Title 29 of the Alaska statutes. This revision of the municipal government statutes was mandated last year by SCR 66 "Directing the Alaska Legislative Council to revise AS 29 (Municipal Government)". Under this resolution, a thirteen member Policy Advisory Group was appointed to oversee the revision process. In addition to four legislative members; Senator Bob Mulcahy, Representative Charles Parr, Representative Margaret Branson, and myself, nine members represented various levels of local government and geographic areas of the state.

This proposed bill represents a tremendous volume of work completed within a limited time frame. However, the revision of Title 29 has been throughly and carefully considered in spite of this time constraint. This is due in large measure to the real concern about local government shared by all members of the Policy Advisory Group. Excellent assistance was provided by a Technical Group composed of two Advisory Group members, municipal attorneys, and a city clerk. This Technical Group was formed to assist the legislative legal staff and the Advisory Group in interpreting provisions of the law and in revising specific statutes. Policy decisions were made by the Policy Advisory Group.

Since the first organizational meeting in August 1980, three complete redrafts of Title 29 have been prepared and reviewed. The legislative Legal Services staff, under the direction of Billy Be rier, is due special recognition for the tremendous amount of staff work provided to the Policy Advisory Group, especially Ms. Tamara Brandt Cook, who was responsible for the successive drafts of Title 29.

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Public testimony was received during the monthly meetings of the Policy Advisory Group from representatives of local government, Native organizations and state agencies. Numerous presentations were made to interested organizations, including a work session at the Alaska Federation of Natives annual meeting, participation at the annual Alaska Municipal League conference and numerous presentations to various interest groups.

A complete report of all changes proposed in Title 29, as well as a explanation of those sections that were deleted from the final bill, has been prepared. This section-by-section analysis will be submitted to respective Senate and House committees of first referral.

The Policy Advisory Group voted unanimously to recommend this bill to the Legislature for passage. While, overall, the committee is satisfied with this bill, it necessarily represents compromises on issues of local government structure by all members of the group. The Policy Advisory Group provided for the submission of minority reports with the Title 29 bill. One minority report was received, and is being submitted with the proposed bill.

The Policy Advisory Group, in its initial meetings, developed two basic guidelines for its revision of Title 29. These can be characterized as the simplification of the title's organization and the achievement of maximum flexibility in the structure and functioning of local government. Simplification of the organization of Title 29 will make it easier for everyone involved with, or interested in municipal government to understand the state's municipal code. Simplification included the clarification of the range of local governmental powers and how those powers can be assumed.

Flexibility in carrying out local administrative and procedural responsibilities meant reducing unnecessary statutory directives on local actions. The Policy Advisory Group recommended the deletion of a number of technical requirements on how local governments were to undertake day-to-day functions. These provisions included requirements for specifying a particular date for council and assembly meetings, the form of local ordinances, specific election dates and procedures, and so on.

However, in meeting the public's desire for more flexibility in the functioning of local government, the Policy Advisory Group was well aware that they were in effect eliminating a model for governmental activities that could be used by newly formed municipalities. Although it does not appear in the proposed revision of Title 29, the Policy Advisory Group found that more technical assistance in defining local government's structure and procedure will be required by local governments once the revision of Title 29 is adopted. To this end, the committee recommends that the capability of the Department of Community and Regional Affairs to provide expanded technical assistance be evaluated and matched to the future demand for the Department's services.

The mandate given the Policy Advisory Group was to prepare a revision of Title 29 for submission to the Legislature. With the submission of this bill, the Policy Advisory Group has fulfilled their mandate. However, there were a number of major policy issues brought before the Policy Advisory Group that could not be addressed within the scope of the revision of Title 29. I would like to outline some of these major issues which the Policy Advisory Group feels will merit further consideration by the Legislature.

The major policy issue beyond the scope of the Title 29 revision was the widespread demand for more local control, both over local matters and over state and federal programs affecting communities. The public brought a variety of proposals before the Policy Advisory Group, from demands for more local direction of state programs, to the granting of municipal rights and powers to Native governments; to the desire for self-governing regional organizations that would be something other than boroughs or unified municipalities. Major policy issues relating to these proposals include the constitutional and statutory basis of such self-governing organizations; questions of representation that must meet federal Supreme Court mandates; and problems of designing mechanisms that will enable the diverse range of local governments to effectively influence state and federal programs.

In testimony before the Policy Advisory Group, two state agencies proposed that local governments consider taking over those agency programs that were primarily local in nature. While responding to the desire for more local control over their programs, neither agency had a clear idea of the cost or manpower requirements such decentralization would place on local governments. As a result, it was not possible to determine whether the total costs of these programs would increase with decentralization, when staff and program costs would be duplicated among several local governments. An important question to be answered by the Legislature, is how much the state is willing to pay to meet the demands for local control. Local governments will need support to carry out statutory mandates. Is the Legislature willing to provide more support to local governments than it presently provides state agencies?

A common problem faced by rural residents is the multiplication of agencies and organizations formed to respond to state and federal program requirements. There was a general call for coordinating and streamlining requirements that now result, in some cases, in up to 10 local boards and organizations. These may include a city council, IRA council, village corporation board and subcommittees, membership in various non-profit organizations (formed to provide health services, state and federal contract construction services, BIA funded social services, regional housing authorities, and so on) and regional Coastal Resource Service Areas and Regional Education Attendance Areas and so on.

Comments on the "pros" and "cons" of the service area concept and its use were brought to the Policy Advisory Group. Some rural residents expressed a strong feeling that the creation of separate single-purpose service areas led to a fragmenting of local control. Others felt that service areas would be the best vehicle for additional public services in the unorganized borough. In any event, the creation of additional single-purpose service areas, to be superimposed on the existing system of REAAs, Coastal Resources Service Areas and Aquaculture Districts, needs to be given serious thought. This is especially true in light of the constitutional intent of a simplified system of local government. Or, put in another way, should the Legislature create a multi-layered type of governmental system in the unorganized borough that is considered undesirable within an organized city or borough?

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In short there is a widespread and growing concern in all areas of the state about the nature and structure of local government. The proposed revision of Title 29 addresses many of the difficulties of organized local governments, and will hopefully make it easier for areas to incorporate and function as municipalities. In addition to this revision the Legislature will be faced with a number of questions on the very substance and purpose of local government and local self-determination that go far beyond the recommended revision of Title 29. In order to answer these public concerns, the Legislature will have to be prepared to reassess the constitutional and philosophical foundations of local government in Alaska.

I see the revision of Title 29 as the first necessary step in this reevaluation of the structure and function of local government in our state. When our constitution was adopted in 1956, its provisions for local government were the most advanced in the nation. As with the update of the municipal code in 1972, the present effort to revise Title 29 reflects a continuing commitment to developing a healthy, flexible, and most functional system of local government possible to meet Alaska's needs.

In closing, I would like to request that this memorandum be made a part of the Journal Supplement upon submission of this bill.

Attachments:
Minority Report
Policy Group Members List
Technical Group Members List

CHARLIE PARR
*ALASKA LEGISLATURE*

S. R. Box 50599
Fairbanks, Alaska 99701
456-3029

Pouch V
Juneau, Alaska 99811
465-4908

January 21, 1981

Senator Arliss Sturgulewski
Chairman
Title 29 Revision Commission
Pouch V
Juneau, Alaska 99811

Dear Senator Sturgulewski:

As we discussed during the Title 29 Revision Commission meeting of January 17-18, 1981, I wish to submit a minority report.

In general, I agree with the direction taken, a[illegible] in some instances do not consider issues of sufficient import to justify taking written exception. I think it speaks well for the Commission that mine will probably be the only minority report, and that I can confine myself to two issues.

It was a pleasure to work with you.

Sincerely,

Charles H. Parr

TITLE 29 REVISION COMMISSION

Minority Report

At the first meeting of the Commission I laid out what appeared to me to be two general directions in which work should proceed:

1 - The garage mechanic, housewife, or other average citizen, when elected to the city council or borough assembly, should be able to read the Code and understand it.

2 - After ensuring that the Code contained provisions which would guarantee democratic rights common to all citizens of the State, we should "take the strings off" the municipalities as much as possible.

In my view, the Commission's work went a long way toward reaching this first goal. Although the Code is still somewhat confusing, it is much improved in organization and a number of passages with convoluted syntax have been removed.

I do not agree with the Commission's recommendation for abolition of the third class borough. No one has, in my judgment, presented compelling arguments for depriving citizens of this local government alternative. The third class borough at the present time offers a form of local government which is less demanding than that of the first and second class borough, and yet it has powers other than education. It may exercise these powers on a service area basis.

Apparently the crux of the matter is the fact that the third class borough is not required to exercise planning and zoning functions and this is anathema to the professional planners in our midst. I can find no other justification for their opposition.

The second point on which I wish to disassociate myself from the Commission's majority recommendations is that of State compliance with local subdivision regulation. It is common knowledge that the present administration, by its refusal to release land into private ownership, held down the safety valve on the steam boiler and caused the Beirne initiative explosion. We were rescued from the (probably) devastating effects of the initiative by the Supreme Court ruling that it was an appropriation and therefore unconstitutional. In an attempt to release some pressure from the "boiler", the Legislature has established the land disposal program and is insistent that sufficient land be made available to prevent a future such initiative which might meet constitutional tests.

If the State must meet subdivision requirements, several things will happen:

1 - The land disposal program will be delayed as necessary roads, and perhaps other improvements, must be constructed and pass municipal inspection before the land can be disposed of.

2 - The cost of improvements will be high and the State will be faced with a large subsidy for each parcel disposed of. If this large subsidy is not to be made, the parcels of land will be priced out of reach of many of the persons who would like to have them (especially young couples getting started).

3 - Subdivision standards vary from place to place. The State will be, in effect, favoring those municipalities which have higher subdivision standards. This could well lead to municipalities upgrading their standards in order to receive more from the State.

The whole issue of what the State should do in land disposal will be before the Legislature this year and a number of major policy decisions need to be made. I do not consider it appropriate to make such decisions in what was intended to be a non-policy revision of Title 29.

Charles H. Parr

TITLE 29 REVISION POLICY ADVISORY GROUP

Senator Arliss Sturgulewski
Chairman

Senator Bob Mulcahy

Representative Charles Parr

Representative Margaret Branson

Ted Berns
Attorney, Municipality of Anchorage

Terry Cook
City Council, City of Alakanuk

Marilyn Dimmick
Borough Assembly, Kenai Peninsula Borough

James Kohler
City Manager, City of Yakutat

Ronald Larson,
Mayor, Matanuska-Susitna Borough

Gene Moore
City Manager, City of Kotzebue

Jonathan Solomon
Mayor, City of Fort Yukon

Donna Sherby
City Clerk, City of Cordova

Russell Walker
Attorney, City and Borough of Ketchikan

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Allan Tesche
Attorney, Matanuska-Susitna Borough

Richard Garnett, III
Attorney, Kodiak Borough

John Messenger
Bond Counsel, Preston, Thorgrimson, Ellis, Holman & Fletcher

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Jim Nordale
Attorney, Fairbanks North Star Borough

Gerald Lee Sharp
Attorney, City and Borough of Juneau

JoAnne Shanley
City Clerk, City of Seward

TITLE 29 REVISION EX-OFFICIO MEMBERS

Ginny Chitwood
Executive Director, Alaska Municipal League

Palmer McCarter
Director, Division of Local Government Assistance
Department of Community and Regional Affairs

Phil Smith
Director, RuralCAP

To A-12

March 31, 1980

TO: Senator Clem Tillion

FROM: Senator Arliss Sturgulewski

RE: Revision of AS 29

It is generally recognized, especially by those who work most closely with it, that AS 29 is in need of revision. Since the time of original enactment, changes in the title, problems in its application, and policy questions of importance have been noted by municipal attorneys, city managers and clerks, and such other municipal officials as assessors. The Legislative Revisor has indicated that AS 29 should be next approached in terms of needed revision.

The work of revision is complicated and, at times, highly technical. I have received numerous inquiries and requests for a process by which to revise AS 29. I have discussed this problem with many people, including Mr. Berrier, and Ms. Chitwood of the Alaska Municipal League.

I would like to suggest the following as an approach to the revision of AS 29 during the period of time between this session and the 1981 session. Funds and responsibility for this project would be directed by the Legislative Council to Mr. Billy Berrier, Legislative Legal Services, to conduct the revision. I foresee the project as follows: two groups would be selected by Mr. Berrier from recommendations provided by the Department of Community and Regional Affairs, Alaska Municipal League and other interested and affected parties. The first group would be a policy advisory group composed of a variety of perspectives and interests, representing the diversity of local governments across the state, and would include a representative of the legislature. The second, a much smaller group, would be a working group, composed of people who have had experience in the application of AS 29. The work group should consist of municipal attorneys, representatives of the Department of Community and Regional Affairs and the Department of Law, as well as a staff member of Legislative Legal Services; other municipal staff functions should also be represented, such as managers or clerks. While the actual technical work would be conducted by the working group, the policy group would provide overall guidance and assistance on policy questions.

Administrative and secretarial responsbility would rest in Legal Services. In order to support this project funds would be required for travel and per diem. Most local governments will be glad to contribute staff time to this project. However, for both the policy and the working group it will be necessary to provide travel funds. As often as possibl teleconferencing will be used to reduce travel needs and to expedite the

project. A draft bill will be ready for January 1981.

It is anticipated that $20,000 should cover the cost of this project. Any funds remaining would be returned.

Thank you for your attention to this matter.

SCOMM

#23:6

# IRA + Traditional Councils

## Issues and legislation

Introduced for Discussion
Primarily - needs
conceptual work 9/25

Introduced: 4/17/80
Referred: ~~Community &~~
Regional Affairs

IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

SENATE BILL NO. 565

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to Native village governments.

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

* Section 1. FINDINGS AND PURPOSE. (a) The legislature has determined that

(1) there exist in the state several communities which have Native village governments recognized as the traditional local government; and

(2) the law and customs of Native village governments include notions of democracy, liberty and the exercise of personal rights consistent with the state and federal constitution.

(b) It is the purpose of this Act to

(1) insure that the state recognizes Native village governments as local governments and encourages them in the administration of government for the benefit of their people; and

(2) provide for interaction between the state government and Native village governments.

* Sec. 2. AS 29 is amended by adding a new chapter to read:

CHAPTER 70. NATIVE VILLAGE GOVERNMENTS.

Sec. 29.70.010. NATIVE VILLAGE GOVERNMENTS. A Native village government, in a village which is not incorporated and not an organized borough is recognized by the state as the governing body of that village A Native village government recognized by the state under this section is eligible to participate in all state programs to the same extent and in the same manner as a second class city. A Native village government recognized under this section is entitled to notice concerning proposed

actions by the state to the same extent as the government of a second class city is entitled to notice. A Native village government recognized under this section shall be consulted by the state on state actions and programs which affect the village to the same extent that the government of a second class city is consulted on state actions and programs.

Sec. 29.70.020. AGREEMENTS. A Native village government or group of Native village governments may negotiate agreements with the commissioner of community and regional affairs regarding coordination of state activities with the activities of the Native village government or group of native village governments, including proposals to coordinate state services with services provided by a Native village government such as judicial services, law enforcement services, and correctional services.

(b) When the commissioner of community and regional affairs negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The commissioner of community and regional affairs shall next submit the proposed agreement to the governor. The governor may approve an agreement and upon approval the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.70.030. NONDISCRIMINATION. A Native village government which is a party to an agreement under AS 29.70.020 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent on racial classification or membership in a Native tribe, clan, or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.70.020 void.

Sec. 29.70.040. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or Native village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or a regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing in this chapter deprives a Native person, Native village, or Native corporation of any right, privilege or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government.

Sec. 29.70.050. DEFINITIONS. In this chapter

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered, or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by authority of the Act of Congress of June 18, 1934, 25 U.S.C. sec. 476, or a local governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 U.S.C. secs. 1601 et seq.

## COMPOSITE INDIAN REORGANIZATION ACT FOR ALASKA

Alaska amendment of May 1, 1936:

That sections 1, 5, 7, 8, 15, 17, and 19 of the Act entitled "An Act to conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes", approved June 18, 1934 (48 Stat. 984), shall hereafter apply to the Territory of Alaska: *Provided*, That groups of Indians in Alaska not heretofore recognized as bands or tribes, but having a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district, may organize to adopt constitutions and bylaws and to receive charters of incorporation and Federal loans under sections 16, 17, and 10 of the Act of June 18, 1934 (48 Stat. 984).

SEC. 2. That the Secretary of the Interior is hereby authorized to designate as an Indian reservation any area of land which has been reserved for the use and occupancy of Indians or Eskimos by section 8 of the Act of May 17, 1884 (23 Stat. 26), or by section 14 or section 15 of the Act of March 3, 1891 (26 Stat. 1101), or which has been heretofore reserved under any executive order and placed under the jurisdiction of the Department of the Interior or any bureau thereof, together with additional public lands adjacent thereto, within the Territory of Alaska, or any other public lands which are actually occupied by Indians or Eskimos within said Territory: *Provided*, That the designation by the Secretary of the Interior of any such area of land as a reservation shall be effective only upon its approval by the vote, by secret ballot, of a majority of the Indian or Eskimo residents thereof who vote at a special election duly called by the Secretary of the Interior upon thirty days' notice: *Provided, however*, That in each instance the total vote cast shall not be less than 30 per centum of those entitled to vote: *Provided further*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

The following provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. p. 984), are applicable to Alaska:

That hereafter no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

* * * * * * *

SEC. 5. The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift,

exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona and New Mexico, in the event that the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S. 2499 and H. R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H. R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico and for other purposes, or similar legislation, become law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to this Act shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

* * * * * * *

SEC. 7. The Secretary of the Interior is hereby authorized to proclaim new Indian reservations on lands acquired pursuant to any authority conferred by this Act, or to add such lands to existing reservations: *Provided*, That lands added to existing reservations shall be designated for the exclusive use of Indians entitled by enrollment or by tribal membership to residence at such reservations.

SEC. 8. Nothing contained in this Act shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or established hereafter.

SEC. 9. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, but not to exceed $250,000 in any fiscal year, to be expended at the order of the Secretary of the Interior, in defraying the expenses of organizing Indian chartered corporations or other organizations created under this Act.

SEC. 10. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, the sum of $10,000,000 to be established as a revolving fund from which the Secretary of the Interior, under such rules and regulations as he may prescribe, may make loans to Indian chartered corporations for the purpose of promoting the economic development of such tribes and of their members, and may defray the expenses of administering such loans. Repayment of amounts loaned under this authorization shall be credited to the revolving fund and shall be available for the purposes for which the fund is established. A report shall be made annually to Congress of transactions under this authorization.

SEC. 11. There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $250,000 annually, together with any unexpended balances of previous appropriations made pursuant to this section, for loans to Indians for the payment of tuition and other expenses in recognized vocational and trade schools: *Provided*, That not more than $50,000 of such sum shall be available for loans to Indian students in high schools and colleges. Such loans shall be reimbursable under rules established by the Commissioner of Indian Affairs.

SEC. 12. The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil-service laws, to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

* * * * * * *

SEC. 15. Nothing in this Act shall be construed to impair or prejudice any claim or suit of any Indian tribe against the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

SEC. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

SEC. 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation

to such tribe: *Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

* * * * * * *

SEC. 19. The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendents of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation. The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

Act of May 17, 1884 (23 Stats. 26):

SEC. 14. That none of the provisions of the last two preceding sections of this Act shall be so construed as to warrant the sale of any lands belonging to the United States which shall contain coal or the precious metals, or any town site, or which shall be occupied by the United States for public purposes, or which shall be reserved for such purposes, or to which the natives of Alaska have prior rights by virtue of actual occupation, or which shall be selected by the United States Commissioner of Fish and Fisheries on the island of Kadiak and Afognak for the purpose of establishing fish-culture stations. And all tracts of land not exceeding six hundred and forty acres in any one tract now occupied as missionary stations in said district of Alaska are hereby excepted from the operation of the last preceding sections of this act. No portion of the islands of the Pribylov Group or the Seal Islands of Alaska shall be subject to sale under this Act; and the United States reserves, and there shall be reserved in all patents issued under the provisions of the last two preceding sections the right of the United States to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all the water of the lands granted frequented by salmon.

SEC. 15. That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in Southeastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who

have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior.

Act of March 3, 1891 (26 Stat. 1101):

SEC. 8. * * * *Provided*, That the Indians or other persons in said district shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire title to such lands is reserved for future legislation by Congress: *And provided further*, That parties who have located mines or mineral privileges therein under the law of the United States applicable to the public domain, or who have occupied and improved or exercised acts of ownership over such claims, shall not be disturbed therein, but shall be allowed to perfect their title to such claims by payment as aforesaid: *And provided lso*, That the land not exceeding six hundred and forty acres at any station now occupied as missionary stations among the Indian tribes in said section, with the improvements thereon erected by or for such societies, shall be continued in the occupancy of the several religious societies to which said missionary stations respectively belong until action by Congress. But nothing contained in this act shall be construed to put in force in said district the general land laws of the United States.

U. S. GOVERNMENT PRINTING OFFICE : 1939

Public Law 93-638
93rd Congress, S. 1017
January 4, 1975

# An Act

To provide maximum Indian participation in the Government and education of the Indian people; to provide for the full participation of Indian tribes in programs and services conducted by the Federal Government for Indians and to encourage the development of human resources of the Indian people; to establish a program of assistance to upgrade Indian education; to support the right of Indian citizens to control their own educational activities; and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "Indian Self-Determination and Education Assistance Act".

Indian Self-Determination and Education Assistance Act.
25 USC 450 note.

## CONGRESSIONAL FINDINGS

25 USC 450.

SEC. 2. (a) The Congress, after careful review of the Federal Government's historical and special legal relationship with, and resulting responsibilities to, American Indian people, finds that—

(1) the prolonged Federal domination of Indian service programs has served to retard rather than enhance the progress of Indian people and their communities by depriving Indians of the full opportunity to develop leadership skills crucial to the realization of self-government, and has denied to the Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities; and

(2) the Indian people will never surrender their desire to control their relationships both among themselves and with non-Indian governments, organizations, and persons.

(b) The Congress further finds that—

(1) true self-determination in any society of people is dependent upon an educational process which will insure the development of qualified people to fulfill meaningful leadership roles;

(2) the Federal responsibility for and assistance to education of Indian children has not effected the desired level of educational achievement or created the diverse opportunities and personal satisfaction which education can and should provide; and

(3) parental and community control of the educational process is of crucial importance to the Indian people.

## DECLARATION OF POLICY

25 USC 450a.
88 STAT. 2203
88 STAT. 2204

SEC. 3. (a) The Congress hereby recognizes the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities.

(b) The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with and responsibility to the Indian people through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.

(c) The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and

excel in the life areas of their choice, and to achieve the measure of self-determination essential to their social and economic well-being.

DEFINITIONS

25 USC 450b.

SEC. 4. For the purposes of this Act, the term—

(a) "Indian" means a person who is a member of an Indian tribe;

(b) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(c) "Tribal organization" means the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefitting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant;

(d) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(f) "State education agency" means the State board of education or other agency or officer primarily responsible for supervision by the State of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

REPORTING AND AUDIT REQUIREMENTS

Record-keeping.
25 USC 450a.

SEC. 5. (a) Each recipient of Federal financial assistance from the Secretary of Interior or the Secretary of Health, Education, and Welfare, under this Act, shall keep such records as the appropriate Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

88 STAT. 2204
88 STAT. 2205

(b) The Comptroller General and the appropriate Secretary, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in the preceding subsection of this section, have access (for the purpose of audit and examination) to any books, documents, papers, and records of such recipients which in the opinion of the Comptroller General or the appropriate Secretary may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to in the preceding subsection.

(c) Each recipient of Federal financial assistance referred to in subsection (a) of this section shall make such reports and information available to the Indian people served or represented by such recipient as and in a manner determined to be adequate by the appropriate Secretary.

(d) Any funds paid to a financial assistance recipient referred to in subsection (a) of this section and not expended or used for the purposes for which paid shall be repaid to the Treasury of the United States.

PENALTIES

SEC. 6. Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of a contract, subcontract, grant, or subgrant pursuant to this Act or the Act of April 16, 1934 (48 Stat. 596), as amended, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, shall be fined not more than $10,000 or imprisoned for not more than two years, or both, but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both. 25 USC 450d. 25 USC 452.

WAGE AND LABOR STANDARDS

SEC. 7. (a) All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting or decorating of buildings or other facilities in connection with contracts or grants entered into pursuant to this Act, shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act of March 3, 1931 (46 Stat. 1494), as amended. With respect to construction, alteration, or repair work to which the Act of March 3, 1921 is applicable under the terms of this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934 (48 Stat. 948, 40 U.S.C. 276c). 25 USC 450e. 40 USC 276a note. 5 USC app. II.

(b) Any contract, subcontract, grant, or subgrant pursuant to this Act, the Act of April 16, 1934 (48 Stat. 596), as amended, or any other Act authorizing Federal contracts with or grants to Indian organizations or for the benefit of Indians, shall require that to the greatest extent feasible— 25 USC 452.

(1) preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians; and

(2) preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77). 25 USC 1452. 88 STAT. 2205

88 STAT. 2206

CARRYOVER OF FUNDS

SEC. 8. The provisions of any other laws to the contrary notwithstanding, any funds appropriated pursuant to the Act of November 2, 1921 (42 Stat. 208), for any fiscal year which are not obligated and expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure during such succeeding fiscal year. 25 USC 13a. 25 USC 13, 52a.

## TITLE I—INDIAN SELF-DETERMINATION ACT

Citation of title.
25 USC 450f note.

SEC. 101. This title may be cited as the "Indian Self-Determination Act".

CONTRACTS BY THE SECRETARY OF THE INTERIOR

25 USC 450f.

SEC. 102. (a) The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

25 USC 452.

25 USC 13, 52a.

(b) Whenever the Secretary declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days, (2) provide to the extent practicable assistance to the tribe or tribal organization to overcome his stated objections, and (3) provide the tribe with a hearing, under such rules and regulations as he may promulgate, and the opportunity for appeal on the objections raised.

(c) The Secretary is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance.

CONTRACTS BY THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

25 USC 450g.

SEC. 103. (a) The Secretary of Health, Education, and Welfare is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to carry out any or all of his functions, authorities, and responsibilities under the Act of August 5, 1954 (68 Stat. 674), as amended: *Provided, however*. That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted for will not be satisfactory; (2) adequate protection of trust resources is not assured; or (3) the proposed project or function to be contracted for cannot be properly completed or main-

88 STAT. 2206
88 STAT. 2207
42 USC 2001.

tained by the proposed contract: *Provided further*, That the Secretary of Health, Education, and Welfare, in arriving at his finding, shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

(b) Whenever the Secretary of Health, Education, and Welfare declines to enter into a contract or contracts pursuant to subsection (a) of this section, he shall (1) state his objections in writing to the tribe within sixty days; (2) provide, to the extent practicable, assistance to the tribe or tribal organization to overcome his stated objections; and (3) provide the tribe with a hearing, under such rules and regulations as he shall promulgate, and the opportunity for appeal on the objections raised. Hearing.

(c) The Secretary of Health, Education, and Welfare is authorized to require any tribe requesting that he enter into a contract pursuant to the provisions of this title to obtain adequate liability insurance: *Provided, however*, That each such policy of insurance shall contain a provision that the insurance carrier shall waive any right it may have to raise as a defense the tribe's sovereign immunity from suit, but that such waiver shall extend only to claims the amount and nature of which are within the coverage and limits of the policy and shall not authorize or empower such insurance carrier to waive or otherwise limit the tribe's sovereign immunity outside or beyond the coverage and limits of the policy of insurance. Liability insurance.

GRANTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 104. (a) The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to the Act of November 2, 1921 (42 Stat. 208), and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for— 25 USC 450h. 25 USC 13, 52a.

(1) the strengthening or improvement of tribal government (including, but not limited to, the development, improvement, and administration of planning, financial management, or merit personnel systems; the improvement of tribally funded programs or activities; or the development, construction, improvement, maintenance, preservation, or operation of tribal facilities or resources);

(2) the planning, training, evaluation of other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 102 of this Act and the additional costs associated with the initial years of operation under such a contract or contracts;

(3) the acquisition of land in connection with items (1) and (2) above: *Provided*, That in the case of land within reservation boundaries or which adjoins on at least two sides lands held in trust by the United States for the tribe or for individual Indians, the Secretary of Interior may (upon request of the tribe) acquire such land in trust for the tribe; or

(4) the planning, designing, monitoring, and evaluating of Federal programs serving the tribe.

(b) The Secretary of Health, Education, and Welfare may, in accordance with regulations adopted pursuant to section 107 of this Act, make grants to any Indian tribe or tribal organization for—

(1) the development, construction, operation, provision, or maintenance of adequate health facilities or services including the training of personnel for such work, from funds appropriated to the Indian Health Service for Indian health services or Indian health facilities; or

(2) planning, training, evaluation or other activities designed to improve the capacity of a tribal organization to enter into a contract or contracts pursuant to section 103 of this Act.

(c) The provisions of any other Act notwithstanding, any funds made available to a tribal organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made.

PERSONNEL

SEC. 105. (a) Section 3371(2) of chapter 33 of title 5, United States Code, is amended (1) by deleting the word "and" immediately after the semicolon in clause (A); (2) by deleting the period at the end of clause (B) and inserting in lieu thereof a semicolon and the word "and"; and (3) by adding at the end thereof the following new clause:

"(C) any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and includes any tribal organization as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act."

43 USC 1601 note.

Ante, p. 2204.

(b) The Act of August 5, 1954 (68 Stat. 674), as amended, is further amended by adding a new section 8 after section 7 of the Act, as follows:

42 USC 2004a.

"SEC. 8. In accordance with subsection (d) of section 214 of the Public Health Service Act (58 Stat. 690), as amended, upon the request of any Indian tribe, band, group, or community, commissioned officers of the Service may be assigned by the Secretary for the purpose of assisting such Indian tribe, group, band, or community in carrying out the provisions of contracts with, or grants to, tribal organizations pursuant to section 102, 103, or 104 of the Indian Self-Determination and Education Assistance Act".

42 USC 2004b.

42 USC 215.

Ante, p. 2206, 2207.

(c) Paragraph (2) of subsection (a) of section 6 of the Military Selective Service Act of 1967 (81 Stat. 100), as amended, is amended by inserting after the words "Environmental Science Services Administration" the words "or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended".

50 USC app. 456.

42 USC 2001.

(d) Section 502 of the Intergovernmental Personnel Act of 1970 (84 Stat. 1909, 1925) is amended—

42 USC 4762.

(1) by deleting the word "and" after paragraph (3);

(2) by deleting the period after paragraph (4) and inserting in lieu thereof a semicolon and the word "and"; and

(3) by adding at the end thereof the following new paragraph:

"(5) Notwithstanding the population requirements of section 203(a) and 303(c) of this Act, a 'local government' and a 'general local government' also mean the recognized governing body of an Indian tribe, band, pueblo, or other organized group or community, including any Alaska Native village, as defined in the Alaska Native Claims Settlement Act (85 Stat. 688), which performs substantial governmental functions. The requirements of sections 203(c) and 303(d) of this Act, relating to reviews by the

42 USC 4723, 4743.

88 STAT. 2208

88 STAT. 2209

43 USC 1601 note.

42 USC 4723, 4743.

Governor of a State, do not apply to grant applications from the governing body of an Indian tribe, although nothing in this Act is intended to discourage or prohibit voluntary communication and cooperation between Indian tribes and State and local governments."

Certain tribal organization employees, coverage, rights, and benefits. 25 USC 4501.

(e) Notwithstanding any other law, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization on or before December 31, 1985, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

Work injuries, compensation. 5 USC 8101.

(1) To retain coverage, rights, and benefits under subchapter I of chapter 81 ("Compensation for Work Injuries") of title 5, United States Code, and for this purpose his employment with the tribal organization shall be deemed employment by the United States. However, if an injured employee, or his dependents in case of his death, receives from the tribal organization any payment (including an allowance, gratuity, payment under an insurance policy for which the premium is wholly paid by the tribal organization, or other benefit of any kind) on account of the same injury or death, the amount of that payment shall be credited against any benefit payable under subchapter I of chapter 81 of title 5, United States Code, as follows:

(A) payments on account of injury or disability shall be credited against disability compensation payable to the injured employee; and

(B) payments on account of death shall be credited against death compensation payable to dependents of the deceased employee.

Retirement. 5 USC 8301.

(2) To retain coverage, rights, and benefits under chapter 83 ("Retirement") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Civil Service Retirement and Disability Fund (section 8348 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed creditable service under section 8332 of title 5, United States Code. Days of unused sick leave to the credit of an employee under a formal leave system at the time the employee leaves Federal employment to be employed by a tribal organization remain to his credit for retirement purposes during covered service with the tribal organization.

Health insurance. 5 USC 8901.

(3) To retain coverage, rights, and benefits under chapter 89 ("Health Insurance") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organization are currently deposited in the Employee's Health Benefit Fund (section 8909 of title 5, United States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 89 of title 5, United States Code.

Life insurance. 5 USC 8701.

(4) To retain coverage, rights, and benefits under chapter 87 ("Life Insurance") of title 5, United States Code, if necessary employee deductions and agency contributions in payment for the coverage, rights, and benefits for the period of employment with the tribal organizations are currently deposited in the Employee's Life Insurance Fund (section 8714 of title 5, United

88 STAT. 2209
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States Code); and the period during which coverage, rights, and benefits are retained under this paragraph is deemed service as an employee under chapter 87 of title 5, United States Code.

5 USC 8701.

(f) During the period an employee is entitled to the coverage, rights, and benefits pursuant to the preceding subsection, the tribal organization employing such employee shall deposit currently in the appropriate funds the employee deductions and agency contributions required by paragraphs (2), (3), and (4) of such preceding subsection.

(g) An employee who is employed by a tribal organization under subsection (e) of this section and such tribal organization shall make the election to retain the coverages, rights, and benefits in paragraphs (1), (2), (3), and (4) of such subsection (e) before the date of his employment by a tribal organization. An employee who is employed by a tribal organization under subsection (e) of this section shall continue to be entitled to the benefits of such subsection if he is employed by another tribal organization to perform service in activities of the type described in such subsection.

"Employee."

(h) For the purposes of subsections (e), (f), and (g) of this section, the term "employee" means an employee as defined in section 2105 of title 5, United States Code.

Regulations.

(i) The President may prescribe regulations necessary to carry out the provisions of subsections (e), (f), (g), and (h) of this section and to protect and assure the compensation, retirement, insurance, leave, reemployment rights, and such other similar civil service employment rights as he finds appropriate.

(j) Anything in sections 205 and 207 of title 18, United States Code to the contrary notwithstanding, officers and employees of the United States assigned to an Indian tribe as authorized under section 3372 of title 5, United States Code, or section 2072 of the Revised Statutes (25 U.S.C. 48) and former officers and employees of the United States employed by Indian tribes may act as agents or attorneys for or appear on behalf of such tribes in connection wth any matter pending before any department, agency, court, or commission, including any matter in which the United States is a party or has a direct and substantial interest: *Provided*, That each such officer or employee or former officer or employee must advise in writing the head of the department, agency, court, or commission with which he is dealing or appearing on behalf of the tribe of any personal and substantial involvement he may have had as an officer or employee of the United States in connection with the matter involved.

ADMINISTRATIVE PROVISIONS

25 USC 450j.

SEC. 106. (a) Contracts with tribal organizations pursuant to sections 102 and 103 of this Act shall be in accordance with all Federal contracting laws and regulations except that, in the discretion of the appropriate Secretary, such contracts may be negotiated without advertising and need not conform with the provisions of the Act of

40 USC 270a.

August 24, 1935 (49 Stat. 793), as amended: *Provided*, That the appropriate Secretary may waive any provisions of such contracting laws or regulations which he determines are not appropriate for the purposes of the contract involved or inconsistant with the provisions of this Act.

(b) Payments of any grants or under any contracts pursuant to section 102, 103, or 104 of this Act may be made in advance or by way

88 STAT. 2210

of reimbursement and in such installments and on such conditions as

88 STAT. 2211

the appropriate Secretary deems necessary to carry out the purposes of this title. The transfer of funds shall be scheduled consistent with program requirements and applicable Treasury regulations, so as to

minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by the tribal organization, whether such disbursement occurs prior to or subsequent to such transfer of funds. Tribal organizations shall not be held accountable for interest earned on such funds, pending their disbursement by such organization.

Contracts, term.

(c) Any contract requested by a tribe pursuant to sections 102 and 103 of this Act shall be for a term not to exceed one year unless the appropriate Secretary determines that a longer term would be advisable: *Provided*, That such term may not exceed three years and shall be subject to the availability of appropriations: *Provided, further*, That the amounts of such contracts may be renegotiated annually to reflect factors, including but not limited to cost increases beyond the control of a tribal organization.

(d) Notwithstanding any provision of law to the contrary, the appropriate Secretary may, at the request or consent of a tribal organization, revise or amend any contract or grant made by him pursuant to section 102, 103, or 104 of this Act with such organization as necessary to carry out the purposes of this title: *Provided, however*, That whenever an Indian tribe requests retrocession of the appropriate Secretary for any contract entered into pursuant to this Act, such retrocession shall become effective upon a date specified by the appropriate Secretary not more than one hundred and twenty days from the date of the request by the tribe or at such later date as may be mutually agreed to by the appropriate Secretary and the tribe.

(e) In connection with any contract or grant made pursuant to section 102, 103, or 104 of this Act, the appropriate Secretary may permit a tribal organization to utilize, in carrying out such contract or grant, existing school buildings, hospitals, and other facilities and all equipment therein or appertaining thereto and other personal property owned by the Government within his jurisdiction under such terms and conditions as may be agreed upon for their use and maintenance.

(f) The contracts authorized under sections 102 and 103 of this Act and grants pursuant to section 104 of this Act may include provisions for the performance of personal services which would otherwise be performed by Federal employees including, but in no way limited to, functions such as determination of eligibility of applicants for assistance, benefits, or services, and the extent or amount of such assistance, benefits, or services to be provided and the provisions of such assistance, benefits, or services, all in accordance with the terms of the contract or grant and applicable rules and regulations of the appropriate Secretary: *Provided*, That the Secretary shall not make any contract which would impair his ability to discharge his trust responsibilities to any Indian tribe or individuals.

(g) Contracts and grants with tribal organizations pursuant to sections 102, 103, and 104 of this Act and the rules and regulations adopted by the Secretaries of the Interior and Health, Education, and Welfare pursuant to section 107 of this Act shall include provisions to assure the fair and uniform provision by such tribal organizations of the services and assistance they provide to Indians under such contracts and grants.

(h) The amount of funds provided under the terms of contracts entered into pursuant to sections 102 and 103 shall not be less than the appropriate Secretary would have otherwise provided for his direct operation of the programs or portions thereof for the period covered by the contract: *Provided*, That any savings in operation under such contracts shall be utilized to provide additional services or benefits under the contract.

88 STAT. 2211
88 STAT. 2212

PROMULGATION OF RULES AND REGULATIONS

25 USC 450k.

SEC. 107. (a) The Secretaries of the Interior and of Health, Education, and Welfare are each authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purposes of carrying out the provisions of this title.

(b)(1) Within six months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each to the extent practicable, consult with national and regional Indian organizations to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall each present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

Publication in Federal Register.

(3) Within eight months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary of the Interior and the Secretary of Health, Education, and Welfare shall promulgate rules and regulations to implement the provisions of this title.

(c) The Secretary of the Interior and the Secretary of Health, Education, and Welfare are authorized to revise and amend any rules or regulations promulgated pursuant to this section: *Provided*, That prior to any revision or amendment to such rules or regulations, the respective Secretary or Secretaries shall present the proposed revision or amendment to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives and shall, to the extent practicable, consult with appropriate national or regional Indian organizations and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

REPORTS

25 USC 450l.

SEC. 108. For each fiscal year during which an Indian tribal organization receives or expends funds pursuant to a contract or grant under this title, the Indian tribe which requested such contract or grant shall submit to the appropriate Secretary a report including, but not limited to, an accounting of the amounts and purposes for which Federal funds were expended, information on the conduct of the program or service involved, and such other information as the appropriate Secretary may request.

REASSUMPTION OF PROGRAMS

25 USC 450m.

SEC. 109. Each contract or grant agreement entered into pursuant to sections 102, 103, and 104 of this Act shall provide that in any case where the appropriate Secretary determines that the tribal organization's performance under such contract or grant agreement involves (1) the violation of the rights or endangerment of the health, safety, or welfare of any persons; or (2) gross negligence or mismanagement in the handling or use of funds provided to the tribal organization pursuant to such contract or grant agreement, such Secretary may

88 STAT. 2213
88 STAT. 2213

under regulations prescribed by him and after providing notice and hearing to such tribal organization, rescind such contract or grant agreement and assume or resume control or operation of the program, activity, or service involved if he determines that the tribal organization has not taken corrective action as prescribed by him: *Provided*, That the appropriate Secretary may, upon notice to a tribal organization, immediately rescind a contract or grant and resume control or operation of a program, activity, or service if he finds that there is an immediate threat to safety and, in such cases, he shall hold a hearing on such action within ten days thereof. Such Secretary may decline to enter into a new contract or grant agreement and retain control of such program, activity, or service until such time as he is satisfied that the violations of rights or endangerment of health, safety, or welfare which necessitated the rescission has been corrected. Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651). Notice and hearing.

EFFECT ON EXISTING RIGHTS

SEC. 110. Nothing in this Act shall be construed as— 25 USC 450n.

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by an Indian tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

## TITLE II—THE INDIAN EDUCATION ASSISTANCE ACT

SEC. 201. This title may be cited as the "Indian Education Assistance Act". Citation of title.

PART A—EDUCATION OF INDIANS IN PUBLIC SCHOOLS 25 USC 455 note.

SEC. 202. The Act of April 16, 1934 (48 Stat. 596), as amended, is further amended by adding at the end thereof the following new sections: 25 USC 452.

"SEC. 4. The Secretary of the Interior shall not enter into any contract for the education of Indians unless the prospective contractor has submitted to, and has had approved by the Secretary of the Interior, an education plan, which plan, in the determination of the Secretary, contains educational objectives which adequately address the educational needs of the Indian students who are to be beneficiaries of the contract and assures that the contract is capable of meeting such objectives: *Provided*, That where students other than Indian students participate in such programs, money expended under such contract shall be prorated to cover the participation of only the Indian students. 25 USC 455.

"SEC. 5. (a) Whenever a school district affected by a contract or contracts for the education of Indians pursuant to this Act has a local school board not composed of a majority of Indians, the parents of the Indian children enrolled in the school or schools affected by such contract or contracts shall elect a local committee from among their number. Such committee shall fully participate in the development of, and shall have the authority to approve or disapprove programs to be conducted under such contract or contracts, and shall carry out such other duties, and be so structured, as the Secretary of the Interior shall by regulation provide: *Provided, however*, That, whenever a local Indian committee or committees established pursuant to section 305 (b)(2)(B)(ii) of the Act of June 23, 1972 (86 Stat. 235) or an Indian advisory school board or boards established pursuant to this Act prior to the date of enactment of this section exists in such school district, 25 USC 456. 88 STAT. 2213

such committee or board may, in the discretion of the affected tribal governing body or bodies, be utilized for the purposes of this section.

"(b) The Secretary of the Interior may, in his discretion, revoke any contract if the contractor fails to permit a local committee to perform its duties pursuant to subsection (a).

25 USC 457.

"Sec. 6. Any school district educating Indian students who are members of recognized Indian tribes, who do not normally reside in the State in which such school district is located, and who are residing in Federal boarding facilities for the purposes of attending public schools within such district may, in the discretion of the Secretary of the Interior, be reimbursed by him for the full per capita costs of educating such Indian students."

Report to congressional committees. 25 USC 457 note.

SEC. 203. After conferring with persons competent in the field of Indian education, the Secretary, in consultation with the Secretary of Health, Education, and Welfare, shall prepare and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives not later than October 1, 1975, a report which shall include:

25 USC 452.

(1) a comprehensive analysis of the Act of April 16, 1934 (48 Stat. 596), as amended, including—

(A) factors determining the allocation of funds for the special or supplemental educational programs of Indian students and current operating expenditures;

(B) the relationship of the Act of April 16, 1934 (48 Stat. 596), as amended, to—

20 USC 236.

(i) title I of the Act of September 30, 1950 (64 Stat. 1100), as amended; and

20 USC 821 note.

(ii) the Act of April 11, 1965 (79 Stat. 27), as amended; and

20 USC 241aa note.

(iii) title IV of the Act of June 23, 1972 (86 Stat. 235); and

20 USC 631.

(iv) the Act of September 23, 1950 (72 Stat. 548), as amended;

(2) a specific program to meet the special educational needs of Indian children who attend public schools. Such program shall include, but need not be limited to, the following:

(A) a plan for the equitable distribution of funds to meet the special or supplemental educational needs of Indian children and, where necessary, to provide general operating expenditures to schools and school districts educating Indian children; and

(B) an estimate of the cost of such program;

(3) detailed legislative recommendations to implement the program prepared pursuant to clause (2); and

Indian-controlled community colleges.

(4) a specific program, together with detailed legislative recommendations, to assist the development and administration of Indian-controlled community colleges.

## PART B—SCHOOL CONSTRUCTION

Contract authority. 25 USC 458.

SEC. 204. (a) The Secretary is authorized to enter into a contract or contracts with any State education agency or school district for the purpose of assisting such agency or district in the acquisition of sites for, or the construction, acquisition, or renovation of facilities (including all necessary equipment) in school districts on or adjacent to or in close proximity to any Indian reservation or other lands held in trust by the United States for Indians, if such facilities are necessary for the education of Indians residing on any such reservation or lands.

(b) The Secretary may expend not less than 75 per centum of such funds as are authorized and appropriated pursuant to this part B on those projects which meet the eligibility requirements under subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended. Such funds shall be allocated on the basis of existing funding priorities, if any, established by the United States Commissioner of Education under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. The United States Commissioner of Education is directed to submit to the Secretary, at the beginning of each fiscal year, commencing with the first full fiscal year after the date of enactment of this Act, a list of those projects eligible for funding under subsections (a) and (b) of section 14 of the Act of September 23, 1950, as amended. 20 USC 644.

(c) The Secretary may expend not more than 25 per centum of such funds as may be authorized and appropriated pursuant to this part B on any school eligible to receive funds under section 208 of this Act.

(d) Any contract entered into by the Secretary pursuant to this section shall contain provisions requiring the relevant State educational agency to—

(1) provide Indian students attending any such facilities constructed, acquired, or renovated, in whole or in part, from funds made available pursuant to this section with standards of education not less than those provided non-Indian students in the school district in which the facilities are situated; and

(2) meet, with respect to such facilities, the requirements of the State and local building codes, and other building standards set by the State educational agency or school district for other public school facilities under its jurisdiction or control or by the local government in the jurisdiction within which the facilities are situated.

(e) The Secretary shall consult with the entity designated pursuant to section 5 of the Act of April 16, 1934 (48 Stat. 596), as amended by this Act, and with the governing body of any Indian tribe or tribes the educational opportunity for the members of which will be significantly affected by any contract entered into pursuant to this section. Such consultation shall be advisory only, but shall occur prior to the entering into of any such contract. The foregoing provisions of this subsection shall not be applicable where the application for a contract pursuant to this section is submitted by an elected school board of which a majority of its members are Indians.

(f) Within ninety days following the expiration of the three year period following the date of the enactment of this Act, the Secretary shall evaluate the effectiveness of the program pursuant to this section and transmit a report of such evaluation to the Congress. Such report shall include— Program evaluation, report to Congress.

(1) an analysis of construction costs and the impact on such costs of the provisions of subsection (f) of this section and the Act of March 3, 1921 (46 Stat. 1491), as amended;

(2) a description of the working relationship between the Department of the Interior and the Department of Health, Education, and Welfare including any memorandum of understanding in connection with the acquisition of data pursuant to subsection (b) of this section;

(3) projections of the Secretary of future construction needs of the public schools serving Indian children residing on or adjacent to Indian reservations;

(4) a description of the working relationship of the Department of the Interior with local or State educational agencies in connection with the contracting for construction, acquisition, or renovation of school facilities pursuant to this section; and

(5) the recommendations of the Secretary with respect to the transfer of the responsibility for administering subsections (a) and (b) of section 14 of the Act of September 23, 1950 (72 Stat. 548), as amended, from the Department of Health, Education, and Welfare to the Department of the Interior.

20 USC 644.

Appropriation.

(g) For the purpose of carrying out the provisions of this section, there is authorized to be appropriated the sum of $35,000,000 for the fiscal year ending June 30, 1974; $35,000,000 for each of the four succeeding fiscal years; and thereafter, such sums as may be necessary, all of such sums to remain available until expended.

PART C—GENERAL PROVISIONS

25 USC 458a.

SEC. 205. No funds from any grant or contract pursuant to this title shall be made available to any school district unless the Secretary is satisfied that the quality and standard of education, including facilities and auxiliary services, for Indian students enrolled in the schools of such district are at least equal to that provided all other students from resources, other than resources provided in this title, available to the local school district.

25 USC 458b.

SEC. 206. No funds from any contract or grant pursuant to this title shall be made available by any Federal agency directly to other than public agencies and Indian tribes, institutions, and organizations: *Provided*, That school districts, State education agencies, and Indian tribes, institutions, and organizations assisted by this title may use funds provided herein to contract for necessary services with any appropriate individual, organization, or corporation.

25 USC 458e.

SEC. 207. (a)(1) Within six months from the date of enactment of this Act, the Secretary shall, to the extent practicable, consult with national and regional Indian organizations with experiences in Indian education to consider and formulate appropriate rules and regulations to implement the provisions of this title.

(2) Within seven months from the date of enactment of this Act, the Secretary shall present the proposed rules and regulations to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives.

Rules and regulations, publication in Federal Register.

(3) Within eight months from the date of enactment of this Act, the Secretary shall publish proposed rules and regulations in the Federal Register for the purpose of receiving comments from interested parties.

(4) Within ten months from the date of enactment of this Act, the Secretary shall promulgate rules and regulations to implement the provisions of this title.

(b) The Secretary is authorized to revise and amend any rules or regulations promulgated pursuant to subsection (a) of this section: *Provided*, That prior to any revision or amendment to such rules or regulations the Secretary shall, to the extent practicable, consult with appropriate national and regional Indian organizations, and shall publish any proposed revisions in the Federal Register not less than sixty days prior to the effective date of such rules and regulations in order to provide adequate notice to, and receive comments from, other interested parties.

Publication in Federal Register.

25 USC 458d.

SEC. 208. The Secretary is authorized and directed to provide funds, pursuant to this Act; the the Act of April 16, 1934 (48 Stat. 596), as amended; or any other authority granted to him to any tribe or tribal organization which controls and manages any previously private

25 USC 452.

school. The Secretary shall transmit annually to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a report on the educational assistance program conducted pursuant to this section. Report to congressional committees.

SEC. 209. The assistance provided in this Act for the education of Indians in the public schools of any State is in addition and supplemental to assistance provided under title IV of the Act of June 23, 1972 (86 Stat. 235). 25 USC 455e. 20 USC 1001 note.

Approved January 4, 1975.

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LEGISLATIVE HISTORY:

HOUSE REPORT No. 93-1600 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: Nos. 93-682 and 93-762 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 120 (1974):
Feb. 8, considered and passed Senate.
Feb. 18, action of Feb. 8 vacated.
Apr. 1, reconsidered and passed Senate.
Dec. 19, considered and passed House, amended; Senate concurred in House amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 11, No. 2:
Jan. 4, Presidential statement.

August 28, 1979

The Honorable Arlis Sturgulewski,
Senator
Alaska State Senate
2957 Sheldon Jackson Street
Anchorage, Alaska 99501

Dear Senator Sturgulewski:

Re: Indian Self-Determination and BIA Contracting

In 1975 the U.S. Congress enacted the Indian Self-Determination and Education Assistance Act. This act had a pronounced effect upon the administration of Federal Indian programs. Nationally, the result was a decentralization of Federal Bureaucracies and a corresponding move towards local reservation control and administration of Indian and Native American programs. In Alaska, the result has been the strengthening and growth of Alaska Native Non-profit Corporations through the availability of increased Federal program dollars.

In the Indian Self-Determination Act it specifically identifies Alaska Native villages, or regional or village corporations as having "Indian Tribe" status. The act further states that any recognized Indian tribe with an accountable "Tribal Organization" can negotiate and contract for services normally provided to Indian and Native Americans by the U.S. Department of Interior and HEW.

There are a variety of federally funded programs currently being contracted out to Alaska Native Non-Profit Corporations. The Bureau of Indian Affairs (BIA) contracts to the non-profits for the provision of Social Services, Employment Assistance and Johnson O'Malley funds (educational). HEW through Indian Health Service (IHA) contracts for the provision of health services to a variety of Alaska Native Health entities. The U.S. Department of Labor contracts Indian and Native American CETA funds to 14 Native Non-

profit corporations throughout Alaska. HUD contracts to regional Native Housing Authorities for the provision of adequate Native housing.

Each of these Federal funding agents requires that the contracting non-profit have the support of the regional Native communities for which it is contracting. The Bureau of Indian Affairs is actively involved in the process of Indian Self-Determination implementation. The procedures BIA has developed for determining local support for contracting to a regional non-profit illustrate the inherent strengths and weaknesses of Indian Self-Determination.

The Indian Self-Determination Act specifically identifies Alaska Native villages as being eligible for the contracting of Federal Indian programs. Each recognized Alaska Native community must pass a resolution of support for any entity seeking a service contract from the BIA. In the Calista Region, all fifty of the villages must decide whether or not to support the AVCP (Area Village Council Presidents) in their bid for the BIA contracted services. If only twenty communities pass resolutions supporting the AVCP initiative, the AVCP will receive funding for only those communities. The balance of the communities will continue to be served by the BIA or negotiate for their non-profit service contracts. Individual Native communities or sub-regional Native non-profit corporations can (with proven accountability and resolutions) contract for the provision of BIA funded services. Municipal governments have no say in the process of Indian Self-Determination. The IRA council or traditional council is the body which decides who will provide the contracted services for their community.

Through the Bureau of Indian Affairs, Indian Self-Determination has provided for a more equitable distribution of services. However, this is accomplished at the risk of a decrease in the efficiency of service delivery.

On a local level, the need for specific services and the best manner of delivery of such services can be tailor made through regional control. The variety and applicability of available services can increase the delivery of essential services. In addition, local or regionally contracted Native NOon-profits are strengthened financially and professionally by the availability of program dollars. From this process of self determination, Alaska Native people have begun to have a greater sense of control over their own destinies.

However, as with most processes of change, there are many unanticipated problems. Indian Self-determination in Alaska

has created some specific challenges.

1) there has been no increase in BIA funding levels. However, with the proliferation of Native Non-profit service organizations, the total administrative costs have vastly increased. This has resulted in an overall reduction in available program dollars.

2) Each community has the right to support a particular non-profit in its bid for BIA contracts or provide the services themselves. This can lead to the fractionalization of region-wide non-profits and further divide available program and administrative dollars.

3) Each contracting Federal agency has its own limits on the allowable administrative costs. CETA programs have congressionally mandated administrative cost limits. BIA and IHS negotiate their allowable administrative cost levels independently. This can result in a Native non-profit corporation having 3 or 4 administrative cost levels. None of the federal agencies wants their program to be absorbing a disproportionate share of total administrative costs. Frequently, audits result in a Federal agency disallowing administrative costs they feel give a disproportionate share to their agency. This has created serious financial problems for many non-profits. This fosters the breaking apart of regional non-profits into separate non-profits offering specific functions (Health Authority, Housing Authorities, CETA organizations, etc.) The net effect is a reduction in cost efficiency and program coordination.

Conclusions:

There are some aspects of Indian Self-Determination that can be used. This process does allow regional priorities to be set and control to be established at the local level. The contracting of programs to regional non-profits allows these organizations to grow professionally and achieve financial solvency. Most importantly, the inhabitants of the regions have greater accessability to the needed services and local native people can begin to integrate into the employment areas previously reserved for "outsiders".

There are liabilities involved in this self-determination process. There is a potential for continuing regional fractionalization of regional non-profits. This could result in the proliferation of sub-regional or village service delivery entities and a greater sub-dividing of the

State. The differing Federal agency administrative cost levels encourages the creation of separate regional non-profits. These two factors could lead to a decreased efficiency in the utilization of Federal funds and encourage the formation of sub-regional boundaries.

Sincerely,

James C. Sanders

JCS:sj

DEPARTMENT OF COMMUNITY AND REGIONAL

TO: Palmer McCarter
Director

DATE: January 28, 1976

FILE NO:

TELEPHONE NO:

FROM: Carl Smith
Local Government Specialist

SUBJECT: IRA Incorporation

John Hope, of BIA Tribal Oper? ns outlined briefly the procedures for IRA incorporation, with some background on the Bureau's current attitudes toward incorporations which may be proposed for special tax considerations. Incorporation procedures are as follows:

The community proposing IRA incorporation must forward a list of persons who are interested in forming a corporation to the BIA. Once the list is received by the Bureau, a request is sent to the petitioners for creation of a constitutional committee. The completed constitution as drafted by the committee is then returned to the Bureau for review and approval. Upon approval, the Tribal Operations Office sets an election date on the question. At least 30% of the original petitioners must vote with a majority in favor of incorporation. The petitioners, all of whom must demonstrate "common residence occupation, and corporate interest," may then form an IRA council. While in the past some incorporations have established governmental and economic development functions, the trend now is for incorporations to occur strictly for profit ventures.

John Hope remarked that the most recent IRA incorporation took place on the Kenai peninsula some five years ago. He reported that since the passage of the Claims Act in 1971, the Washington office has sought to discourage any IRA incorporations which would create conflict between ANCSA and PL 984, 1934 - the Indian Reorganization Act.

Hope concluded that while the idea of IRA incorporation with intent to transfer village corporation lands and assets to avoid taxation has been presented before, there appears to be little evidence that this idea, in practice is legally defensible.

Mr. Hope encouraged us to have any inquiries concerning the Cordova group channelled to his office of Tribal Operations.

CS: ljd

STATE of ALASKA

# MEMORANDUM

RECEIVED
SEP 01 1976
DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

TO: Palmer McCarter, Director, LGAD

DATE : August 28, 1976

FROM: Lane
Community Development Coordinator

SUBJECT: PL-93-638..Indian Self Determination Act

Cook Inlet Native Association and Tanana Chief's Conference are contesting the position of Clay Antiquia, Area Director, Bureau of Indian Affairs, the latter who states that the non profit Regional corporations are not "tribes" under the definition of PI93-638, the Indian Self Determination Act. The latter piece of legislation, a rather complicated piece, essentially provides that services once performed by the Bureau can now be contracted to Indian tribes. The definition of Indian Tribes has been a very difficult one for Alaskan Natives to deal with and the Area Director is maintaining that only villages can be (under this definition he is looking at IRA, tradition village and second class cities) called tribes and therefore contract for services. It is the contention of CINA and TCC that if this is the case, then the money would be easily disipated because of the economy of scale.

During our soujourns in the Interior we can be just a jump ahead, or a jump behind the team that was traveling this area to explain the position of both sides and asking support for the non profit point of view. The team we met were Fred Baker, Fairbanks Regional Director, BIA; Tom Richards and Sam Demientieff, TCC. They had four resolutions covering the various services currently being offered by BIA and asking that the village councils pass on the resolutions. If a major support is given, then this will be used as an affirmative statement by the villages that they want the non profits to be considered as a contracting agency. In the middle Yukon area, on August 25, we found few of the village leaders present for any length of time, because of the "round up" of the village leaders for a joint meeting at Koyukon. In the upper Yukon, we did not find them at all for they were at a meeting in Fort Yukon. (August 27) We did sit in on the meeting at Galena where the process was explained and watched the decision making of the City Council of Galena. It was a good background for each of us to know.

There will be major meetings on PL 93-638 in Juneau, Bethel, Anchorage and Fairbanks on September 2, 3, 4, 1976. At this time a sub committee of the U. S. Congress on Indian Affairs will be taking testimony and also giving their explanations. It would seem prudent that these be covered in at least Juneau, Anchorage and Fairbanks.

Of particular importance to our Department will be the definition, especially as it may effect second class cities, where the majority of people sitting on the Council are Alaskan Natives, this may be considered "tribe" and therefore eligible to contract.

L:cm

STATE of ALASKA

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

Interoffice Memos LGAD

TO: Mike Harper
Deputy Commissioner

gh: Palmer, McCarter, Director
Local Government Assistance

DATE :

FROM: David Jensen
Local Government Specialist

SUBJECT: PL 93-638 meeting in Anchorage
8/20/76 (Indian Self-Determination)

The meeting commenced at 9:30 with about 35 persons present. The purpose of the meeting was to familurize BIA regional officials with PL 93-638 grant programs. That portion of PL 93-638 relating to transfers of BIA services was not discussed.

Grants may be for:

Conduct a demographic and/or economic study of the village

Establish a personnel position to provide clerical and typing functions for tribal government

To purchase equipment and supplies for tribal government operations

Improve Tribal Communication System

Evaluate desirability of and/or complete charter for I.R.A. Charter

Establish a Tribal Record Management System

Improve meeting facilities

Develop and implement a Personnel Management System

Establish a Tribal Office

Train tribal officials in Tribal Government skills

Meet operating cost of the Tribal Government

Evaluate and revise Tribal Constitution - Evaluate and improve Tribal Election procedures

Develop budgeting and fiscal control systems for tribal funds

Establish a Tribal Newsletter

Establish Contract/Grant application personnel position (new hire)

DEPUTY COMMISSIONER
Interoffice Memos
LGAD

Basically the meeting was for the purpose of familiarizing BIA regional officials with PL 93-638 grant programs. The meeting was interesting in terms of familiarizing Betty Barton and myself with BIA programs. I believe Department of Community and Regional Affairs field staff should be aware of PL 93-638 grant programs with the advantage being that Department staff can convey information to rural areas.

It would be my opinion that Department staff could act as information carriers but avoid any further involvement.

Grant application deadline is September 10, 1976.

The Juneau Area Office has established the following order of precedence for determining the recognized governing body of a village for the limited purposes of the Self-Determination Act:

(a). If there is an IRA council, and it provides governmental functions, it will be recognized.

(b). If there is no IRA council, or it does not provide governmental functions, and there is a traditional village council which provides governmental functions, then the traditional village council will be recognized.

(c). If there is no IRA council and no traditional village council which provide governmental functions, then under certain circumstances the city council of the incorporated second-class city may be recognized. For a city council to be recognized it must meet the following criteria:

(i) It must have been recognized as the traditional village government prior to its incorporation

(ii) It must be representative of the Native population of the village

(d). If there is no IRA council, no traditional village council and no city council, then the village (profit) corporation will be recognized.

(e). If there are none of the above, then the regional (profit) corporation will be recognized.

The regulations define the tribal governing body as, "The recognized governing body of an Indian tribe. "In many cases there are several governing bodies in each village, i.e., IRA council, traditional village council, city council, and the village corporation organized under the Alaska Native Claims Settlement Act. Which of these should be "recognized" as the governing body for the purposes of the Self-Determination Act?

DJ/ajr

(1) the Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as a primary place of residence, or as a primary place of business, or as a subsistence campsite, or as headquarters for reindeer husbandry;

(2) the Village Corporation shall then convey to the occupant, either without consideration or upon payment of an amount not in excess of fair market value, determined as of the date of initial occupancy and without regard to any improvements thereon, title to the surface estate in any tract occupied by a nonprofit organization;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres;

(4) the Village Corporation shall convey to the Federal Government, State or to the appropriate Municipal Corporation, title to the surface estate for existing airport sites, airway beacons, and other navigation aids, together with such additional acreage and/or easements as are necessary to provide related services and to insure safe approaches to airport runways; and

(5) for a period of ten years after the date of enactment of this Act, the Regional Corporation shall be afforded the opportunity to review and render advice to the Village Corporations on all land sales, leases or other transactions prior to any final commitment.

(d) The Secretary may apply the rule of approximation with respect to the acreage limitations contained in this sectio

(e) Immediately after selection by a Regional Corporation, the Secretary shall convey to the Regional Corporation title to the surface and/or the subsurface estates, as is appropriate, in the lands selected.

(f) When the Secretary issues a patent to a Village Corporation for the surface estate in lands pursuant to subsections (a) and (b), he shall issue to the Regional Corporation for the region in which the lands are located a patent to the subsurface estate in such lands, except lands located in the National Wildlife Refuge System and lands withdrawn or reserved for national defense purposes, including Naval Petroleum Reserve Numbered 4, for which in lieu rights are provided for in subsection 12(a)(1): Provided, That the right to explore, develop, or remove minerals from the subsurface estate in the lands within the boundaries of any Native village shall be subject to the consent of the Village Corporation.

(g) All conveyances made pursuant to this Act shall be subject to valid existing rights. Where, prior to patent of any land or minerals under this Act, a lease, contract, permit, right-of-way, or ease-

Tom - note that some contracts are to incorporated areas

-29 TRIBAL ORGANIZATIONS

Combined total [illegible]

| | | | |
|---|---|---|---|
| 1. | 1638 | Ketchikan Indian Corporation - Box 6855, Ketchikan | 352,438 |
| 2. | 1643 | Sitka Community Association - Box 4360, Mt Edgecumbe | 235.264 |
| 3. | 1644 | Metlakatla Indian Community - Box 8, Metlakatla | 82,819 |
| 4. | 1647 | Indians of Juneau, Inc. - Box 808, Douglas | 298,463 |
| 5. | 1663 | Bidarki Corporation - Box 117, Cordova | 61,280 |
| 6. | 1631 | Hooper Bay Native Education Committee | 112,539 |
| 7. | 1637 | Kuskokwim Native Association | 171,409 |
| 8. | 1667 | Elim JOM/NEC | 11,951 |
| 9. | 1627 | Ninilchik Native Association | 19,373 |
| 10. | 1628 | Kokhanok JOM-NEC | 57,236 |
| 11. | 1629 | Unalaska Aleut Development Corporation | 29.222 |
| 12. | 1632 | Kodiak Area Native Association | 370,287 |
| 13. | 1634 | Dillingham JOM-NEC | 147,790 |
| 14. | 1635 | Aleutian/Pribilof Islands Association 430-C St, Anchorage | 156,455 |
| 15. | 1636 | Sand Point JOM/NEC | 47,346 |
| 16. | 1639 | JOM/NEC of Egegik | 7,440 |
| 17. | 1646 | Copper River Native Association | 86,784 |
| 18. | 1649 | Chignik Lake JOM/NEC | 25,438 |
| 19. | 1652 | Newhalen JOM/NEC | 18,360 |
| 20. | 1654 | Bristol Bay Native Association | 109,435 |
| 21. | 1657 | Tyonek JOM/Parent Committee | 26,511 |
| 22. | 1659 | Athabascan/Eskimo United Heritage Association Box 1010, Wasilla | 158,769 |
| 23. | 1660 | Cook Inlet Native Association 1057 W Fireweed, Anchorage | 1,209,00 |
| 24. | 1661 | North Pacific Rim - 903 W. Northern Lights, Anch | 98,814 |
| 25. | 1668 | Naknek Native Village Council | 50,758 |
| 26. | 1630 | Fairbanks Native Association | 411,256 |
| 27. | 1645 | Northway JOM/NEC | 20,726 |
| 28. | 1655 | Arctic Village Tribal Council | 18,474 |
| 29. | 1666 | JOM/NEC of Tanacross | 10,552 |
| 30. | 1669 | United Crow Band | 21,650 |

## 15 SCHOOL DISTRICTS

| | | | |
|---|---|---|---|
| 1. | 1641 | Hoonah Public Schools - Box 157, Hoonah | 56,224 |
| 2. | 1625 | St. Mary's School District | 52,129 |
| 3. | 1656 | Lower Yukon School District | 304,059 |
| 4. | 1665 | Lower Kuskokwim School District | 683,815 |
| 5. | 1633 | Nome Public School District | 287,209 |
| 6. | 1648 | Northwest Arctic School District | 690,575 |
| 7. | 1664 | Bering Straits School District | 291,703 |
| 8. | 1626 | King Cove School District | 48,493 |
| 9. | 1642 | Southwest Region Schools | 152,867 |
| 10. | 1658 | Lake & Peninsula School District | 61,928 |
| 11. | 1640 | North Slope Borough School District | 590,956 |
| 12. | 1650 | Galena City School District | 67,050 |
| 13. | 1651 | Yukon-Koyukuk School District | 270,051 |
| 14. | 1653 | Iditarod Area School District | 86,490 |
| 15. | 1662 | Yukon Flats School District | 154,743 |

NON-JOM - Education Contracts -

| | | | Amount |
|---|---|---|---|
| BE - 1. | 1752 - | Kodiak Community College - U of A. | $20,000 |
| E - 2 | 1757 - | Aleutian/Pribilof Islands Assoc. Inc. | 20,000 |
| 3. | 1789 - | Kuskokwim Native Assoc. | 77,995.00 |
| 4. | 1739 - | Kuspuk School District | 75,736.00 |
| E - 5 | 1719 - | CINA | 50,000.00 |
| 6. | 1697 - | Education Research Associates | 58,844.00 |
| 7. | 1786 - | Utah State University | 65,050.00 |
| 8. | 1743 - | Alaska Treatment Center | 48,996.00 |
| - 9. | 1772 - | Prince William Sound Com. College - U of A | 30,000.00 |
| 10. | 1787 - | King Lake Camp | 24,875.00 |
| - 11. | 1746 - | Kawerak, Inc. | 120,000.00 |
| 12. | 1748 - | Lower Yukon School Dist. | 324,224.00 |
| 13. | 1755 - | State of Kansas - Dept. of Ed. | 300,000.00 |
| 14 | 1738 - | Northwest Arctic School Dist. | 500,000.00 |
| - 15. | 1781 - | Tanana Chiefs Conference | 114,000.00 |
| - 16. | 1754 - | Kuskokwim Community College | 120,000.00 |
| 17. | 1642 - | Oregon College of Education | 374,[illegible] |
| 18. | 1780 - | [illegible] | 163,[illegible] |

# PL. 93-638 PROGRAM CONTRACTS

SHEET 1 7/13/79

| | | INDIRECT COST |
|---|---|---|
| 1. CENTRAL COUNCIL TEH | $11,045 | + $8300 |
| 2. MCLAKATLA | $160,900 | + $38,995 |
| 3. " | $727,093 | + $65,108 |
| 4 " | $157,522 | + $8825 |
| 5 TANANA CHIEFS | $2,295,693 | + $723,541 |
| 6. FBKS. NAT. ASSOC. | $691,491 | + $51,416 |
| 7. UNITED CROW BAND. | $148,500 | + $12,050 |
| 8 ASSOC. of VILLAGE COUNCIL PRES. | $1,413,801 | + $202,256 |
| 9. COOK INLET NAT. ASSOC. | $1,391,900 | + $214,548 |
| 10. INUPIAT COM. OF NORTH SL. | $677,107 | + $90,000 |
| 11. MAUNELUK ASSOC. | $760,868 | + $83,050 |
| 12. SITKA COMM. ASSOC. | $248,947 | + $18,188 |
| 13. CENTRAL COUNCIL OF TEH | $2,357,694 | + $841,384 |
| 14, KODIAK AREA NAT. ASSOC. | $208,568 | + $41,655 |
| 15. KIANA TRADITIONAL COUNC | $41,721 | + $5,903 |

16. Ketchikan Ind. Comm. $53,635 + $10,169

17. Nome Eskimo Comm. $164,026 + $24,077

Cont. SHEET 1

18 Admiralty Cit. (Angoon) Council $158,499 + $1375

19. Katzebue IRA Counc. 255,743 + $32,347

20. Aleut./Prib. Isle Assoc. 97,452 + 19,045

As communities grow and develop

so does their need for land



ANNUAL REPORT

# Municipal Lands Trustee Program

STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

JUNE 30, 1979

## SECTION 14(c)(3) of the ALASKA NATIVE CLAIMS SETTLEMENT ACT:

(c) Each patent issued pursuant to subsections (a) and (b) shall be subject to the requirements of this subsection. Upon receipt of a patent or patents;

(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided, That the amount of lands to transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres;

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**Sec. 44.47.150. Village land conveyed in trust.** (a) The commissioner of the Department of Community and Regional Affairs is designated to accept, administer, and dispose of land conveyed to the state in trust by village corporations under § 14(c)(3) of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 703) for the purposes specified in that section.

(b) Transfer of land by sale, lease, right-of-way, easement, or permit, including transfer of surface resources, may be made by the commissioner only after approval of an appropriate village entity such as the traditional council, a village meeting, or a village referendum. Such approval shall be by resolution filed with the department.

(c) Within one complete state fiscal year after the incorporation of a municipality in the village or of a municipality which includes all or part of the village, land acquired under this section shall be conveyed without cost to the municipality, and the municipality shall succeed to all the entrusted interest in the land.

(d) Separate accounts shall be maintained in the name of each village for the land, including the revenues from the land, acquired from each village corporation under this section, and within 90 days of the close of each state fiscal year a statement of the account for each municipality shall be prepared by the commissioner and be made available to the village and to the public upon request.

(e) Upon the conveyance of land to a municipality under this section, the commissioner shall account to the municipality for all profits including interest from the land, and the municipality may then request that the governor submit a request to the legislature for an appropriation for the amount due it.

(f) No title or interest to lands acquired by the department under this section may be acquired by adverse possession or prescription.

(g) For the purposes of this chapter, the term municipality includes only first and second class cities incorporated under the laws of the state. (§ 1 ch 119 SLA 1975)

# STATE OF ALASKA

JAY S. HAMMOND, Governor

**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811


June 30, 1979

To the Residents of the Trust-related Villages:

As trustee for municipal trust lands, I am pleased to present you with this report of the Municipal Lands Trustee program for the past year.

This program concerns the "so-called" 1,280 acre reconveyances to the State-in-Trust for any future municipality which may be established in your village in the future, in accordance with the Alaska Native Claims Settlement Act (ANCSA), Section 14 (c)(3). The commissioner of the Department of Community and Regional Affairs has trustee responsibilities for these lands.

As trustee of community lands under ANCSA, our objectives are important to you. These objectives are:

- Municipal trust lands are community lands. Title to these lands are used to benefit your village now and in the years ahead, and for a possible municipality in the future. These lands cannot be used for the benefit of the State itself without specific approval by your community.

- The laws and regulations which control the Trustee Program and our staff activities guarantee the rights of village residents to oversee the Trustee's activities concerning their community lands.

- The trust lands will be turned over to any first or second class municipality established in your village in the future. Our intent is to be so responsive to your needs and desires, however, that you will feel no particular need to incorporate as a municipality simply to obtain more localized control over these lands.

By keeping us informed about your concerns and interests, we can better serve you, your village, and any future municipality.

Sincerely,

Lee McAnerney

Lee McAnerney
Commissioner
(Municipal Lands Trustee)

## INTRODUCTION

**This annual report of the Municipal Lands Trustee Program is prepared and distributed pursuant to Alaska Statues 44.47.150 (reprinted on the inside front cover of this report).**

**Section 14(c)(3) of the Alaska Native Claims Settlement Act (ANCSA) requires all two hundred Native Village Corporations in the state to convey certain lands to the existing municipality in the village or, if no municipality exists, to the State-in-Trust for any municipality that may be established in the village in the future. Those lands conveyed to the State-in-trust are known as Municipal Trust Lands.**

Municipal trust lands consist of the surface estate of certain improved lands on which the village is located and additional lands necessary for community expansion, public rights-of-way, and other foreseeable community needs. The minimum amount required by ANCSA to be transferred is 1,280 acres (see the inside front cover of this report for a reprint of ANCSA Section 14(c)(3)). The State Legislature and the Department of Community and Regional Affairs regard these trust lands as being community lands, administered in trust for the residents of the village and for any future municipality in the village, not State lands to benefit the whole of the State.

## OVERVIEW OF THE TRUSTEE PROGRAM

In 1975 the State Legislature designated the commissioner of the Department of Community and Regional Affairs, acting as the trustee of municipal trust lands, to accept, administer, and dispose of such lands where no incorporated municipality exists. This Act established four basic policies under which trust lands are administered.

First, all transfers of trust land by sale, lease, right-of-way, easement, or permit, including transfer of surface resources, must first

have the approval of a recognized "appropriate village entity such as a traditional council, village meeting, or village referendum".

Second, the Trustee Program aims to be so responsive to the needs and desires of village residents that they will feel little or no pressure to incorporate as municipalities for the single reason of obtaining local control of their lands. If and when a city is organized in a village for which trust lands have been administered, these lands together with all records of lands and revenues, will be conveyed to the city within one State fiscal year.

Third, careful records will be kept concerning trust lands, including an accounting of any revenues received from them, so that if and when incorporation into a municipality does occur, the legislature may appropriate these monies for the new municipality.

Fourth, title to and interest in trust lands can be obtained only through the Trustee Program and may not be acquired by adverse possession or prescription (loosely: a method of acquiring title by possession ("squatting") or by long, continued use).

The Municipal Lands Trustee Program was initiated by AS 44.47.150. Under the general direction of the commissioner, the municipal lands trust officer is responsible for developing and conducting the trustee program. Administrative responsibility for the program is assigned to the director of the Division of Community Planning.

The Trustee Program is a result of federal legislation (the Alaska Native Claims Settlement Act). The State Legislature has shown a clear understanding of the local community issues involved for which the State has responsibilities, has shown constructive interest in the program, and has been responsible in funding the program. The Trustee Program is wholly supported by funds from the State; no money or control over the trustee program is provided by the federal government. The legislature

provided sufficient travel funds and one additional professional staff position for fiscal year 1979. One additional professional-technical position was funded for FY 1980. Two more staff positions (one clerical and one professional) are being proposed for fiscal year 1981 to meet expected increased trustee activity requirements. This should round out the trustee program staff.

## STATUS OF THE TRUSTEE PROGRAM

There are presently 95 villages associated with the trustee program. Their village corporations are receiving lands under ANCSA and have a legal duty to convey municipal lands under Section 14(c)(3). None of these trust villages are incorporated as municipalities under Alaska Statutes. Additional villages may eventually be added to this list as a result of the settling of certain legal or land status issues presently being litigated or considered. The inside back cover of this report contains a list of current trust villages.

The period between July 1, 1978 and June 30, 1979 was devoted to meeting two main objectives:

(1) developing operating regulations and policies to guide the way the trustee must operate and to insure appropriate control of these activities by village residents.

(2) meeting specific land title needs to permit urgent community projects to proceed.

Following strong support of the 1977 preliminary statement of trust philosophy from rural leaders directly affected by the MLT program, operating regulations were drafted for consideration at hearings across the State. These proposed regulations stress that village residents, through their recognized village entity or by village meetings, generally will oversee the trust program in each particular village. This is

important since village residents best know the land in their area, can identify land clearly essential for community expansion, and can define continuing expansion needs.

Fourteen hearings were held, with all but one being convened in or near one or more affected unincorporated villages. The proposed regulations were printed and distributed widely for review and comment before hearings were held. Each village council received a copy of the hearing schedule and notices of the hearings were published in the Tundra Times and other news media. Individual copies of the draft regulations were made available to all concerned parties. Hearings were scheduled to test the widest possible range of locational, social, and varied land status situations.

Testimony and comments were plentiful and generally very supportive. Many very constructive suggestions were received. After all hearings were held and all comments considered, the draft regulations were revised as needed. They provide procedures for identifying and conveying potential municipal lands into trust, for officially recognizing "appropriate village entities", for determining how and when meetings of village residents will be held to oversee the trustee program, and for the manner of obtaining approval from recognized village entities concerning transfers of trust lands. Provisions also are included in the regulations for "due process", notice, and review of action to be taken by the State in-trust. The regulations are designed to assure opportunities for high amounts of local participation and input.

At the time this report is being prepared, the final version of the regulations is undergoing a final review by the Attorney General's office, and is expected to be officially adopted during the first quarter of FY 80. Upon adoption, the trustee program can progress to the next stage of recognizing village entities to oversee the program for each village. The following stage will be the tender and acceptance of substantial amounts of Municipal Trust Lands.

Although village corporations filed their land selections with the Bureau of Land Mangement in 1974, by June 30, 1978, only 17 (out of the approximately 100 village corporations which will ultimately convey land to the State in trust) had received title to even a small portion of their land; none had received title to all of its selections. This left little opportunity to develop and implement a large-scale program of conveyances under the trust program.

BLM has now established new policies and reorganized its ANCSA land conveyance procedures and staff. As a result, as of June 30, 1979, 29 trust program villages have received title, or are very close to receiving title, to a substantial portion of their land. The increasing frequency of conveyances indicates that the adoption of our regulations will coincide with the ability of many village corporations to make conveyances under 14(c).

Where Interim Conveyance from BLM has not been granted, the trustee program has developed and used various forms of interim transactions to meet land title requirements needed for pending and urgent community projects such as the construction of new schools, HUD housing projects, village relocations, and so forth. These include both formal, contractual agreements between a village corporation and the State-in-trust respecting future commitments to convey, and informal and conditional letters of intent which convey sufficient property interest to allow project planning by a particular agency to proceed. In turn, these agreements are based upon statutory approval of the proposal by an appropriate village entity.

This past year evidenced a large increase in the number of discussions with village councils and corporations relating to planning for future conveyances of Municipal Trust Lands. These meetings have been helpful in promoting a better understanding of the program and what it means to the villages. There is an increase in activities which have made municipal trust lands available for community uses compared to prior years.

## THE FUTURE

The 1980 annual report of trustee activity is expected to show a substantial increase in specific activites involving trust lands. Transfers of land or commitments to transfer certain land into trust, and transfers of land out of trust status to permit school and other public facility construction will substantially increase. These expectations are based upon the following factors, which are expected to be present in the coming year:

(1) The program development phase of the Trustee Program will be completed with adoption of operating regulations.

(2) A greatly increased acreage of land will be conveyed to village corporations by the Bureau of Land Management during 1980.

(3) Village corporations are becoming increasingly aware of the reconveyance requirements of ANCSA 14(c)(3), as a result of explanations by ourselves, regional corporations, and other organizations.

(4) Contacts with, and personal visits to the trust-related villages by the municipal lands trust officer and other department staff members will be greatly increased.

The d-2 legislation currently before Congress, when enacted, will increase the scope of the municipal land trust program by authorizing the transfer of trusteeship over vacant Federal Townsite land in unincorporated villages from BLM to the State-in-trust. This same legislation will also permit change in the minimum acreage requirements for conveyance under ANCSA 14(c)(3) for some villages. The alterations, of course, will come about only if the d-2 legislation is passed in its present form or the proposed legislation is passed in a separate bill, apart from d-2.

## TABLES

The following tables show FY 79 and accumulated municipal trust land activity for the period ending June 30, 1979. Because of the restrictions under which community development projects must presently operate due to land title problems, the tables also provide data concerning tentative trustee transactions and related activities.

No revenues have been received from municipal trust lands in this or preceeding years. An RSA contract has been developed for execution in early FY 80 to develop an accounting system for expected revenues generated by the municipal trust lands program in a manner provided by law.

## CONSOLIDATED ACCOUNT OF TRUST LAND AND RELATED REVENUES

(Showing activity for FY 79 and Accumulated Activity Through June 30, 1979) 1/ 2/

| Location (Native Region) NAME OF VILLAGE | Land Title or Other Interests Tentatively Transferred: Into Trust Number of Actions FY 79 | Into Trust Acres FY 79 (Cumulative) | Out of Trust Number of Actions FY 79 | Out of Trust Acres FY 79 (Cumulative) | Other Related Activities Number of Actions FY 79 (Cumulative) | REMARKS |
|---|---|---|---|---|---|---|
| (Ahtna) CANTWELL | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -2- (2) | HUD Housing. Discussions were held on siting future HUD housing project on potential municipal trust land. Community Hall. Discussions on siting a community hall on potential municipal trust land were held. |
| CHITINA | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -2- (2) | HUD Project. Provided technical assistance concerning use of potential municipal trust lands and conveyance procedures as applied to proposed HUD housing project. Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. Hearings were held in Tazlina and Anchorage so residents of Chitina, Cantwell, and other communities could attend. |
| COPPER CENTER | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -3- (3) | HUD Housing. Public notice was given and a hearing was held on proposed agreement by village corporation to convey 2 acres as municipal trust land for reconveyance as site for public housing. Agreements are near completion. Final execution is expected during FY 80. Village Relocation. Discussions held on potential conveyance of municipal trust land for partial village relocation. Community Hall. Discussions held on siting for a proposed new community hall. |
| GULKANA | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (1) | Public Housing. Site control questions for a proposed Public Housing project were covered in discussions with the Federal Townsite Trustee. Technical assistance was made available for site control documentation. |
| MENTASTA | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -2- (2) | HUD Housing. Discussions were held on site location for a proposed new housing project. Proposed site is potential municipal trust land. Laundromat. Provided technical assistance to village and BLM Federal Townsite Trustee in funding activities for a village laundromat. |

| Location (Native Region) NAME OF VILLAGE | Land Title or Other Interests Tentatively Transferred | | | | Other Related Activities | REMARKS |
|---|---|---|---|---|---|---|
| | Into Trust | | Out of Trust | | | |
| | Number of Actions FY 79 | Acres FY 79 | Number of Actions FY 79 | Acres FY 79 | Number of Actions (Cumulative) | |
| TAZLINA | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -2-<br>(2) | Glennallen High School. Continued intermediary activity between village corporation, school officials, and officials of State DOE and DNR affecting existing Glennallen High School as described in FY 78 report. Site may or may not become municipal trust land. Alternative solutions are being studied by the parties and negotiations between them are in progress.<br>Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. Residents of Copper Center and Gakona also attended the hearing. |
| (Aleut)<br>AKUTAN | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -3-<br>(3) | Incorporation. Information was provided on the nature of local control over municipal trust land at a public meeting of residents considering incorporation as a second class city. Incorporation is pending.<br>Fuel Storage Grant. Application for a 1979 Block Grant (HUD) for utilities and fuel storage for 18 houses has been made. Municipal trust lands probably will be used.<br>General Tender. Discussions were held covering a general tender of land to satisfy major 14(c)(3) requirements for municipal trust lands. |
| FALSE PASS | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -1-<br>(1) | Airfield Upgrading. An application was made in 1979 for a RDA Grant (joint with DOT/PF and APA) for the upgrading of the local airfield. Municipal trust lands involvement is likely. |
| NELSON LAGOON | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -1-<br>(1) | New School. Discussions were held with school district officials about potential municipal trust land as site of new school. Construction may begin in 1979. |
| NIKOLSKI | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(1) | |
| ST. GEORGE | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -2-<br>(3) | Tender of Lands. Discussions with village corporation officials for tender of municipal trust land were held. Action is expected in FY 80.<br>Incorporation. Information was provided on nature of local control over municipal trust lands at a public village meeting of residents considering incorporation as a second class city. Incorporation action was deferred. |

| Location (Native Region) NAME OF VILLAGE | Land Title or Other Interests Tentatively Transferred: Into Trust — Number of Actions-Acres FY 79 | | Out of Trust — Number of Actions-Acres FY 79 | | Other Related Activities — Number of Actions (Cumulative) | REMARKS |
|---|---|---|---|---|---|---|
| (Arctic Slope). ATKASOOK | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -2- (2) | HUD Housing. There is possible municipal trust land involvement in the conveyance of land title for 13 HUD houses already constructed. Discussions were held with North Slope Borough officials on the use and availability of municipal trust land for both housing and airport construction projects. Airport Construction. Apolication has been made by Borough for funding construction of an airport at Atkasook. Availability of potential municipal trust land for the project was covered in discussions. |
| POINT LAY | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -2- (2) | Village Relocation. Continued discussions with village residents, consultants, and North Slope Borough officials on use of municipal trust land for village relocation were held. Commitment to convey all or most of the new village site as municipal trust land was made by the village corporation board. Execution expected in FY 80. Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which decisions affecting the municipal trust lands would be made. |
| (Bering Straits) COUNCIL | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (1) | Bridge Construction. Information was provided to State(DOT/PF) on the process of transferring municipal trust lands. Particular emphasis was on statutory power of an appropriate village entity in the village to oversee and approve use or disposal of municipal trust land. |
| KING ISLAND | -1- (1) | 15 +/- pending (15 +/-) (pending) | -1- (1) | 15 +/- pending (15 +/-) (pending) | -1- (1) | Village Relocation. There were continuing discussions involving the corporation, Native Community Council, and DCRA to utilize municipal trust lands for potential village relocation to Cape Wooley. Formal approval and title transfer is dependent upon completion of planning and a final relocation commitment by the village council. Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. The hearing was held in Nome so residents of King Island and Mary's Igloo could attend. |

| Location (Native Region) NAME OF VILLAGE | Land Title or Other Interests Tentatively Transferred: Into Trust — Number of Actions FY 79 | Into Trust — Acres FY 79 | Out of Trust — Number of Actions FY 79 | Out of Trust — Acres FY 79 | Other Related Activities — Number of Actions (Cumulative) | REMARKS |
|---|---|---|---|---|---|---|
| (Bristol Bay) | | | | | | |
| EKUK | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -1-<br>(1) | Reconveyance Discussions. Discussions were held with village corporation staff concerning the reconveyance process for municipal trust lands. |
| IVANOFF BAY | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -1-<br>(1) | Proposed Airport. Construction of an airport has been proposed which may involve municipal trust land. |
| KOKHANOK | -2-<br>(2) | 5.0 school<br>0.46 R-0-W<br>(5.0)<br>(0.46) | -1-<br>(1) | 5.0 school<br>(5.0) | -0-<br>(0) | New High School Site. Final execution of transfer documents was completed in FY 79 and recorded for 5.46 acres to be used for a new high school site. |
| KOLIGANEK | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -2-<br>(2) | Community Hall Site. A discussion with village officials was held on the siting of a new community hall on potential municipal trust land. Work continues.<br>New Clinic. A new clinic has been proposed for 1980 for construction on potential muncipal trust land. |
| NAKNEK | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -2-<br>(2) | Regulations Hearing. Conducted hearing in Naknek to inform participants about ANCSA 14(c)(3) and obtain testimony regarding proposed regulations especially in relation to Borough vs. State-in-Trust as recipient of title.<br>Disposal Site. Participated in site planning discussions for solid-waste disposal project. |
| PILOT POINT | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -1-<br>(1) | Firehouse. Application was made for a HUD Block Grant for the construction of a firehouse. The firehouse likely will be built on municipal trust land. |
| PORTAGE CREEK | -0-<br>(1) | -0-<br>(0.1) | -0-<br>(1) | -0-<br>(0.1) | -1-<br>(1) | New School. A new school is planned which will most likely be built on municipal trust land. |
| SOUTH NAKNEK | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -0-<br>(0) | -1-<br>(1) | Airport Construction. Application has been made for the construction of airport facilities which may involve municipal trust land. |

| Location (Native Region) NAME OF VILLAGE | Land Title or Other Interests Tentatively Transferred Into Trust Number of Actions-Acres FY 79 | | Out of Trust Number of Actions-Acres FY 79 | | Other Related Activities Number of Actions (Cumulative) | REMARKS |
|---|---|---|---|---|---|---|
| (Calista) ANDREAFSKI | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -2- (2) | Policy Review. Provided policy review to village officials and to City of St. Mary's officials relative to potential recipients of land to be conveyed under ANCSA 14(c)(3), and potential corollary effects of a proposed annexation of a portion of Andreafski townsite to city of St. Mary's.<br>Regulations hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. |
| CROOKED CREEK | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -3- (3) | New High School. Moderated discussions between village council and school officials on siting and title transfer for proposed new school. Transfer agreement documents involving municipal trust land have been drafted and partially executed.<br>Title Discussions. Held discussions with village corporation concerning title to certain lands occupied after effective date of ANCSA, December 18, 1971.<br>PHS Building. Discussions on siting and transfer of municipal trust land for proposed Public Health Service building were held. |
| KIPNUK | -1- (1) power plant | 0.16 (0.16) | -1- (1) power plant | 0.16 (0.16) | -2- (2) | New Community Hall. Prepared site transfer documents for new community hall. Execution expected in FY 80.<br>Power Plant. Village corporation conveyed .16 acres as municipal trust land. Site leased to village council as site for village electric generator.<br>Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. |
| KWIGILLINGOK | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -2- (2) | New School. To be constructed during the summer of 1979, a new school probably will be located on land leased by BLM to DOT/PF. This lease may be replaced through the municipal trust lands program upon its expected termination in 1980.<br>Electrical Project. Funded by a 1979 RDA grant, portions of the village electrical project will be located on future municipal trust land. |
| LIME VILLAGE | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (1) | Realty Training. Provided realty training for village land managers with emphasis on the requirements of ANCSA 14(c)(3). Tendering of trust lands scheduled in FY 80 following effective date of regulations. The hearing was held in Aniak so residents from Red Devil, Crooked Creek, Sleetmute, Stony River, and Lime Village could attend. |

| Location (Native Region) NAME OF VILLAGE | Land Title or Other Interests Tentatively Transferred: Into Trust Number of Actions FY 79 | Into Trust Acres FY 79 | Out of Trust Number of Actions FY 79 | Out of Trust Acres FY 79 | Other Related Activities Number of Actions (Cumulative) | REMARKS |
|---|---|---|---|---|---|---|
| OSCARVILLE | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (1) | New School. Discussions were held with school officials on use of potential municipal trust land for proposed new school. Planned for 1980 construction. |
| PAIMIUT | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (1) | Status and Plans. Meetings were held with members of the village corporation concerning the status of potential municipal trust lands. Plans were covered for land selection and transfer procedures. |
| TUNTUTULIAK | -1- (1) | 3.72 (3.72) | -1- (1) | 3.72 (3.72) | -0- (0) | New School. 3.72 acres for a new school were conveyed in FY 79 through the municipal trust lands program. |
| (Chugach) CHENEGA | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (1) | Village Relocation. Continuing discussions were held with the village corporation, village council, and officials of the North Pacific Rim on the use of potential municipal trust land for village relocation and re-establishment. Further transactions are dependent upon BLM conveyance schedule and 14(c)(3) conveyances by the village corporation. |
| TATITLEK | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (2) | Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. The hearing was held in Cordova so residents of Tatitlek and neighboring communities could attend. |
| (Cook Inlet) EKLUTNA | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (1) | Muncipal Land Conveyances. Village corporation and Municipality of Anchorage reached agreement in principle on 14(c)(3) reconveyances. If approved by village residents in FY 80, Department of Community and Regional Affairs will construe these actions as a discharge of any potential trustee duties. Work continues. |
| TYONEK | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -0- (2) | |
| (Doyon) DOT LAKE | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (1) | New Airport. Discussions were held with the village president and state DOT/PF for airport development on potential municipal trust land. |

| Location (Native Region) NAME OF VILLAGE | Land Title or Other Interests Tentatively Transferred: Into Trust Number of Actions-Acres FY 79 | | Out of Trust Number of Actions-Acres FY 79 | | Other Related Activities Number of Actions (Cumulative) | REMARKS |
|---|---|---|---|---|---|---|
| EVANSVILLE | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (2) | Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. |
| MANLEY HOT SPRINGS | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (2) | Incorporation. Information was provided on nature of local control over municipal trust land at a public village meeting of residents considering incorporation as a 2nd class city. Proposition defeated. |
| TAKOTNA | -0- (2) | -0- (3.1) | -0- (2) | -0- (3.1) | -4- (5) | Community Council. Our suggestion to form a bi-racial "community council" to oversee the municipal land trust program was adopted by the community.<br>PHS Building. Discussions on siting for the PHS building on potential municipal trust lands were held.<br>Electrification. Discussions were held on the use of municipal trust land for electric generating plant site and use of distribution lines right of way. The 1979 legislature appropriated funds for the electrification projects.<br>Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. |
| TANACROSS | -0- (1) | -0- (0.9) | -0- (1) | -0- (0.9) | -2- (2) | New School. Title transfer agreements for 10.86 acres into trust and 5.0 acres out of trust for the construction site of a new elementary school were developed. Execution was partially completed in FY 79.<br>Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. The hearing was held in Tok so Tanacross, Eagle, and Northway residents could attend. |
| TELIDA | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -0- (1) | |
| (Koniag) AFOGNAK | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -1- (1) | Informal Discussions. Informal discussions were held with some of the directors of the village corporation concerning the municipal trust lands program and reconveyance procedures. |

| Location (Native Region) NAME OF VILLAGE | Land Title or Other Interests Tentatively Transferred | | | | Other Related Activities | REMARKS |
|---|---|---|---|---|---|---|
| | Into Trust | | Out of Trust | | | |
| | Number of Actions-Acres FY 79 | | Number of Actions-Acres FY 79 | | Number of Actions (Cumulative) | |
| KARLUK | -1- (1) village relocation | 14.3 (14.3) | -1- (1) village relocation | 14.3 (14.3) | -2- (2) | Airport Land Transfer. Discusssions were held with village corporation and council on municipal trust land for site of new airport. Documents for title transfer partially developed during FY 79. Execution expected in FY 80.<br>Village Relocation. Continuing discussions were held with the village corporation respecting tender and conveyance of the new village site as municipal trust lands. They are expected to be included in a tender in FY 80.<br>Dump Site. A dump site was discussed. Probable location will be on municipal trust land. |
| (Nana) NOATAK | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -3- (3) | New High School. Discussions with school officials, village corporation members, and village council representatives on the use of municipal trust land for the new school and partial villlage relocation were held. Work continues.<br>School Site. Relocation of the old school site appears necessary due to erosion of the riverbank. The action may involve municipal trust lands.<br>Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. |
| (Sealaska) KLUKWAN | -0- (0) | -0- (0) | -0- (0) | -0- (0) | -2- (2) | Land Selection. Meetings were held with representatives of Klukwan and Sealaska concerning the unique problems and possible solutions for the unusual situation in which all lands available for reconveyance to the State-in-Trust are located 380 miles from the village. Work continues.<br>Regulations Hearing. A hearing was held to discuss the proposed regulations for the Municipal Lands Trustee program and the process by which future decisions affecting the municipal trust lands would be made. |

Footnote 1/: See inside of back cover for complete listing of villages potentially involved in the Municipal Lands Trustee Program.

Footnote 2/: No revenues have been received from Municipal Trust Lands for any villages to date.

# POTENTIAL STATE IN TRUST VILLAGES
as of June 30, 1979

## AHTNA

1. Cantwell
2. Chistochina
3. Chitina
4. Copper Center
5. Gakona
6. Gulkana
7. Mentasta Lake
8. Tazlina

## ALEUT

1. Akutan
2. Atka
3. Belkofski
4. False Pass
5. Nelson Lagoon
6. Nikolski
7. St. George
8. Unga

## ARCTIC SLOPE

1. Atkasook
2. Point Lay

## BERING STRAITS

1. Council
2. King Island
3. Mary's Igloo

## BRISTOL BAY

1. Chignik
2. Chignik Lagoon
3. Chignik Lake
4. Egegik
5. Ekuk
6. Igiugig
7. Iliamna
8. Ivanoff Bay
9. Kokhanok
10. Koliganek
11. Levelock

## BRISTOL BAY (Cont'd)

12. Naknek
13. Pedro Bay
14. Perryville
15. Pilot Point
16. Portage Creek
17. South Naknek
18. Twin Hills
19. Ugashik

## CALISTA

1. Andreafski
2. Bill Moore's
3. Chuloonawick
4. Crooked Creek
5. Georgetown
6. Hamilton
7. Kipnuk
8. Kongiganak
9. Kwigillingok
10. Lime Villages
11. Napamiut
12. Ohogamiut
13. Oscarville
14. Paimiut
15. Pitkas Point
16. Red Devil
17. Sleetmute
18. Stony River
19. Tuntutuliak
20. Umkumiute

## CHUGACH

1. Chenega
2. English Bay
3. Port Graham
4. Tatitlek

## COOK INLET

1. Chickaloon
2. Knik
3. Ninilchik
4. Tyonek

## DOYON

1. Alatna
2. Beaver
3. Birch Creek
4. Chalkyitsik
5. Circle
6. Dot Lake
7. Eagle
8. Evansville
9. Healy Lake
10. Manley Hot Springs
11. Minto
12. Northway
13. Rampart
14. Stevens Village
15. Takotna
16. Tanacross
17. Telida

## KONIAG

1. Afognak
2. Kaguyak
3. Karluk
4. Woody Island

## NANA

1. Noatak

## SEALASKA

1. Klukwan

NOTE: This list does not include 19 villages that are in litigation or uncertain as to municipal status within the Aleut, Bering Straits, Cook Inlet, and Koniag Regions.

Additional copies of the Annual Report, Statement of Trust Philosophy, and Administrative Regulations, as well as other information on the Municipal Lands Trust Program, may be obtained by contacting:

Director
Division of Community Planning
Department of Community and
Regional Affairs
225 Cordova St., Bldg. B
Anchorage, Alaska 99501

or

Municipal Lands Trust Officer
Division of Community Planning
Department of Community and
Regional Affairs
225 Cordova St., Bldg. B
Anchorage, Alaska 99501

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF COMMUNITY PLANNING POUCH B – JUNEAU 99811

511 W. Fourth Avenue
Anchorage, Alaska 99501
August 29, 1977

# MUNICIPAL LANDS TRUST PROGRAM

## A PRELIMINARY STATEMENT OF TRUST PHILOSOPHY

## AND

## AN ASSESSMENT OF PRINCIPLES AND PRIMARY POLICY ISSUES

By: Robert L. Jenks
Municipal Lands Trustee

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Thirdly, involvement and participation by all interested parties is necessary to insure that the trust program be practical and acceptable. This outside input is invited as a structured part of the Municipal Lands Trust program, and is not intended merely to be an incidental follow-up. This paper provides a format for these parties to base such involvement and input.

The fourth and final purpose is that it might serve as a temporary guide for program development and the basis for developing formal regulation proposals, subject to input received from others. This preliminary paper will not substitute for formal review procedures of regulation proposals as prescribed by law, nor is it a formal departmental expression of policy in lieu of regulations.

## BACKGROUND

The Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, provided, among other things, that approximately 200 native villages in Alaska would form corporations to receive title to land. 22 million acres were selected by these village corporations in 1974. Generally, the pattern of lands selected commenced with the village situs and progressed outward in several directions for a maximum distance of about 15 miles. The total acreage selected by each village (excepting in Southeast) ranged from 69,120 to over 161,280 acres, with most entitlements being either 69,120 or 92,160 acres (108 and 144 square miles respectively). In Southeast, villages selected 23,040 acres (36 square miles).

# MUNICIPAL LANDS TRUST PROGRAM

## A PRELIMINARY STATEMENT OF TRUST PHILOSOPHY

## AND

## AN ASSESSMENT OF PRINCIPLES AND PRIMARY POLICY ISSUES

By: Robert L. Jenks
Municipal Lands Trustee

### PURPOSE

This paper deals with the program of community expansion lands to be conveyed by about 100 village corporations to the State in trust where no first or second class city exists in the Native village. The paper is designed to fill four purposes.

One purpose is to provide the Commissioner and staff of the Department, and the Attorney General, my initial perception of the nature and scope of the trust program. It summarizes considerable discussion and research, and differentiates this trusteeship from ordinary line programs of the State of Alaska.

A second purpose is to inform outside parties having an interest in the Municipal Lands Trust Program of these preliminary views, through wide-spread distribution of this paper. Parties having interest in this program who will receive copies include: approximately 100 Native Village Corporations, approximately 100 traditional Village Councils, the 24 profit and non-profit regional corporations, AFN and ANF leadership, and the Alaska Native Land Managers Association. It will be offered to Tundra Times and ANF Management Report for publication of excerpts.

Thirdly, involvement and participation by all interested parties is necessary to insure that the trust program be practical and acceptable. This outside input is invited as a structured part of the Municipal Lands Trust program, and is not intended merely to be an incidental follow-up. This paper provides a format for these parties to base such involvement and input.

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The Alaska Native Claims Settlement Act (ANCSA) of December 18, 1971, provided, among other things, that approximately 200 native villages in Alaska would form corporations to receive title to land. 22 million acres were selected by these village corporations in 1974. Generally, the pattern of lands selected commenced with the village situs and progressed outward in several directions for a maximum distance of about 15 miles. The total acreage selected by each village (excepting in Southeast) ranged from 69,120 to over 161,280 acres, with most entitlements being either 69,120 or 92,160 acres (108 and 144 square miles respectively). In Southeast, villages selected 23,040 acres (36 square miles).

In about one-half of the villages and prior to ANCSA, the federal government had made residential and business land titles available to occupants under the townsite laws. For the remaining half, Congress required village corporations under ANCSA Section 14(c)(1), upon receiving title to the village situs, to convey comparable occupied town lots to village occupants without consideration.

To facilitate title conveyance of these lots to the occupants, the cost of their subdivisional survey will be borne by the United States. 43CFR 2650.5-4(b). When these land transfers are completed, the situation will be roughly equivalent in all villages; that is, residents will have title to the land occupied by their homes and businesses, regardless of whether they received them earlier through operation of the federal townsite laws or from village corporations as a result of ANCSA. All other eligible occupancies specified by ANCSA Section 14(c)(1) and (2), including subsistance campsites, are subject to reconveyance by village corporations, regardless of any prior federal townsite.

Whether or not a federal townsite existed in a Native village prior to ANCSA, Congress provided also, that every village corporation must convey title to yet another category of land; i.e., "the remaining improved land on which the native village is located, and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and land for other forseeable community needs." These lands must be transferred to the appropriate Municipal Corporation where one exists, or otherwise to the "State in trust for any Municipal

Corporation established in the Native village in the future." In either case, the amount of lands to be transferred to the Municipal Corporation, or in trust, shall be no less than 1,280 acres (2 square miles). ANCSA Sec. 14(c)(3).[1/]

Presently, about 100, or half, of the villages authorized to make land selections are incorporated as first or second class cities. These cities will receive title to the community expansion lands in their own right. No qualifying municipality exists in the remaining half, requiring conveyance of these land titles to the State in trust for any municipality which may be established in these Native villages in the future. (The exact number of villages involved in each category presently is uncertain due mostly to litigation involving the federal government's determinations of the eligibility of certain villages to select land under ANCSA).

It is this State trust responsibility which is being addressed by this Preliminary Statement of Philosophy and Assessment of Principles and Primary Policy Issues.

DISTINGUISHING BETWEEN STATE AS TRUSTEE AND STATE AS SOVEREIGN

Extra-ordinary relationships and policies exist with respect to community expansion lands conveyed to the State in trust. This arises from the language of ANCSA Section 14(c)(3) establishing a trust, the acceptance

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1/ See Appendix A (top half) at the end of this paper for the entire wording of ANCSA Section 14(c)(3).

of the trust by the state legislature in AS 44.47.150,[2/] and the expectations of rural peoples of Alaska affected by the land trust.

While the sovereign powers of the state over political subdivisions could color the trustee role, the state is expected in this program to assume a constructive "trust" role by the Congress, the legislature, and affected rural peoples. The Commissioner and the undersigned fully agree that adoption of legal trust principles should be an underlying policy of the Municipal Lands Trust program. As trustee, the State should not acquire title to, nor administer, the community expansion (municipal) lands in the 100 or so villages for its own sovereign use and benefit. Rather, the lands should be conveyed and administered "in trust" for any Municipal Corporation established in the native village in the future.

With respect to lands conveyed in trust under ANCSA Section 14(c)(3), the legislature has defined the term "Municipal Corporation" as including "only first and second class cities incorporated under the laws of the state." AS 44.47.150(g). Defining applicable municipal corporations might seem to be an amendment of the basic trust document which would be an action a trustee normally is not permitted to take. Usually, only the settlor, or creator of a trust, may amend a trust document. However, a reasonable interpretation might be that the legislature can act properly as a sovereign with plenary powers over (future) political subdivisions, rather than as trustee, when it defines the powers of municipal corporations under its jurisdiction.

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2/ See Appendix A (bottom half), at the end of this paper for the entire wording of AS 44.47.150.

## PRINCIPLES OF TRUSTEESHIP: A DISCUSSION

A trust involves certain well-defined obligations. The Trust Document normally spells out the duties and relationships of each party in the trust relationship, including a clear identification of each party and the property to be held and/or managed in trust. Over the years, court cases also have refined the extent of certain duties, obligations, and rights of different parties to a trust.

### Trust Document: Creation Of The Trust: Settlor

Section 14(c)(3) of ANCSA constitutes the basic Trust Document. The United States, as holder of title to the lands prior to their conveyance to the Village Corporations, acted as Settlor, or creator of the trust. When selected land is conveyed to the village corporations, the United States will insert in each patent a requirement that mandatory reconveyances specified in Section 14(c) be made by each Village Corporation, including the community expansion (municipal) lands being discussed.

### "Interim" Trustee Role of Village Corporations

All lands selected by village corporations, with the exception of those selected under Section 19 (lands in former reserves selected by villages which did not receive any portion of the Alaska Native Fund monies), are subject to these Section 14(c) reconveyance requirements. As written, ANCSA seems not to permit any other exceptions. Thus, each Village Corporation, in effect, has been charged with the responsibility of

being an Interim Trustee over this land until this transfer of property is completed. A village corporation receives title to community expansion lands in trust for further reconveyance to a municipality or to the State in trust. See item #7 (page 20 ), for more discussion of this interim trust obligation.

Acceptance Of Trust Responsibility by State.

State acceptance of the trust responsibilities was accomplished in 1975 with the enactment of AS 44.47.150. Responsibility for the trust program was placed by the legislature upon the Commissioner of the Department of Community and Regional Affairs.

Identity of Trustee Of Lands Held In Trust

The basic trust document, ANCSA Section 14(c)(3), provides for conveyance of title ..."to the State in trust for any Municipal Corporation established in the Native Village in the future,..." Adding the sense of AS 44.47.150, the Trustee can be defined with respect to each village affected, as:

"The State of Alaska in trust for any first or second class city incorporated under the laws of the state which may be established in the Native village of _____ (name of village) in the future."

I recommend that title to community expansion (municipal trust) lands conveyed to the State in trust under Section 14(c)(3) be granted, accepted, and

administered in accordance with the above definition of the trustee.

The State in trust, through the Municipal Lands Trust program, is an institutional trusteeship, differing from the personal trusteeship found in federal (BLM) townsite trust administration. The Commissioner of the Department of Community and Regional Affairs has been designated to administer the trust; and this writer, being appointed to the position of "Municipal Lands Trustee", is a surrogate trustee or agent of the Commissioner, and is subject to the Commissioner's direction and supervision.

The term "municipal lands" in the program name and job title seems appropriate even though the identical term is not found in ANCSA Section 14(c)(3). ANCSA requires that "community expansion" lands be conveyed in trust to the State for later reconveyance to a future municipality in the Native village, hence they are actually "municipal" lands. Where a first or second class city (municipality) already exists so that no trusteeship is required, the comparable lands become "municipal" lands immediately upon conveyance by a village corporation.

Principle of Undivided Loyalty: Relationship of Trustee to Beneficiaries and Others.

In administering the Municipal Lands Trust Program, the Commissioner and Municipal Lands Trustee assume roles somewhat different from those found in administering usual State agency programs. In law, a trustee is one who takes and holds title to trust property solely for the benefit of another. A standard law text (Corpus Juris Secundum), states that a

trustee owes to the beneficiaries of a trust the duty of undivided loyalty, and he must not be guided or influenced by personal interests of a third party. So it is the duty of a trustee not to accept any position or enter into any relation, or do any act inconsistent with the interests of the beneficiary; that is, he must refrain from doing those things which would tend to interfere with the exercise of a wholly disinterested and independent judgement; and he cannot assume a position inconsistent with, or in opposition to, his trust. He cannot serve two masters with antagonistic interests. 90 CJS Trusts 247.

The rule of undivided loyalty is one of uncompromising rigidity; and no amount of good faith on the part of the trustee can overcome a breach of trust which would result from the existence of divided loyalty. ibid.

Accordingly, actions, regulations, and policies of the Commissioner, Municipal Lands Trustee, and any other staff involved in administration of these trust lands should reflect at all times the best interests of the beneficiaries, avoid potential conflicts of interest with other parties, and do all things reasonably necessary to avoid any breach of trust in connection with these duties. Such policy seems fully consistent with the terms of acceptance of the trust by the legislature as expressed by AS 44.47.150.

Beneficiaries Of Lands Held In Trust.

Just as the basic Trust Document (ANCSA Section 14(c)(3)) defines the Trustee, it also defines the Beneficiaries, as follows: "any Municipal

Corporation established in the Native village in the future..." Adding the sense of AS 44.47.150, each Beneficiary presently is defined by law as:

> "Any first or second class city established in the Native village in the future."

Since it is a future first or second class city that is beneficiary of the trust, it seems instructive to consult the legal text on general property rights of municipalities. Specific laws passed by the Alaska legislature (representing the sovereign powers of the State over municipalities) can modify these general rules; Alaskan municipalities presently have been given rather broad powers regarding municipally owned lands.

All property owned by a municipality is public property in the broadest sense. Municipal corporations hold all property in a fiduciary capacity, for the use and benefit of its citizens, in the sense that all powers of such a corporation are held in trust for public use. 63 CJS MUNICIPAL CORPORATIONS 950.

Municipal property is not the private property of the residents of the municipality on the theory that the municipality is a trustee holding the legal title for the benefit of the inhabitants, and the persons who are taxpayers or members of the public do not have any private interest in the funds and property of a municipal corporation. ibid. It follows, then, that community expansion lands held in trust for a

future first or second class city are for the ultimate general welfare of all future inhabitants of the village.

"Appropriate Village Entity", and Resident Village Citizens, are Quasi-Co-Trustees with the State.

From the foregoing discussion, it is apparent that the Trustee and resident citizens of the Native Village as represented by the "appropriate village entity" as defined by AS 44.47.150(b), have a joint obligation to manage the trust lands for the village "public" much as would a city government under the same circumstances. The power to pre-approve certain Trustee actions carries with it an obligation to see that the lands are managed consistent with the long-term best interests of that Native community; the trust lands are not merely "private" lands of the present village residents. In this sense, then, the resident citizens collectively can be considered as Co-trustees with the state. Working together, they and the trustee should be certain that appropriate lands and assets can be turned over to the future city at the proper time.

WHAT LANDS MAKE UP THE TRUST (CORPUS)?

Corpus of the trust refers to that property which is to be placed in trust and managed by the trustee for the benefit of the beneficiaries.

Nature of Title Held.

The trust document, ANCSA Section 14(c)(3), specifies title to be conveyed in trust shall be the "surface estate." ANCSA provides, generally,

that the Regional Corporations will own the corresponding subsurface estate. Whether certain resources such as gravel are part of the surface or the sub-surface estate is presently in litigation. Whether any powers of village corporations conferred by ANCSA Section 14(f) to grant consent to explore, develop, or remove minerals from the subsurface estate in village lands are transferred along with the land titles reconveyed to Municipal Corporations and to the State in trust, also is a legal matter which has not been determined.

Type of Property to be Conveyed in Trust

The Trust Document, specifies that the land to be conveyed in trust shall be "the improved land on which the Native village is located" (which remains after conveyances have been made under Sections 14(c)(1) and (2), "and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other forseeable needs", subject to a minimum acreage requirement. ANCSA Section 14(c)(3). See item #13 on page 22 for philosophy on listing land-use catagories of land to be conveyed in trust.

Acreage to be Conveyed

The amount to be conveyed in trust "shall be no less than 1,280 acres". ANCSA Section 14(c)(3). This is equal to two square miles.

Based on settlements already reached between several cities and their respective village corporations, and expressions by a substantial

number of village residents and councils where the State will have trust responsibilities, it appears that the 1,280 acre conveyance is not apt to be greatly exceeded except in unusual circumstances where forseeable needs may require the conveyance of a greater acreage.

## WHEN DO TRUST RESPONSIBILITIES AND ACTIVITIES BEGIN?

The State's responsibilities as the trustee created by ANCSA began when it accepted those responsibilities in 1975 with the passage of AS 44.47.150. The nature of these responsibilities can best be expressed in terms of appropriate trustee activities related to identifying lands to be placed into trust, and the management of those lands.

Philosophically, this can be approached from two points of view; (1) when is the earliest time that trust activities can occur, and (2) when is the latest time permitted under law.

Trust activities already have begun. Responses have been made to urgent needs and requests from several villages needing title to land for public uses such as schools, power easements, HUD housing, and a sewer lagoon. The approach used where the federal government has not yet issued patent or Interim Conveyance (I.C.) to selected lands is what I call "conveyance by promissary note". A Contractual Agreement is executed voluntarily by the parties (Village Corporation and State in trust), backed up by appropriate resolutions of the Village Corporation Board of Directors, and the traditional council where this is an appropriate village entity. The Regional Corporation also certifies

it was given opportunity to review and render advice per ANCSA Section 14(c)(5).

These Agreements provide that the land involved will be part of a future 14(c)(3) conveyance to the State in trust, and that it will be accepted by the State in trust. The Council resolutions concur with the desirability of devoting that parcel to the specific purpose. The trustee gives written assurance to the entity developing the land that an appropriate permit, lease, deed, etc. will be issued to it upon receipt of title by reconveyance from the corporation. As an umbrella over the whole transaction, each party joins in requesting that BLM grant an authorizing temporary permit or lease for the specified use until title is conveyed to the corporation. At that time, the promises to convey made by each party to the Agreements will be carried out.

This cumbersome process is necessitated by the unfortunate delays in granting title by BLM, but it sets the foundation for permanent and equitable long term solutions. Each party becomes involved, and each different interest is recognized and protected.

Carrying this concept further, comprehensive Agreements between the village corporation and the State in trust defining the entire parcel(s) to be conveyed and accepted may be made prior to the time BLM transfers the land title to the corporation by IC or patent, if the corporation and the community desire such action. Several village corporations have begun such discussions. Others located within municipalities already have entered into written Agreements with their appropriate First or Second Class City for all the land to be conveyed, with the blessings of the Regional Corporation.

In several regions, there is a strong expression by village corporation boards to get this major decision settled so they can finish their interim Trusteeship over these lands and get on with other important tasks. Where this is the voluntary wish of the corporation, the State in trust can, and should enter into such early comprehensive agreements. (However, administrative regulations first should be completed and adopted before they are signed by the State in trust. This is scheduled for early 1978).

The latest deadline for actual re-conveyance of community expansion lands to a municipality or the State in trust is, by statute, the receipt of patent to the land by the village corporation. ANCSA 14(c). Before BLM grants patent, however, the corporation must, in virtually every instance present BLM with a Plan of Survey for BLM to use as a guide for surveying the parcels to be re-conveyed under Section 14(c), including the community expansion lands.

Involvement in the Plan of Survey by the State in trust along with the village corporation, is essential, and represents the latest time when activities of the State in trust would begin. The survey plan will constitute a form of acceptance by the Trustee of the 14(c)(3) lands.

Time-wise, there is no statutory deadline when the Plan of Survey must be prepared. However, Village Corporations generally desire to develop the Plan of Survey promptly because, in most instances, individuals authorized to receive tracts under 14(c)(1) cannot get title to their homes, etc. from the corporations without this same Plan of Survey being completed and approved by all parties. Responsibilities of the State in trust in the event of extensive delay or refusal of a corporation to develop a plan

of survey or to convey lands under Section 14(c)(3) are discussed later in this paper.

In summary, the State's trust responsibilities already exist. The State in trust may enter into its program activities now on a village-by-village basis if desired by a particular village corporation. Ordinarily, trust activities will begin by discussing and reaching an agreement with village corporations as to the identity of lands to be conveyed in trust, the trustee representing the interests of any future city to be established in the Native village. This process will be described later. If desired by all parties, an interest in these lands then can be transferred to the State in trust by Contractual Agreement. Actual title can be conveyed to the State in trust when the corporation has received Interim Conveyance from BLM. The ultimate deadline for conveyance to the State in trust is receipt of patent by the Corporation. However, trust activities of the trustee would, in most cases, begin earlier than issuance of patent by BLM, with involvement in the Plan of Survey upon which surveys will be executed so that patent can be granted.

TRUSTEE PARTICIPATION IN IDENTIFYING MUNICIPAL TRUST LANDS.

The Trust Document (ANCSA) is silent as to what party or parties have responsibility to identify community expansion lands, other than to impose a clear duty upon village corporations to make such conveyances to Municipal Corporations or to the State in trust.

Lands to be conveyed to municipalities or placed in trust in nearly every instance require prior survey for purposes of identification and property description. Upon presentment of a proper Approved Plan of

Survey, the Bureau of Land Management will conduct such a survey.

Before a survey is authorized, however, BLM requires assurances that the parties to receive title from the village corporation under Section 14(c) have reached agreement with the corporation and with each other as to how the lands are to be surveyed and reconveyed. If the Approved Plan of Survey is incomplete or if conflicts are not resolved, any extra survey costs needed to accomplish mandator conveyances appear to be the responsibility of the village corporation. 43 CFR 2650.5-4.

In parallel conveyances of community expansion lands to existing first and second class cities, a broad consensus is developing that the Municipal Corporations and the Village Corporations have a joint, bilaterai, and cooperative role in negotiating a settlement of lands which will be surveyed by the Bureau of Land Management and subsequently transfered from the Village Corporation to the Municipal Corporation. Disagreement which cannot be overcome likely would require settlement through litigation between these two parties. (Of course, in any settlement prior to December 18, 1981, the appropriate Regional Corporation also must be given opportunity by the Village Corporation to review and render advice on this matter, according to common interpretations of ANCSA Section 14(c)(5)). Neither the State in trust nor existing municipalities appear to have a one-sided "selection" right, and for this reason, I recommend that the term "select" be avoided in reference to these lands.

In villages where community expansion lands are to be conveyed to the State in trust, the manner in which specific community expansion lands should be identified is open to interpretation. Do the village corporations

in this instance have a unilateral role not found in villages where a municipality exists? I think not. A conveyance made by a village corporation as Grantor also must have a corresponding Grantee to accept the title. Thus, the State in trust, as Grantee, seems to have a legitimate role in identifying and accepting lands to be conveyed in trust. BLM has indicated that they will not make those determinations, and that they look to the State in trust to be a party to the Approved Plan of Survey as an indication that agreement on the parcel(s) to be surveyed and conveyed has been reached.

In my opinion, the State as trustee, after reaching agreement with a village corporation, is the appropriate entity to indicate concurrence on the formal Plan of Survey on behalf of the Beneficiary (a future first or second class city in the Native village). In villages where no Municipal Corporation exists, there is no other authorized legal entity to sign the survey plan with respect to 14(c)(3) community expansion lands. Even though in most villages, community and corporation leadership is identical, Village Corporations cannot properly represent both Grantor and Grantee as this would involve a potential conflict of interest between economic and community interests. Also, some corporation shareholders live outside each village, and some residents in most villages are not shareholders of that village corporation (such as Natives born after December 18, 1971, Natives enrolled elsewhere, and non-Natives).

A PLAN FOR IDENTIFYING MUNICIPAL TRUST LANDS.

Summarizing points made earlier in this paper, and adding to them, a plan for agreeing upon what lands to survey and reconvey to the State

in trust might follow the ideas listed here:

1. The Municipal Lands Trust program of the State should be conducted in a manner which recognizes a fiduciary responsibility to "any first or second class city established in the Native village in the future" (the beneficiary). This responsibility includes participating with the village corporation and residents of the village to identify the lands to be placed in trust.

2) The grant of 14(c)(3) community expansion lands by the village corporation as Grantor requires a corresponding acceptance by the State in trust as Grantee to complete the transaction.

3) BLM indicates that the Plan of Survey which instructs them how to survey various catagories of 14(c) lands will provide that the State in trust, or an appropriate municipality, be a signatory party, indicating acceptance of the tract(s) delineated for survey and re-conveyance by the village corporation.

4) Even before the Corporation receives title from BLM, if a community and its village corporation desire, portions or all of a village's trust lands may be identified for ultimate transfer to the State in trust through a negotiated Agreement. This procedure is not required by law, but is designed especially to meet urgent community needs, such as HUD Housing, PHS facilities, school construction, etc. Under this procedure, the Trustee (with the concurrence of an appropriate village entity) can agree to the future transfer of an appropriate property interest to the agency involved, and joins with other parties in petitioning BLM to issue temporary rights thereto.

5) Even if there is no urgent community need for facilities requiring immediate identification of the lands to be surveyed and reconveyed to the State in trust, it may make good sense in many instances to arrive at a decision on the lands to be conveyed into trust at an early time before it is otherwise required. At any rate, an agreement between the village corporation and the Trustee should occur promptly after BLM issues I.C. to the land in connection with development and approval of the Plan of Survey.

6) When a corporation does receive I.C. from BLM, title to the Section 14(c)(3) lands then may be re-conveyed immediately to the State in trust if agreement has been reached; this also will be identified on the Plan of Survey, so it may be surveyed and properly described in terms of a legal survey in a corrective deed, following later issuance of a patent by BLM.

7) Because of the way Section 14(c) is written, village corporations probably would be within their rights if they wish to postpone actual conveyance of these lands to the State in trust until they receive a "patent" from BLM to the selected land, following survey by BLM. Meanwhile, however, they have an Interim Trustee responsibility for the lands involved. If lands necessary and appropriate for purposes listed in Section 14(c)(3) were devoted to other purposes by a village corporation rather than being conveyed to a municipality or to the State in trust, it might constitute a breach of trust of its interim trust duty. Development of the Plan of Survey within a reasonable time following receipt of Interim Conveyance constitutes the latest practicable time for making decisions concerning the identification of these lands, although it can be done earlier.

8) The State Municipal Lands Trust program should act with respect to the trust lands, much as would an imaginary city council and mayor. Great weight should be given by the Trustee to the views of the resident citizens of the Native village during the process of identifying, with the village corporation, which lands should be conveyed in trust. The trustee has a duty to be responsive both to the present needs of the village and to forseeable needs of any future city which may be established there.

9) In order to insure this responsiveness, the views of the same "appropriate entity such as the traditional council, a village meeting or a village referendum" specified in AS 44.47.150(b), should be obtained and its recommendations recorded by resolution and placed in the files of the department prior to accepting the grant of lands from the village corporation.

10) The "appropriate village entity" should be encouraged to obtain outside technical information and analysis to assist it in making recommendations to the trustee. (The Division of Community Planning, for example, has staff and programs to provide technical assistance upon request of the village entity).

11) The trustee, acting as a fiduciary, also should obtain outside technical information and advice when deemed appropriate, and share such information and advice with the "appropriate village entity".

12) While a village corporation could take an extreme position of offering lands for community expansion which are wholly unsatisfactory to the residents of the village or a first or second class city established

in the Native village in the future, on a "take it or leave it" basis, it is quite unlikely to occur. If it did, or if a corporation refused altogether to convey lands pursuant to Section 14(c)(3), it appears to be a duty of the trustee to litigate the issue, if it otherwise cannot be resolved by negotiation or arbitration. However, good faith negotiation between the parties will resolve every case without litigation, in my view. Section 14(c)(3) land is community land; the State in trust has a duty to represent and advocate long-term, public interests of the community. Valid community interests will tend to solidify behind reasonable and appropriate settlements of 14(c)(3) lands if all parties representing villages recognize that these lands are their community lands, not the State's. Each community can best determine for itself which lands are most appropriate for community use.

13) No attempt should be made by the State in trust to prepare a uniform or sample list of land-use categories which should be included in the tract or tracts conveyed in trust. Needs of various communities vary greatly. Any such list would hamper common-sense decisions which otherwise will evolve through honest, good-faith negotiation. Technical advice obtained by the village entity and/or the trustee can be expected to raise for consideration land-use issues which might otherwise be overlooked. As a matter of principle it seems appropriate that the lands conveyed be those essential for present and future public, community uses which normally are associated with cities, rather than those which primarily are of income producing nature.

14) Nothing in the law appears to dictate the shape or configuration of all the lands to be conveyed in trust. As appropriate, the conveyance

could consist of a single tract, or more than one tract. In some instances the corporation might retain one or more tracts within a larger block conveyed in trust, provided the overall common-sense effect does not violate the definition of lands to be conveyed in trust as stated in ANCSA Section 14(c)(3). Such tracts, if retained and productively improved by the corporation, or made available by the corporation for other private development, might benefit the community and contribute to the well-being of present and future residents more than would inclusion thereof to the State in trust for a future city. This concept best can be identified locally. Merely because a certain parcel of land may be suitable as a site for expansion of a community, does not necessarily mean that its conveyance to the State in trust is necessary for community expansion. ANCSA Section 14(c)(3) requires reconveyance only of lands necessary for community expansion.

15) The duties of the trustee should include making timely reports to the village residents with respect to their trust lands, in addition to the annual fiscal reports required by AS 44.47.150(d).

16) The trustee staff should become personally familiar with the land and residents of villages where trust responsibilities exist, by traveling to the villages as much as practicable, and consulting often with village people and their leaders.

ON BEING RESPONSIVE TO COMMUNITY NEEDS CONCERNING EXPANSION LANDS

It is intended that the Municipal Lands Trust program be highly responsive to the needs of the communities involved in the trust. A village should

not find it necessary to incorporate as a city only for the purpose of obtaining control of these community expansion lands. If incorporation occurs, it should be for other valid reasons.

If this kind of responsiveness is achieved, it will result from good-faith efforts and cooperation of the rural people involved, (whose participation is essential), and the Trustee staff. This responsiveness can be concentrated through efforts in two broad areas: (a) program activities of the trustee, and (b) participation and involvement by community residents and leaders.

Here are some examples of planned trustee activities: personal village visits by the Municipal Lands Trustee at least once a year (and more frequently when the level of decision-making activity requires), technical assistance visits by others as requested by the community and the trustee, periodic information letters, and annual and special written reports. One such special report could be made to the rural trust villages summarizing the comments received during the initial trustee village visits this fall, and their possible affect on proposed regulations. Always, the trustee will try to keep an open ear to oral and written requests and comments from village residents.

Different villages may need different solutions to their community expansion land problems; what will work in one village should not be forced on another if it does not fit equally well. The statutory requirement that pre-approval resolutions by an appropriate village entity be obtained before the trustee takes certain land actions, will be honored in good faith.

Village entities will be encouraged to develop long-term plans for trust

lands as an aid both to the community and the trustee in knowing what land activities are expected and appropriate. Technical assistance to help in this effort may be arranged through the trustee at the request of the appropriate village entity.

Subdivisional surveys of trust land parcels likely will be required in some villages to make trust land available for authorized purposes; a State budget request by the Municipal Lands Trust program already has been made to establish and fund a Revolving Survey Fund next year. If approved, very low-cost additions probably can be added to basic BLM contractual subdivisional surveys. This would allow lots to be available for lease or sale as appropriate when the village entity has identified them as being required to meet community needs. These survey costs could be included in the price of the lots and recovered as the lots are made available, thus replenishing the fund for later use in that village or elsewhere.

We must honestly encourage, and honorably include, good-faith input by the bush public which is consistent with the legal responsibilities of the trust program. Such a two-way partnership is essential to insure a successful program. Honesty and openness on our part will go a long way in encouraging involvement and acceptance by those served by the trust. Wide distribution of this paper is consistent with this intent.

Prior to drafting proposed regulations which will actually establish the Municipal Lands Trust program operational limits, I expect to visit about 25 villages (about one-fourth of those involved in the trust land program)

to discuss this philosophy and to obtain views as to what the regulations should include. These trips will be scheduled for September and October, 1977. Discussions also will be held with staffs of regional profit and non-profit corporations, and their input requested; also with AFN and ANF leaders. Later the proposed regulations will be broadly circulated for comments before being revised and adopted. A target date for distribution of these proposals is this November or December. After changes are made to reflect appropriate comments and suggestions, hopefully they can be adopted in early 1978. Then the trust program can go ahead on solid footing.

COMMENTS ON BASIC ISSUES

Certain basic issues concerning the trust program have arisen which should be mentioned.

The first issue deals with Native villages which are located in organized Boroughs but are not themselves incorporated as first or second class cities. Would the Borough be a "Municipal Corporation" entitled to receive and administer the 14(c)(3) lands on behalf of such a village? I believe paragraph (g) of AS 44.47.150 is a determination by the legislature, which has sovereign, plenary powers over municipalities, that only first and second class cities are municipal corporations for the purpose of administering 14(c)(3) lands.

The second issue deals with the identity of the recipient of Section 14(c)(3) lands for a Native village not incorporated as a first or second class city, where the lands in question physically are located near that village, but also are located within the jurisdiction of an adjacent or nearby first

or second class city. In some cases, the nearby city may include another village which has ANCSA selection rights of its own. The question raised is --- should the incorporated city receive title to 14(c)(3) land necessary for the expansion of the donating community just because the land falls within its political jurisdiction, (perhaps in addition to receiving lands from its own village corporation), or would the 14(c)(3) land of the first village be conveyed to the State in trust for a future first or second class city which later might be established in the presently unincorporated Native village?

I feel this issue is best approached by recognizing that selections under ANCSA were authorized by an eligibility certification for each Native village. It makes best sense under ANCSA, I think, that community expansion lands located within a selection of 69,120 (or more) acres made by a village certified to so select, be designated for the benefit of that same village, not for another one. Thus, in the example given, since the incorporated city is not located in the first village, the lands probably should be conveyed in trust for a future first or second class city established in that Native village in the future. If the nearby city should annex the village in question, I assume it would then be the city in that village and the lands would be re-conveyed to it by the State in trust. The fact that present policy prohibits incorporation of a separate city in such close proximity to an existing one could be disregarded here. As sovereign, the legislature could amend that policy, could require merger of both areas into one city, or could even dissolve the first. Meanwhile, the State in trust would manage these lands for the ultimate benefit of a city in the donating village.

The third issue deals with determining what is the "appropriate village entity" (see AS 44.47.150(b) for definition: Appendix B) to speak for the citizens of the village and to pre-approve land transfer actions by the trustee. Closely tied in with this is the question of who are residents of some complex communities, especially those along highways. Stated another way, where are the boundaries of those villages? Also, interwoven with these questions is the identity of present residents of any first or second class beneficiary city which later may be established in that Native village. Do all persons living in close proximity to the traditional Native village also constitute a constituency of that future city? Do they properly have sufficient present interest in these affairs to entitle them to participate in a village meeting or village referendum, such as referred to in AS 44.47.150(b)?

I expect the village informational meetings held later this Fall will reveal common-sense answers to this issue. The answers may not be uniform in all village situations. Consensus probably exists, or can be reached, on a local level without a need for the trustee or some other party to make a determination. Possibly in some cases, a local committee acceptable to all factions where impasse is apparent could be formed to offer a solution. This issue will need to be addressed in future regulations; input from the communities offering suggestions on how to satisfactorily resolve it will be helpful and welcome.

The fourth and final issue discussed here concerns structuring the trust program to obtain maximum separation from ordinary line agency programs of the State. Such separation appears necessary so that the Municipal Lands Trust program may operate under a bona-fide trust policy to the

greatest degree possible. It may be more difficult to explain the necessity of this policy to employees of other state agencies than to the trustee program staff.

Acceptance of 14(c)(3) trust lands into the corpus of the trust does not automatically make the land available for purposes desired by other state agencies. AS 44.47.150(b) requires that a pre-approval resolution by the appropriate village entity first must be obtained. A separate transfer document then can be granted by the trustee to make the trust land available to that other agency. In some instances, a reversionary clause might be appropriate to return the property interest to the corpus of the trust or to the future city if the land later were no longer needed for the original purpose.

Arrangements should be made to obtain independent legal advice and representation in the event of actual or potential conflicts of interest occurring between the trust program and other agencies of the state. This might take the form of special counsel appointed by the state attorney general or an independent, outside counsel. Such an arrangement has precedent (See Lassen v Arizona Ex Rel Highway Department, 385 US 458, (1967), involving trust lands in Arizona).

## IN CONCLUSION

This paper intends to establish communication with those involved with and affected by the Municipal Lands Trust program, by identifying issues and setting forth a preliminary philosophy.

It is not the final word. It can be modified, or developed along additional lines.

We ask for comments from all who may be affected by the trust program -- both in the State government and outside. If the trust program is to work properly, these comments are necessary. Please send them as soon as possible so they can be useful in drafting the trustee regulations which will begin about October 15, 1977.

Send comments to:

Robert L. Jenks
Municipal Lands Trustee
Department of Community and
Regional Affairs
511 W. Fourth Avenue
Anchorage, Alaska 99501

OR

Lee McAnerney, Commissioner
Department of Community and
Regional Affairs
Pouch B
Juneau, Alaska 99811

RLJ/ajr

**Statement by Commissioner:**

This preliminary Statement has been reviewed, and its reproduction and distribution is hereby approved. It is not to be regarded as official policy or regulations, but as a method to solicit comments, input, and suggestions from interested parties. Involvement and participation by interested parties is desired and encouraged.

Based upon this statement and any later modifications resulting from comments by others, proposed regulations governing the State in trust program will be created and distributed. These proposed regulations also will be influenced by input received during the 25 to 30 village meetings, one or more to be scheduled in each regional area in the fall of 1977. After the Proposed Regulations are published and copies [illegible] all interested parties of record, (probably in November or December of 1977), further opportunity for comment and input will be provided. [illegible] of basic regulations for the Trustee program presently is planned [illegible] early 1978.

Lee McAnerney

Lee McAnernev, Commissioner

Department of [illegible]

Regional Affairs

29 August 1977

Date

## SECTION 14(c)(3) of the ALASKA NATIVE CLAIMS SETTLEMENT ACT:

**(c) Each patent issued pursuant to subsections (a) and (b) shall be subject to the requirements of this subsection. Upon receipt of a patent or patents;**

**(3) the Village Corporation shall then convey to any Municipal Corporation in the Native village or to the State in trust for any Municipal Corporation established in the Native village in the future, title to the remaining surface estate of the improved land on which the Native village is located and as much additional land as is necessary for community expansion, and appropriate rights-of-way for public use, and other foreseeable community needs: Provided, That the amount of lands to be transferred to the Municipal Corporation or in trust shall be no less than 1,280 acres;**

---

## APPENDIX A (BOTTOM HALF)

ALASKA STATUTES 44.47.150:

**Sec. 44.47.150. Village land conveyed in trust.** (a) The commissioner of the Department of Community and Regional Affairs is designated to accept, administer, and dispose of land conveyed to the state in trust by village corporations under § 14(c)(3) of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 703) for the purposes specified in that section.

(b) Transfer of land by sale, lease, right-of-way, easement, or permit, including transfer of surface resources, may be made by the commissioner only after approval of an appropriate village entity such as the traditional council, a village meeting, or a village referendum. Such approval shall be by resolution filed with the department.

(c) Within one complete state fiscal year after the incorporation of a municipality in the village or of a municipality which includes all or part of the village, land acquired under this section shall be conveyed without cost to the municipality, and the municipality shall succeed to all the entrusted interest in the land.

(d) Separate accounts shall be maintained in the name of each village for the land, including the revenues from the land, acquired from each village corporation under this section, and within 90 days of the close of each state fiscal year a statement of the account for each municipality shall be prepared by the commissioner and be made available to the village and to the public upon request.

(e) Upon the conveyance of land to a municipality under this section, the commissioner shall account to the municipality for all profits including interest from the land, and the municipality may then request that the governor submit a request to the legislature for an appropriation for the amount due it.

(f) No title or interest to lands acquired by the department under this section may be acquired by adverse possession or prescription.

(g) For the purposes of this chapter, the term municipality includes only first and second class cities incorporated under the laws of the state. (§ 1 ch 119 SLA 1975)

APPENDIX B

Citations from Title 43, Code of Federal Regulations:

43 CFR 2650.5-4:

# SECTION 2650.5-4 VILLAGE SURVEYS, BUREAU OF LAND MANAGEMENT RULES AND REGULATIONS FOR ALASKA NATIVE SELECTIONS

(a) Only the exterior boundaries of contiguous entitlements for each village corporation will be surveyed. Where land within the outer perimeter of a selection is not selected, the boundaries along the area excluded shall be deemed exterior boundaries. The survey will be made after the total acreage entitlement of the village has been selected.

(b) Surveys will be made within the village corporation selections to delineate those tracts required by law to be conveyed by the village corporations pursuant to section 14(c) of the act.

(c)(1) The boundaries of the tracts described in paragraph (b) of this section shall be posted on the ground and shown on a map which has been approved in writing by the affected village corporation and submitted to the Bureau of Land Management. Conflicts arising among potential transferees identified in section 14(c) of the act, or between the village corporation and such transferees, will be resolved prior to submission of the map. Occupied lots to be surveyed will be those which were occupied as of December 18, 1971.

(2) Lands shown by the records of the Bureau of Land Management as not having been conveyed to the village corporation will be excluded by adjustments on the map by the Bureau of Land Management. No surveys shall begin prior to final written approval of the map by the village corporation and the Bureau of Land Management. After such written approval, the map will constitute a plan of survey. Surveys will then be made in accordance with the plan of survey. No further changes will be made to accomodate additional section 14(c) transferees, and no additional survey work desired by the village corporation or municipality within the area covered by the plan of survey or immediately adjacent thereto will be performed by the Secretary.

# DRAFT

# TRIBAL-STATE RELATIONS:
# A NEW PARADIGM FOR LOCAL GOVERNMENT IN ALASKA

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## INTRODUCTION.

Alaska is a state which has clearly adopted the philosophy of the "New Federalism." In adapting the local government section of the Alaska Constitution, the framers clearly indicated that it was their intent to further the philosophy of the new federalism in Alaska by decentralizing state government, and addressing the majority of local concerns through local mechanisms.[1] The Alaska Supreme Court has fully embraced the concept of New Federalism in the area of individual rights by specifically holding that the Federal Constitution does not limit the State of Alaska from securing to its citizens greater protection of individual liberties and freedoms than these found under the Federal Constitution.[2] In the political arena, the State of Alaska has sought to lessen federal concern over lands within the state. Finally, in the conduct of its own affairs, the state government has shown innovative during its attempts to reduce the size and scope of state government.

This report is yet another attempt to pursue this policy. The goal of this study is to devise a mechanism which enhances local control over local concerns in those areas of the state which are "unorganized." Additionally, this study investigates possible mechanisms for coordinating multiple governments which may exist in a community.

In pursuit of these objectives, this study suggests a new paradigm for local government in Alaska. The study focuses upon the possibility of developing a state/tribal governmental interface. Fundamental to this paradigm is the effort to develop government-to-government relations between the state and the Native people. Admittedly, this is in sharp contrast to the short history of the State of Alaska. Since statehood, Alaska has attempted to deal with its Native population within a state/citizen context. While this context is appropriate in many situations, the state/citizen context proves inadequate for all situations. In order for a pluralistic society such as Alaska to reflect the respective pluralistic structures within the society, those structures must reflect the various pluralistic interest which make up the society-at-large.

In the case of the Native people, early experiments and societal assimilation have proved only marginally successful. Rather it is the rule that the Alaska Native people remain culturally unassimilated and retain cultural and government characteristics which separate them as a people from the majority of Alaskan citizens. On the contrary, it is not uncommon for the rural non-Native residents to become assimilated into the Native culture and society. In the political sense, this assimilation is reflected in the active enfranchisement of many non-Native into rural Native government. Thus, in such rural Alaskan communities the dominant Native government and society has come to constitute the whole community's government and society, in spite of the presence and participation of individuals racially defined as non-Native. Under these circumstances, the tribal government constitutes the only feasible and viable form of local government for that community. In such cases, the tribal/state paradigm does not function to exclude representation of non-Native elements within the community, but rather becomes the most appropriate vehicle for the representation of local interests and concern. It is the purpose of this study to investigate the feasibility of utilizing Alaskan Native governments as an alternative local government form for those communities where such a form is the most appropriate vehicle for the representation of local interests and concerns. For such a mechanism to be successful, it is necessary that the mechanism will promote to the maximum extent possible the coordination of Native government and state government. It is hoped that through such coordination the respective interest of the state and the Native governments can be met.

There exists in rural Alaska the common perception that where a parallel government exists within a community, the municipality represents the non-Native interest in the community while the Native government represents the Native interest in the community. For this reason, the Native element in the community generally elects not to participate in the municipal government. The result is that the municipal government is not an expression of self-government for the community but an expression of self-government for the non-Native portion of that community. Furthermore, the Native element of a community tends to exclude non-Natives from participating in the affairs of the Native government.

Obviously, the Native government represents the expression of self-government for the Native portion of the community. In this situation, neither council represents self-government of the community as a whole. The exclusion of Native governments from the local government system of the state thereby results in the exclusion of the Native portion of many communities in rural Alaska. The inclusion of Native governments within the state system of local government would promote the more accurate representation of the community as a whole, albeit a representation through the various factions of the community.

# PART I

## EARLY AND CURRENT ALASKAN LOCAL GOVERNMENTS

### A. EARLY ALASKAN LOCAL GOVERNMENTS

The earliest "local governments" in Alaska were Native. As Dave Case points out these primeval governments varied as between the Native cultures.[1] Generally, however, these early governments were loose associations of individuals based upon family relationships and customs. Group decisions were made by consensus.

Similarly, early non-Native local government in Alaska was very informal. After the purchase of Alaska by the U.S. in 1867, the primary mechanism of local government was the extra legal mining districts.[2] Like the Native governments, these early miner's governments were loose associations based on custom. Generally, decisions were made by majority vote. In 1884, Congress recognized the authority of these mining districts, but the status of Native governments remained in limbo.

In 1900, Congress enacted a civil code for Alaska which included authorization to form towns of over 300 residents.[3] This first form of municipal government was patterned after the mayor-council city government common to the "lower 48." Towns were severely limited as to their ability to tax and contract debt and were highly dependent on intergovernmental transfers. Their primary function seems to have been providing school services. In 1904, some of these limitations were relaxed, but the next major change had to wait until the formation of a territorial government.

In 1905, Congress authorized the formation of independent (city) school districts, and school districts for unincorporated areas.[4] In both cases, the districts were fiscally autonomous respecting current expenditures. They directly received a portion of intergovernmental

revenue transfers due the city. They remained dependent on the city or territory tax revenues for capital expenditures.

In 1912, Congress passed the Organic Act creating the Territorial legislature.[5] In the following years, the legislature created a second class of territorial towns, subject to the limitations of the earlier Act of Congress. It was fully intentioned that local government be kept weak so as not to present a taxing or regulatory threat to commercial and mining interests in the territory.[6] In fact, the Organic Act prohibited organization of "counties" or other regional local governments.[7] In 1915, the legislature upgraded territorial towns so that they would be subject to the same limitations as the towns authorized under the federal legislation. At the same time, the legislature for the first time attempted to assimilate Native village government through the Indian Village Act of 1915. This Act authorized Indian villages to organize as units of local government.[8]

In 1917, the legislature authorized incorporation of school districts in unincorporated areas. Under this new legislation, the incorporated school districts achieved greater fiscal autonomy through authorization to tax, as well as an increase in shared intergovernmental transfer revenues.

The legislature undertook a revision of the territorial municipal code in 1923. The new code replaced federally authorized towns with first class cities which directly elected a mayor, expanded council powers, provided for mayoral vetoes, and established minimum procedures for city government.[9] Later, in 1929, the legislature repealed the Indian Village Act of 1915, and revised the laws relating to second class cities making them substantially equal to first class cities.

By 1934, the federal policy toward Indians had again shifted away from assimilation. This was reflected by the passage of the Indian Reorganization Act, and the subsequent extension of the Act to Alaska in 1936.[10] The Act was intended to vest "tribal organizations with

real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations."

At this same time, the legislature instituted reforms designed to authorize special purpose regional governments. In 1935, the legislature authorized incorporation of "independent school districts" which included both the area inside city limits and the surrounding adjacent areas. The new school districts were independent of city governments and were fiscally autonomous.[12] Also in 1935, the legislature authorized public utility districts which were fiscally autonomous special purpose governments capable of providing garbage, parks, street, fire, telephones, electrical, etc., services.[13]

In 1951, the legislature authorized third class cities, which were essentially the same as second class cities, differing only in geographical and population size.[14]

In 1957, the territorial legislature again attempted to create incorporate villages under territorial law.[15] An Incorporated Village had limited powers which include its power to provide water, electing sewers, and fire protection; regulate dogs, curfews, and land use; and provide public works. The State amended the Act in 1959 to invest the incorporated village with general police powers and provided for village magistrates to levy limited fines. At the same time, the legislature defined the incorporated villages as a city of the fourth class.

At the time of statehood, there existed in the state:

24 first class cities
8 second class cities
2 third class cities
10 fourth class cities
69 I.R.A.'s
5 P.U.D.'s
8 independent school districts
1 incorporated school district
unknown number of traditional Native councils

Statehood did not drastically alter the local government pattern since under Article XV, Section 1 of the Alaska Constitution, the laws of the territory remained in effect until they were repealed, amended or expired.

It was not until 1972, the state undertook a wholesale version of the municipal code to create the current system.

## B. CURRENT STATE CHARTERED LOCAL GOVERNMENT

The system of local government authorized under the Alaska Constitution is relatively simple. It is possible to categorize Alaskan local governments into two basic types, i.e., general and special purpose governments. For the sake of analysis, a general purpose government is a government which exercises independent discretion over a broad range of topical concerns. In contrast, a special purpose government is a government which exercises discretion over a specific topical concern.

### General Purpose Governments.

The general purpose government is the constitutionally preferred unit of local government in Alaska. This policy is specifically stated in Article X, Section 1 of the Alaska Constitution which states that, "The purpose of this article is to provide for maximum local self-government with a minimum of local government units, ..." This policy is implemented in Article X, Section 2 which provides that "All local government powers shall be vested in boroughs and cities," and is further stated in Article X, Section 15 which states "Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law."

This concern for consolidating local powers into single general purpose governments is expressed throughout the Constitutional Convention record. The adoption of "one basic local government system" was

intended to prevent "creation of numerous types of local units which can become not only complicated but unworkable."[16] Of immediate concern to the Delegates was the governance of the school boards, Public Utility Districts (P.U.D.s) and health districts. As stated by Delegate Victor Fischer:

> "That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[17]

To this end the constitution provides for the creation of boroughs and cities.[18]

The most unique aspect of the Alaskan general law municipality is the framer's intent to create strong local government units. Systems of government then operating in the majority of the states were felt to be too weak.[19] In his initial address to the convention introducing the Local Government Committee's proposed article, Delegate Vic Fischer expressed the "New Federalist" philosophy favoring general decentralized government. Citing the Congressional Commission on Intergovernmental Relations, Delegate Fischer stated:

> "The Commission concerned itself with the need for strengthening of state government and a decentralization of federal power. In this study they found that local government is an important factor in this process and I would like to briefly quote a few paragraphs. In discussing the strengthening of local government, the Committee says, 'The objective of decentralization cannot be obtained by a readjustment of national-state relations alone. It will be fully achieved only when carried through to the lowest levels of government where every citizen has the opportunity to participate actively and directly. The strengthening of local government requires the activities that can be handled by these units be allocated to them together with the financial resources necessary for

their support.' Then the report goes on and draws a picture of the tremendous number of overlapping tax jurisdictions and separate local entities we now have in the state and goes on to say, 'More or less hidden in this picture is a paradox that consistently plagues the state and bars any easy solution of the problem of achieving the decentralization of government -- too many local governments and not enough local government.' That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[20]

To implement this plan, the committee adopted the so-called "Texas Plan." This approach was explained to the convention by Delegate Victor Rivers as follows:

The old approach to county government was that they existed and had their authorities only in those specifically delegated to them and specifically spelled out to them by the legislature or by the constitution. The other approach which has been adopted and which has operated in a few states, approximately seven as I recall, particularly in Texas, has been called the Texas Plan, and there, under that plan, they allocate such powers to the intermediate tier of government and the cities are not specifically reserved or eventually withdrawn by the state itself. They have a broad exercise of local authority much as our cities have today. That has been the matter of the choice -- whether we wanted to follow the old pattern in which the constitution and the legislature would delegate certain specific powers to the intermediate form of government, which often is called the county and which we have designated as the borough, or whether we would follow the plan of reserving powers to the state and letting the local government exercise broad general authority within the limits of those reservations.[21]

It is quite clear that the "pure" Texas plan called for application of home rule principals to all local governments. The various classes of cities and boroughs would be defined in law by the quantity and quality of powers reserved by the state.

The record indicates that some delegates to the constitutional convention supported the "pure" Texas Plan.[22] In fact, the concept of a "general law" municipality was not introduced in the floor debate, but seems to have been an assumed constant which carried over from the territorial local government concepts. This is reflected in Article X, Section 9 and 11 which respectively provide that first-class municipalities could assume home-rule status, and that the legislature could extend home rule to other classes of government. The concept of "general law" municipalities was enacted by statute.[23] It is interesting to note that although the "general law" concept was not discussed in convention floor debates, it has become a fundamental concept guiding the majority of local governments in Alaska.

i) Boroughs: A borough is the intermediate level of government in the State of Alaska. Although the term "borough" is somewhat unique, the notion of an intermediate level of government is common to the American local government scene. The borough "corresponds generally to the county in other states."[24] By statute, the borough is a government for an "area."[25] This is in contrast to a city, which is a government for a "community."[26] The framers of the constitution anticipated that an average size borough would be between 1,000-2,500 square miles.[27] Presumably, an area could include a number of communities and their outlying areas.[28] Clearly, the framers intended to create a system of two-tiered, local coexistent governments.

But the framers also intended local government to be flexible enough to adjust to future developments. It has, therefore, been observed that:

> Boroughs in different parts of Alaska may serve two quite different purposes. In areas which include cities, they may

constitute a second tier of government. In other areas, they may themselves be the sole or primary local units.[31]

The Alaska Supreme Court has recognized this by stating that the Constitution does not require the coexistence of boroughs and cities.[32]

There is a strong indication that the original concept of the borough was strongly linked to home rule. This is most notably demonstrated in committee answers to delegate questions regarding the unorganized borough.

V. Rivers: ... In the extent that the benefits that the legislature sets up will offset the added cost to the people, and the extent of their desire for home rule will govern how far they go in organizing those boroughs, but it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated boroughs...[33]

This sentiment is noticeable in comparing the respective constitutional sections dealing with cities and boroughs. Whereas the constitution specifically states that "Cities shall have the powers and functions conferred by law or charter."[34] (emphasis added) The comparable clause dealing with boroughs is less specific providing that, "The legislature shall classify boroughs and prescribe their powers and functions."[35] (emphasis added) It remains unclear whether such prescription should be by specific enumeration or reservation. Nevertheless, inclusion of reference to boroughs in Article X, Sections 9 and 10 leaves no doubt that general law boroughs were constitutionally contemplated.

ii) Cities. In contrast to boroughs, cities are statutory defined as the local government unit for "communities."[36] The local government committee of the Constitutional Convention considered the option of abolishing the city form of government. It was felt, however, that

such a move was "too drastic a step," and it was felt that the existing territorial units of governments should be perpetuated. On the other hand, it was also stated that,

> " .. we visualize the possibility that as the borough becomes a more definite unit of government over the years, which we hope it will, the scope better defined, that all the functions that can best be carried out on the unified basis be transferred over to the borough."[38]

In City of Douglas v. City and Borough of Juneau,[39] the Court recognized that "Unification is consistent with the purpose expressed in Article X, Section 1 of minimizing the number of local government units." But in preserving the city, the convention did not intend to subordinate the city to the borough as indicated by the following exchange:

HURLEY: The borough then has nothing to say about the services that the city offers its own residents within its boundaries. Is that true?

ROSSWOG: Yes, the city should remain as much the same as today, or practically the same unless there are some gradual changes in the future. They can delegate powers back and forth but the borough would not tell the city that they had to supply certain services or couldn't supply certain services. That is why the two are set up as having the authority.

HURLEY: In essence, then, you have two local government units?

ROSSWOG: Yes, that is right.[40]

appraising, its own assisting agency, its own condemnations.[42]

This point was recognized by the Alaska Supreme Court in Macauley v. Hildebrand[43] where the Court held that a home rule borough may not require its school system by ordinance to participate in centralized accounting where the Legislature has delegated express authority to the school board to resist such requirements. The Court based its decision upon the theory that education was an area of "pervasive state authority." The obvious conclusion, therefore, is that service areas may exercise substantial autonomy in areas of "pervasive state authority." In a similar manner, the legislature could provide substantial autonomy to public utility districts since regulation of public utilities is also an area of state concern.[44] Thus, while the constitution provides that "all local powers shall be vested in boroughs and cities",[45] it does not exclude the exercise of governmental authority by governments other than cities and boroughs.

This balance is further demonstrated in those constitutional provisions which provide that when a borough is organized, existing service districts shall be "integrated" into the borough government.[46] Once a borough is organized, the assembly may create service areas within its borders.[47] This latter power is subject to the single prohibition that services areas cannot be established where such services can be rendered by annexation to an existing service area or city.[48] This prohibition is consistent with the general preference for integration rather than separate incorporation.

It is quite clear that service areas are only "semi-autonomous." As indicated above, the service area would be subject to the exclusive "fiscal jurisdiction" of the assembly. Beyond this, however, the framer's contemplated that service area boards could be set up and exercise substantial powers. This was clarified by Delegate Fischer who stated:

..., it is the intent of the committee that when you establish a service area you could, say, establish a

Thus, while the momentum set in force by the Constitutional Convention contemplates eventual dissolution of cities in favor of boroughs, the interim is governed by the principals of sovereign coexistence.

Special Purpose Governments

As noted above the integrated/unified local government is the preferred vehicle of local government in Alaska. The constitution, however, provided for service areas and districts which seem to be semi-autonomous special purpose governments. In understanding the role of special purpose governments, it is necessary to recognize that service areas represent a compromise between the constitutional delegates who argued in favor of wholly integrated local governments, and those delegates who favored continuing the independent school districts, health districts and P.U.D.s formed under the territorial government. In expressing this compromise, delegate Vic Fischer stated:

> Mr. Johnson, it was not the intention of the committee to do away with any existing school districts just by the enactment of this article. (Sec 15). The intent was to leave them within a new framework of government.... what we visualize is putting them under the general fiscal jurisdiction of the larger entity, which includes all the people within the particular school district.[41]

This was again explained by Delegate Rivers who stated:

> Mr. President, the idea was that the general powers of government would be with the general elected representatives of the people. Now, as Mr. Fischer has pointed out, the special functions in regards to the use of one group for one special purpose such as health, education or anything else, the power to take the board and take its powers away, the powers of the boards would probably continue except for the taxing power being centralized in the one taxing agency which would thus have its own

separate school board,...to supervise the school functions...[49]

Thus, it is possible for a service area to exercise substantial power independent of the general borough assembly.

It must be remembered, however, that the service area may never exercise total autonomy. There seems to be two chief limitations on the service areas. First, the service area may not unilaterally tax. The Constitution specifically provides that only cities and boroughs may tax.[50] As indicated above, this limitation on service areas was perceived by the framers as the sufficient link needed to achieve local government coordination. There remains, however, substantial autonomy even in fiscal matters as indicated by the Macauley v. Hildebrand case. A school district may maintain separate financial records. Similarly, while service areas have limited control over tax revenues, they may possess substantial autonomy with respect to revenues from intergovernmental transfers. For example, under the terms of A.S. 29.89.030 (2), a health district operating a hospital may qualify for state revenue sharing. Although, the sponsoring municipality would initially receive the revenue sharing payments, the municipality is required to transfer such payments to the service area to be used for health services at the discretion of the hospital "directors".

The second major limitation on a service area's autonomy is related to the operation of the "local activity rule." As the Court stated in Macauley, the legislature may delegate to service areas power beyond the resolution of a parent municipality in those subject areas of state concern. It follows, therefore, that service area autonomy is inversely related to "local" concerns. For example, a municipality could certainly regulate the use of municipal property regardless of whether it was assigned to the service area, since municipal property is purely a local concern.[51] Of course, is is not easy to define what is a "local" concern as opposed to a "state" concern. This is even less clear under the borough form of government in that the framers of the constitution intended boroughs to assume greater responsibility in the area of tradi-

tional state concerns as state government "decentralized." The framers seemed to have accepted this ambiguity, and left the matter to the legislature. The courts recognized this role for the legislature in the Macauley and Chugach Electric cases by holding that municipal regulation is invalid in the face of contrary statutory law.

In spite of these limitations, service areas would seem to be remarkably flexible mechanisms of local government. For example, the Constitution authorized intergovernment cooperative agreements between "any local governments" for joint administration of any functions or powers.[52] Presumably, these provisions would apply to service areas since they are local governments. This view is supported by the fact, that only cities and boroughs are authorized to transfer powers, while "all local governments" are authorized to enter into intergovernmental agreements.[53] Thus, it would seem possible for co-extensive service areas to enter into cooperative administrative agreements for such things as centralized accounting and budgeting, personnel management and property management systems. Such mechanisms could be used rather extensively to provide a wide range of services for a community without city incorporation. This concept is not beyond the framer's contemplation, in that both pro-integration, and anti-integration factions within the constitutional convention characterized cities as "a collection of service areas".[54] It must be remembered, however, that a collection of service areas would lack the power to independently tax which a city possesses. Thus, such a collection would be totally dependent on intergovernmental transfers, whether from the borough or the state. Furthermore, a collection of service areas would be subordinate to borough regulation in areas of "local control". The collection of service areas, however, could exercise substantial autonomy in areas of state interest, upon approval of the legislature.

Service areas have their greatest utility in the unorganized boroughs. The constitution directs the legislature to provide necessary services in the unorganized boroughs, "allowing for maximum local participation and responsibility."[55] To implement this section, the legislature provided that it may authorize "service areas" in the unorganized borough.[56] It

is agreed that such service areas do not possess powers of fiscal autonomy,[57] however, they may exercise other powers delegated by the legislature.

The legislature has seen fit to authorize four types of service areas in the unorganized borough - i.e.: 1) aquaculture service areas; 2) coastal resource service areas; 3) regional educational service areas, and 4) volunteer fire departments.

The legislature authorized the Commissioner of Commerce and Economic Development to declare aquaculture service areas.[58] The purpose of these service areas are to provide fishery enhancement services. The service area board is comprised of representatives of member user groups.

The coastal zone management service areas are general "planning" units for coastal areas of the state. Whereas, coastal boroughs are automatically designated coastal zone management districts, unorganized areas may organize a special service area for the conducting of making district coastal management programs.[59] These programs operate to guide state agencies in the operation of their programs throughout the coastal areas of the state. While the state continues to be the basic provider of basic services, the service area boards operate as a centralized planning agency for the area. The board of the service area is popularly elected.

Third, the regional education attendance areas (REAA) are service areas providing eudcational services within the unorganized borough.[60] Like the coastal zone management areas, the REAA's are controlled by a popularly elected board, but were mandatorally organized by the legislature after a settlement of the "Molly Hootch" case.

Finally, the legislature has "impliedly" authorized organization of volunteer fire departments for unorganized areas of the state through the state revenue sharing program.[61] Under this program, local fire departments may organize under regulations adopted by the state

marshall. Upon approval and registration of the departments, the organizations are eligible for state funding. Generally, these departments enjoy substantial fiscal autonomy, provided that they confine their activities to fire protection.

As noted above, there is great variety in the organization and operation of these special service areas. At the present time, the authority of these special service areas has not been challenged in court, so that it is impossible to define the limits of the legislature's discretion as to the manner and form that these service areas may take. If the past record is an indication of legislative authority, it can only be stated that the legislature possesses broad discretion in creating and organizing service areas, provided they remain impotent in regards to the levying of taxing authority.

## C. ALASKA NATIVE GOVERNMENT ORGANIZATION

As with state chartered local governments, Alaskan Native governments can be categorized as general or special purpose governments. Additionally, there is an additional type of "quasi-governmental" entity. This latter type of entity is included in the following discussion.

### General Purpose Governments.

It is commonly stated that there are two types of general Native governments in Alaska: Native Councils and IRA Councils.[62] It practices there is little difference between the operation of these two types governments. The distinction between the two governments is largely theoretical. This distinction is important, however, when the authority or status of the government comes into question.

i) Traditional Councils. In a strict sense, traditional councils are not traditional to the Alaska Native people. As pointed by David Case, the traditional precontact of Native governments were primarily based on family ties.[63] Traditional councils have been formed in reaction to contact with the non-Native culture for local representation of the

Native community before outside interest. Many of these councils have adopted formal traditional constitutions while others seem to operate according to an unwritten constitution analogous to the British constitution. In all cases, the basic level of organization is the village.

The basis of these government's authority rests in their retained sovereignty, i.e., the principle that absent express Congressional action to the contrary, Indian nations retain the inherent power of internal self-government.[64]

This observation has led to several inquiries regarding the tribal status of Alaskan Native villages. Although the question of tribal status in Alaska is intriguing from an ethnic and political perspective, its resolution has doubtful legal significance. More importantly, the courts have clearly stated that recognition of an Indian community's authority for self-government is directly linked to its dependent status with the federal government. In the United States v. Sandoval,[65] the Supreme Court stated that a Native community's dependent status is determined by legislative and executive course of action respecting the Native community in question.

Congress has specifically extended this recognition to Alaska Native villages and has treated them in the same manner as other Indian tribes. For example, Native villages receive identical treatment as Indian tribes under the Indian Self-determination Act,[67] the State and Local Fiscal Assistance Act of 1972,[68] the Housing and Community Development Act of 1974,[69] the Comprehensive Employment Training Act of 1974,[70] and the Indian Child Welfare Act.[71] Additionally, Congress has recognized self-governing qualities of Alaska Native communities when it provided for the extension of state civil jurisdiction over Alaska Natives. In applying PL 83-290 to Alaska, Congress expressly reserved that:

> Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community, in the exercise of any authority which it may posess shall, if not inconsistent

with any applicable civil law of the state, be given full force and effect in the determination of civil cause of action pursuant to this section.[72]

The executive branch has likewise dealt with Alaska Native villages as Native governments where it exercises discretion. The best example of this is the Omnibus Crimes Control and Safe Streets Act of 1968 which places responsibility of the Secretary of the Interior to determine those Indian tribes which perform law and order functions.[73] Under this authority, the Secretary of the Interior has recognized several Alaska Native villages as exercising the law and order functions including the employment of tribal police, establishment of tribal courts, to undertake corrections functions, and to adopt a law and order code.[74]

i) I.R.A.s. A second type of general Native government in Alaska is the "IRA Village Council." IRA stands for Indian Reorganization Act or the Howard Wheeler Act which was passed in the 1930s in an effort to modernize Indian or Native American governments.[75] IRA originally applied throughout the United States. Its application in Alaska was somewhat unique. A 1934 version of the Indian Reorganization Act provided that only "Indian tribe or tribes residing on the same reservation" could organize to adopt constitutions under the act. In that few reservations existed in Alaska at the time, the Act had, in its original form, doubtful utility in Alaska. To address the special problems of Indian organization in Alaska, Congress amended the Indian Reorganization Act in May of 1936 to specifically extend its provisions to the Territory of Alaska.[76] The operation of the Indian Reorganization Act under the 1936 Alaska amendment was substantially different than the general application of the Act in the "lower 48." The adoption of the Alaska amendment marked the extension of the reservation policy to Alaska. Under the Act, Indian communities could petition the federal government for the creation of reservations.[77] Between 1934 and 1949, several IRA reserves were established. The IRA reserve policy, however, was greatly opposed by non-Native residents of Alaska and through the operation of territorial politics, lawsuits and other pressures on the

Bureau of Indian Affairs, the Bureau abandoned the policy of creating IRA reserves in Alaska.[78] Even though the reservation policy was abandoned by the Bureau, the organizational efforts of the Bureau left in its wake a number of Native villages organized under the Act, but outside established reservations. Those few reservations actually formed pursuant to the Act were later revoked by the Alaskan Native Claims Settlement Act.[79] A net result of this course of events has left a number of Native governments continuing to operate under their IRA constitutions.

The legislative history accompanying passage of the Alaska amendment clearly indicates that Congress intended to recognize the Alaska Native village as analogous to a tribal organization. The House reports stated:

> The proposed amendment, number 1 above, set out is necessary because of the peculiar nontribal organization under which the Alaska Indians operate. They have no tribal organizations as the term is understood generally. Many groups that would otherwise be termed tribes live in villages which are the basis of their organization.[80]

In this sense, the Alaska amendment was consistent with the general statutory purpose of the Indian Reorganization Act. This general purpose was stated to be:

> To stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real limited authority and by prescribing conditions which must be met by such tribal organizations.[81]

In light of these Congressional enactments and legislative history, it is clear that the Alaskan Native IRA Village Council is equivalent or at least analogous to the tribal organization found in the "lower 48." This principle is recognized under Alaskan state law and was enunciated by the Alaska Supreme Court in Ollestead v. Native Village of Tyonek.[82] In that case, the court recognized tribal status of the Native village of Tyonek council.

It is, therefore, clear that to the extent that they exist, Alaska Native Village Councils organized under Indian Reorganization Act are recognized as local tribal government organizations.

Special Purpose Governments

Whereas it is clear that the general purpose governments of Alaskan Natives are organized at the village level, additional special purpose Native governments exist which complicate the governmental pattern of Alaskan Natives. Most notable in this category is the Tlingit/Haida Central Council.

The specific status of Tlingit/Haida Central Council was litigated in Cogo v. the United States.[83] In that case, an individual brought a lawsuit against the Council to require inclusion in the preparation of tribal roll under the Tlingit/Haida Settlement.[84] In that case, the council successfully claimed sovereign immunity as a tribal organization. The plaintiffs argued that the Council was not a tribal organization, and, therefore, could not assert tribal sovereign immunity. Specifically, the plaintiff pointed to the language in the Indian Self-Determination Act which seems to indicate that in Alaska, the village council was the tribal organization. The court rejected the plaintiff's claim stating that the language in the Indian Self-determination Act was irrelevant for the purposes of this suit and went on to state and whereas the Tlingit/Haida Central Council certainly was not a tribal organization for the purposes of the Indian Self-Determination Act; it was a tribal organization for the purposes of Tlingit/Haida Settlement. This case has clearly established a principle that special purpose tribal governments exist in Alaska, however, the exact extent of such special purpose tribal governments have not been fully delineated.

The organization of the Inupiat Community under the Indian Reorganization Act presents a similar problem. Prior to the passage of ANCSA, the Inupiat Community organized several northern slope villages to form a regional IRA. The Department of the Interior takes a position for the purpose of the Indian Self-Determination Act, the Inupiat Com-

munity cannot enter into contracts or accept grants without the prior approval of the affected villages.[85] In both cases, the Solicitor has depended upon the terms of the Indian Self-Determination Act itself which defined "Indian Tribe" as:

> any Indian tribe, band, nation, or other organized group or community including any Alaskan Native or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs of services provided by the United States to Indians because of their status as Indians.[86]

In these special cases, it is unclear which is the special purpose government and which is the general purpose government. As a general rule, Indian nations have the power to determine their own form of self-government in accordance with the political and cultural history.[87] This is in accordance with the principle that "the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal governments existed."[88] Under these circumstances, it is necessary to review an organization's status on a case-by-case basis. In light of the Cogo decision, however, it is also necessary to review any relevant specific statutory law to determine if the respective organization has a special function under federal law.

Native Quasi-Governments

In addition to the general purpose governments and the special purpose governments outlined below, there exists entities which, may be called, for the lack of a better term, Native quasi-governments. These types of organizations are not governments in the formal sense, however, they exercise a variety of functions which are generally exercised by governments. In rare cases, these types of organizations have been formally recognized as exercising governmental authority. The most notable example is illustrated in the court case State v. Aleut Corporation.[89] In that case, several Native organizations sued the

Alaska Division of Lands to prevent a proposed sale of lands adjacent to their communities. In addition to various villages, the plaintiff's list included the Bristol Bay Native Corporation and the Aleut Corporation, both regional corporations formed under the terms of the Alaska Native Claims Settlement Act. The plaintiffs in that case sued under AS 38.05.305, which provided that the Division should give notice and consult with incorporated municipalities and other organized communities adjacent to lands proposed for sale by the state. The court recognized that ANCSA regional corporations perform a number of quasi-governmental functions in rural Alaska. However, the court specifically held that for the purposes of the Alaska Lands Act, regional Native corporations formed under ANCSA did not possess the requisite governmental attributes to qualify them for notice and consultation under the terms of the then existing statute. Subsequent to the Alaska Supreme Court decision, the Alaska Legislature amended the Alaska Lands Act to specifically require the Division of Lands to give notice to the regional Native profit corporations prior to a proposed sale of lands by the state. In 1979, the legislature again amended Section 305 to require the Division of Lands to give notice and consult with village corporations formed under ANCSA, similar to that notice given to organized municipalities. In light of this legislative history, it would seem that the Alaska Legislature intended to vest in ANCSA corporations certain specific governmental powers in spite of their general corporate character.

A second type of quasi-governmental Native organization is characterized by the regional Native nonprofit corporation. The activities of these regional nonprofits substantially vary. Their activities include Self-Determination Act contracting for the administration of BIA programs; contracting from HUD for the administration of housing projects; contracting under Title VI, the Comprehensive Employment and Training Act, for the operation of Native CETA programs; etc.

The basic model for the regional Native nonprofit organization was established under the terms of the Indian Self-Determination Act. That Act authorizes contracts between the BIA and Native governments or, in their place, Native organizations. In Alaska, BIA programs cannot

generally be effectively administered independently by the villages. The sheer cost of administering such programs at the village level makes such contracting not feasible. In response to this problem, Natives have organized along regional lines to form Native organizations which can effectively contract with BIA for the operation of BIA programs within their region.[90] With the exception of the Inupiat Community and the Tlingit/Haida Central Council, none of these regional Native nonprofit organizations possess de jure governmental authority. Rather, they only provide those services normally provided by BIA or other federal or state agencies on a contract basis with those agencies. In this way, they are capable of performing governmental functions without the prerequisite governmental stature.

## PART II

## COMPARISONS OF GOVERNMENTAL AUTHORITY

**The question of governmental authority is actually a question of the respective jurisdiction of the governments in question. Basically there are two types of jurisdiction: Territorial jurisdiction, i.e., the geographical area over which a government's authority extends; subject matter jursidiction, i.e., the topical areas over which a government has the authority.**

### A. TERRITORIAL JURISDICTION

i) Municipalities. The Alaska Constitution provides that boundaries are determined by the Local Boundary Commission.[1] The Local Boundary Commission is charged by statute with establishing boundaries upon incorporations[2] and subsequent alterations.[3]

The territorial jurisdiction of Alaskan cities is ill-defined by Alaskan statutes. The statutes provide for the creation of boundaries,[4] which presumably infers that boundaries constitute the jurisdictional demarcation of a city.[5] This inference is further reinforced by statutes which provide for extra-territorial jurisdictions. These latter statutes authorize any municipality to provide parks, roads, trails, playgrounds, emergency medical services, cemeteries, and airports outside municipal boundaries.[6] Additionally, cities outside boroughs may exercise extra-territorial curfew regulation.[7]

On the other hand, borough territorial jurisdiction is clearly defined in regards to each respective power. Certain powers are "area-wide," i.e., a power of an organized borough exercised throughout the borough.[8] These include education, planning, platting, zoning, and tax assessment and collection and such additional powers acquired by the borough through transfer or referendum.[9] The borough may exercise other municipal powers as "non-area-wide powers," i.e., powers exercised only in the area outside of cities.[10] For first class boroughs,

any municipal power may be exercised as a non-area-wide power by ordinance.[11] Second class boroughs may only exercise certain enumerated powers as non-area-wide powers. These include regulatory power over fireworks, animals, motor vehicles, snow vehicles, garbage, water pollution, and any other municipal power specified in its charter or subsequently acquired by referendum.[12]

ii) Native Government. It is quite common that the various Native village constitutions, whether adopted under the traditional form of government or under the Indian Reorganization Act, fail to define the exterior boundaries of their territorial jurisdiction. It is, therefore, necessary to look to common law in order to determine the respective jurisdictions of the tribal organizations.

Generally, it is said that tribal law and custom are applicable within "Indian country." This rule was not altered when Congress extended the State of Alaska's jurisdiction to Alaskan Indian country. Congress expressly reserved that Indian law and custom shall be given full force and effect in the determination of civil causes of action arising within Indian country in Alaska.[14]

This observation, however, begs the question to whether Indian country exists in Alaska, and, if so, what are the limits of Indian country in Alaska. Unfortunately, in Alaska the question whether Indian country exists is largely disputed, and supported by a vacillating history of cases.

As Felix Cohen illustrates in his early attempt to define the term Indian country, the term is a dynamic concept. Originally, the concept seems to have been born out of respect for the territorial integrity of Indian nations.[15] Later, the idea was supported in the Jacksonian policy of Indian removal to reserves, a policy designed to physically separate Indians and the immigrant culture.[16] From thence, the concept found its way into the early Indian Intercourse Acts to indicate Indian lands west of the Mississippi.[17] From this point, the courts and Congress have separately, albeit tangentially, developed the concept of "Indian country."

Congress repealed the definition section of the act in 1834 and failed to reenact a substitute general definition of Indian country.[18] Later, however, Congress defined the term Indian country in relation to specific jurisdictional situations.[19] The only current federal statutory definition of Indian country exists in 18 USC 1151 which defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation.

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state.

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

It should be noted that this definition of Indian country only applies to a set of federal criminal statutes contained in Title 18 of the U.S. Code. The term Indian country, however, is also found in 28 USC 1360 dealing with state civil jurisdiction over Indians. The result is that there is no general statutory definition for Indian country, nor is there a statutory definition for Indian country in the civil sense.

The resulting ambiguity from the lack of a statutory definition of Indian country led to a series of Supreme Court decisions laying down the principal common law definition of Indian country. Felix Cohen states that the first ruling by the Supreme Court on the issue came in Bates v. Clark,[20] which stated in essence that:

"it follows from this that all the country described by the Act of 1834 is Indian country, remains Indian country so long as the

Indians retain their original title to the soil, and ceases to be Indian country when ever they lose that title, in the absence of any different provision by treaty or act of Congress."

This basic principle expanded in Donnelly v. U.S.,[21] where the court stated that executive order reservations constituted Indian country even though the respective band did not possess original title to the land in question.

Of more importance to the Alaskan situation however, was the case U.S. v. Sandoval, 231 US 28 (1913) which held that Pueblo lands not held in trust by the United States, but owned in fee simple by a Native community under a Spanish land grant, was in fact Indian country. In his treaties on the federal-Indian relationship, David Case pointed out that the Sandoval doctrine presents a clear analogy to the Alaskan situation where Native communities own land in fee simple through their Native corporations. In the Sandoval case, the court looked to the statutory definition embodied in 18 USC 1151 and held that the Pueblos of New Mexico were clearly dependent communities within the definition of Indian country. In a similar case, U.S. v. Chavez,[23] the Court defined Indian country as "any unceded lands owned or occupied by an Indian nation or tribe of Indians." If these Court cases are to be literally applied to the Alaska situation, it is clear that Indian country does exist in Alaska. However, the matter has never truly been settled.

The modern federal courts have only addressed the question whether Indian country exists in Alaska on three occasions. In the first case, regarding McCord,[24] the Court heard a petition in a proceeding for a writ of habeas corpus arising from a conviction for statutory rape occurring upon the Tyonek Indian Reserve. In that case, the Court followed the Donnelly decision and held that the executive order reservation was in fact Indian country which denied state jurisdiction to prosecute the defendant in the case. The second major case following McCord by one year, was U.S. v. Booth.[25] In that case, the court held that the Metlakatla Indian Reservation did not constitute Indian country because the reservation was not a "reservation in the tradi-

tional sense." The court further distinguished the case from McCord by noting the different conditions and history behind the Metlakatla Reservation. The decision in the McCord case, however, led to a general public outcry in concern over the lack of law and order within Indian country in Alaska. Alerted to this apparent gap in jurisdiction, Congress passed an amendment to PL 83-280 including Alaska among those states where mandatory state jurisdiction extended over Indian country within the borders of the state.[26] The legislative history behind this action clearly indicates that the Congress reacted to the holding in the McCord case, and clearly desired to overrule and reverse the precedents set by that case.[27] If the application of PL 280 in Alaska was a congressional reaction to McCord, not Booth, it is safe to assume that the holding in McCord was a correct statement of the legal crisis prior to the application of PL 280 to Alaska. In that the Act specifically states that the State of Alaska shall have jurisdiction over Indian country within its borders, it seems incredible to assert that Indian country does not exist in Alaska.

But the doctrinal confusion regarding the existence of Indian country in Alaska has continued. This is primarily due to the nature of the cases in which the claim of Indian country arises. For example, in the People of South Naknek v. Bristol Bay Borough,[28] the plaintiffs claimed a tax exemption for Native townsites within the borough by claiming that the townsites were Indian country and therefore exempt from state taxation. The court firmly refused to attempt an answer as to whether or not the land in question was in fact Indian country. The court, however, noted the historical confusion over the question of Indian country in Alaska. The court blamed much of this confusion on "one of the principal Indian jurisdictional cases that has emerged from Alaska," specifically, the Organized Village of Kake v. Egan.[29] Like Naknek, the Kake case arose out of a claim denying state jurisdiction. It is important to note, however, that the case did not deal with the question of Indian country per se, but addressed a narrower question of whether state law applied to off-reservation Indians. It should be noted that the mere existence of Indian country and consequent tribal jurisdiction is not an exclusive claim to jurisdiction and does automatically not deny state criminal and civil jurisdiction.

As noted earlier, Alaska is subject to the mandatory provisions of PL 83-280 which authorized the extension of state jurisdiction over Indian country. As a general rule, however, the application of PL 83-280 does not create exclusive state jurisdiction nor does it substantially affect tribal jurisdiction. In the case Bryan v. Atasca County,[30] the court clearly stated that:

> . . . nothing in its [PL 280] legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to states would result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes into little more than private voluntary organizations.[31]

In reaching this conclusion, the court noted that 28 USC Section 1360(c) provided for full force and effect of any tribal ordinances or customs heretofore or hereafter adopted by an Indian tribe if not inconsistent with any applicable civil laws of the state. In light of these cases, it would seem that territorial jurisdiction over those areas which can be determined to be Indian country, would seem to be concurrent between the state and the tribe.

There remains, however, substantial concern that the Alaska Native Claims Settlement Act placed in question the existence of Indian country in Alaska. Specifically, concern centers around Section 19, which revoked existing reservations in Alaska. The supporters of this theory contend that, when the reservations were revoked, the territorial jurisdictions of the respective villages was destroyed. The argument, however, rests upon the proposition that Indian country is exclusively coexistent with reservations. The Supreme Court has clearly announced that there is nothing magic in the term "reservation."[32] It is also clear that tribal jurisdiction is not dependent upon federal ownership of the territory in question. The Pueblo cases arising out of the New Mexico situation clearly demonstrate this. For example, in Chavez, Indian country was defined as "any unceded land owned or occupied by an Indian nation or tribe of Indians." It is not necessary that clear, unequivocal boundaries be established. Rather, it is only

necessary that the lands in question are occupied by "distinctly Indian communities" recognized and treated by the government as dependent communities entitled to its protection.[33] Applying this rule to Alaska subsequent to ANCSA, it is quite easy to identify those villages in rural Alaska which continue to be predominantly Native. Such communities retain substantial cultural, social, and economic characteristics identifiable as Native. Those villages clearly fall within the definition of a dependent Indian community enunciated in the Sandoval decision. Additionally, it must be recognized that ANCSA clarified continued Native title to certain lands within the state. Under the terms of the Act, Alaskan Native aboriginal claims to the land were extinguished.[34] In compensation for the extinguishment of such claims, Alaska Native villages were allowed to select and receive substantial amounts of land surrounding the villages.[35] The main effect of this act was to continue Native occupancy and ownership of a substantial amount of land surrounding Native communities, thus those lands selected and ultimately conveyed to the village corporations clearly constituted "unceded lands owned and occupied" by the Native villages concerned. Thus, the definition of Indian country as specified in the Chavez case is clearly met. As noted earlier, the fact that such lands were conveyed in fee simple is irrelevant under the terms of the Sandoval case.

Of course, this does not address the substantial concern which may arise upon subsequent land transfers by the respective Indian communities. The problem presents itself in two distinct situations. First, what is the status of lands originally selected by a village corporation and then conveyed by the corporation to non-Natives? Secondly, what is the status of lands subsequently acquired by the Native village?

The basic rule governing subsequently acquired Indian lands and their respective status as Indian country was laid down. In that case, the lands in question were lands owned by the United States and purchased out of funds appropriated by Congress for this purpose. The ruling that such lands were in fact Indian country relied on the role of the government in the establishment of the colony. The role of the federal government in the creation of the Reno Colony is substantially

analagous to the role of the federal government in the identification and conveyance of lands received under the terms of ANCSA. Subsequent purchases of private land by Alaskan Native villages in fee simple would by definition not involve the federal government. Under the rationale of McGowan, the diminished federal role in the identification of Indian lands would substantially impact the status of those lands under the McGowan test. Subsequently, acquired land which would not involve federal government participation in the acquisition of such land would clearly not extend village jurisdiction.

The above type of subsequent acquisition, however, should be sharply contrasted from acquisitions authorized under the Indian Reorganization Act.[36] Lands acquired in this manner would fall under the black letter rule of McGowan, so that lands subsequently acquired pursuant to the terms of the Indian Reorganization Act would clearly extend village jurisdiction to those lands.

The possibility that a village might sell or otherwise dispose of village lands to nonmembers of the community presents a substantially different problem. In the case Seymour v. Superintendent,[37] the United States Supreme Court held that lands conveyed to non-Indians within the exterior boundaries of a former reservation did not lose the character of Indian country. This rests upon the theory that once Congress has set aside certain lands for the use and occupancy of Indians, such use and occupancy shall not be disturbed. Broadly applying this principle to Alaskan Native villages, it would seem that lands within the Alaskan Native village selections authorized under the terms of ANCSA, would continue to be Indian country in spite of subsequent conveyance of such lands to non-Indians by the village.[38] In contrast to these decisions, however, is the decision in DeCoteau v. District County Court.[39] In that case, the Court held that the Lake Traverse Indian Reservation in South Dakota was terminated and returned to the public domain and, hence, Indian country on the Lake Traverse reservation ceased to exist on this reservation. The Court in DeCoteau noted that the Act in question was a ratification of a prior negotiated agreement which was fully intended to terminate the reser-

vation. By the terms of the agreement itself, the Indians would "cede, sell, and relinquish, and convey" all the remaining land in the reservation. The court distinguished Matz and Seymour as being cases involving unilateral Congressional action rather than possession or sale of land by the Indians. From this line of cases, it is only reasonable to conclude that a sale of Indian lands by a village would result in the relinquishment of tribal jurisdiction over those lands.

iii) Summary Comparison. In summary, it seems clear that the territorial jurisdiction of state municipal governments are basically defined in terms of their boundaries. Borough's territorial jurisdiction may be limited in regards to a number of powers by the existence of cities within its boundaries. Finally, all municipalities may exercise extra-territorial jurisdiction in respect to certain enumerated powers. The procedure for enlarging or diminishing boundaries is statutorily prescribed. In contrast, a Native village government's territorial jurisdiction is defined in reference to the village's "Indian country." It is most likely that a village's Indian country is coextensive with lands received under ANCSA, and any other lands subsequently acquired with federal participation. A village's Indian country may be diminished through unilateral sale or cession of village lands.

PERSONAL JURISDICTION

In contrast to a municipal government, tribal government has very limited personal jurisdiction. Whereas personal jurisdiction of a municipality extends to all or most individuals within its territorial jurisdiction, a tribe's jurisdiction is generally linked to its membership. The U.S. Supreme Court enunciated the basic principles of tribal personal jurisdiction in the companion cases, Oliphant v. Suquamish[40] and U.S. v. Wheeler.[41] In Oliphant, the Suquamish tribe attempted to enforce a local traffic ordinance against a nontribal member. In its decision, however, the Court denied the tribe's claim to jurisdiction over nonmembers. In Wheeler, however, the Court upheld the Navajo Reservation's claim to enforcement jurisdiction over tribal members.

There are basically two ways to interpret the meaning of these cases. In the broad sense the Oliphant decision can be interpreted as denying tribal jurisdiction in a general sense over nontribal members. It is important to note, however, that the Court in Oliphant did not overrule the holding in U.S. v. Mazurie. In that case, the court upheld the extension of tribal liquor ordinances over nonmembers of the tribe. Although the cases seem irreconcilable at first glance, there were substantial differences in these two cases. In Mazurie, the Court upheld the prescriptive, i.e., legislative, act of a tribal government and stated that such prescriptive or legislative acts extend and apply to nontribal individuals. The actual enforcement mechanism in the Mazurie case were federal authorities, i.e., the federal courts. In contrast, the tribe in Oliphant was attempting to enforce tribal ordinances through tribal courts. The only way these two cases can be reconciled is to recognize that tribal ordinances extend to nonmembers and that tribes have the prescriptive jurisdiction over nontribal members. In contrast, Oliphant tells us that tribes do not have enforcement jurisdiction over nonmembers. The result is that tribes must seek alternative enforcement mechanisms against nontribal members, i.e., the state or federal courts. As noted in Bryan v. Itasca, federal courts are not available in a PL 280 state such as Alaska in that federal jurisdiction has essentially been withdrawn. Thus, the state courts are the only forum for enforcement of tribal ordinances which are available in a PL 280 state. As noted above, however, "PL 280" requires the state to give "full force and effect" to valid tribal ordinances in civil cases.[43] Under this rationale, a village would have prescriptive jurisdiction over non-tribal members with state enforcement in civil matters.

There remains, of course, the question of criminal cases. PL 280 has no comparable requirement for "full force and effect" of tribal ordinances in criminal cases. There exists, however, two lines of authority on this issue. Some states have extended "full faith and credit" to tribal ordinances by holding that a tribe is a "territory" under 28 USC 1738.[44] On the other hand, many states have refused full faith and credit, but have extended "comity" to tribal ordinances.[45] The issue remains unresolved.[46]

## B. SUBJECT MATTER JURISDICTION

Subject matter jurisdiction refers to the types of issues with which a government may concern itself. Often subject matter jurisdiction is referred to as the "powers" of a government. Title 29 of the Alaska Statutes enunciates in a comprehensive manner, the powers of state chartered local governments. In contrast, there exists no similar comprehensive and authoritative exposition of tribal powers. Understanding tribal powers requires a thorough review of a substantial body of federal and international common law. Finally, there exists a less formidable body of federal common law governing the interaction of these respective jurisdictions.

### 1) Concurrent Jurisdiction

There are two basic principals governing the interaction between municipal and tribal governments.

The first principle was enunciated by the United States Supreme Court in Williams v. Lee.[47] In that case, the United States Supreme Court held that states have jurisdiction over Indians except where such state jurisdiction infringes upon tribal self-government. This test was specifically applied to Alaska in Organized Village of Kake v. Egan.[48] In that case, the Court analyzed the development of this principle and stated:

> "these decisions indicate that even on reservations, state laws may be applied to Indians unless such application would interfere with reservations, self-government, or impair a right granted or reserved by federal law."

In explaining these lines of decisions, the Supreme Court further stated that, "it must be remembered that the Courts in applying the Williams test, have dealt principally with situations involving non-Indians."[49] In these situations, both the tribe and state fairly claim an interest in asserting jurisdiction. The Williams test was designed to

resolve this conflict, but providing that the state could protect its interest in its non-Native citizens up to the point where tribal self-government would be affected.[50] In fulfillment of this policy, cases arising between tribal members fell within the exclusive interest of the tribal government.

The second major principle is a modification of the above rule required by the fact that Alaska is governed by the operation of Public Law 280.[51] Generally, this law confers upon the state criminal and civil jurisdiction to adjudicate matters between Natives within Indian country. It is important, however, to understand the parameters of PL 280 as recently defined by the courts. The courts have generally attempted to limit the effect of PL 280 because of the "devastating impact on tribal governments" that the law has had.[52] In Brian v. Itasca County, the U.S. Supreme Court in commenting on PL 280 stated:

> "nothing in this legislative history remotely suggest that Congress meant the acts extension of civil jurisdiction to the states should result in the undermining or destruction of such tribal governments as did exist in a conversion of the affected tribes in the little more than "private volunteer organizations," a possible result if tribal governments and reservation Indians were subordinated to full Panoply of civil regulatory powers, including taxation of state and local governments. The act itself refutes such an inference: There is notably absent any conferral of state jurisdiction of the tribes themselves and Section 4 C, 28 U.S. C Section 1360(C) (28 U.S. CS Section 1360 (C)), providing for the "full force in effect" of any tribal ordinances or custums "heretofore or hereafter adopted by An Indian Tribe...if not inconsistent with any applicable civil laws of the state, contemplates the continuing vitality of tribal government."

The court went on in a footnote to further explain this policy of promoting Native governments. In a comment of particular importance to Alaska, the court stated:

"the suggestion is that since tribal governments are disabled under many state laws from incorporating as local units of government, general regulatory control might relegate tribal governments to a level below that of counties and municipalities, thus essentially destroying them, particularly if they might raise revenue only after the tax base had been filtered through many governmental layers of taxation. Present federal policy appears to be returning to a focus upon strenghthening tribal government...and the Court of Appeals of the Ninth Curcuit has impressed the view that courts are not obliged in ambiguous instances to strain to implement an assimilationist policy Congress has now rejected, particularly, where to do so will interfere with the present Congressional approach to what is after all an ongoing relationship."[54]

This general policy, favoring the strengthening of tribal governments has two effects.

First, PL 280 does not confer a state's general civil regulatory control over Indian country.[55] Although the Supreme Court has failed to fully define what the scope of "regulatory" means, it is clear that taxation of personal property on trust land,[56] zoning authority,[57] and outdoor advertizing[58] in Indian country is beyond the state authority. The second effect of Brian v. Itasca was that PL 280 only made applicable to Indian country those state laws which "had a general applicability throughout the state." In short, this general principle denies the authority of local governments to exercise authority over Indian country since their authority does not extend throughout the state.[59] This basic principle, if applied in Alaska, could have a crippling effect on rural municipal governments in Alaska. The result would be the creation of local governments chartered under state law whose authority only extended over non-Indians. The end result would be the creation of parallel local government units incapable of exercising jurisdiction over the respective persons subject to the other local government's personal jurisdiction.

2) Local Government Powers.

The basic rule regarding the powers of a tribal government is that such powers are not in general delegated powers granted by express Acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished.[60] This has recently been compared with the concept of home rule under Alaska state law.[61]

In contrast, Alaskan municipalities are of two types. A home rule municipality, like an Indian tribe possesses all local government powers not reserved from it by state law.[62] A general law municipality possesses powers delegated to it by state law.[63] As noted above, Alaskan municipalities are further divided between cities, boroughs, and service areas.

Basically, all these municipalities exercise four types of powers.

A municipality possesses "general powers" related to the municipal corporate identity. These powers include the power to be sued, power to employ municipal officers and officials, power to be sued, power to levy taxes and special assessments, enforce ordinances, prescribe penalties for violations, acquire manage control use, and dispose of personal and real property to promote legislation for the municipality to expend funds for community purposes, and to borrow money and issue evidence of undebtedness. By statute, all municipalities possess the unilateral authority to exercise these powers.

Second, municipal organizations possess "regulatory powers," which relate to: public rights-of-way facilities to services, traffic and general transportation including buses, taxis, etc., animal control, sales of goods, foods, and alcoholic beverages, dangerous insect and rodent control, recreational devices, building codes, public nuisance abatement, garbage & solid waste collection, water and air pollution, licensing of day-care facilities, police powers, or other general health safety and well-being welfare functions.[65]

As a general rule, cities possess the unilateral authority to exercise the regulatory powers. Boroughs, however, are subject to a narrower grant of authority depending on whether the power is area-wide or non-area-wide (see Part II (i) above).

Third, Alaska Statutes outline a number of municipal facilities and services which municipalities may provide. These include services and facilities relating to streets and sidewalks, sewage treatment facilities, harbors, flood control, health and hospital services, cemeteries, police and jail services, cold storage, telephone, lights, power, heat, water, transportation, community centers, libraries, recreation facilities, airport facilities, garbage facilities, fire protection, parking, urban renewable, consumer protection, and historical sites, buildings and monuments.[66] Any city may exercise the powers necessary to provide these facilities, however, boroughs must assume the powers to provide these facilities and services in a like manner required for the exercise of regulatory powers. Third class boroughs are not specifically authorized to provide such facilities and services.

Fourth, municipalities are authorized to exercise what are commonly called area-wide powers, i.e., education, and planting, platting, and zoning authority. Generally, first and second class boroughs have the statutory authority to unilaterally provide such services on an area-wide basis. All third class boroughs may provide educational services on an area-wide basis and may, upon voter approval, exercise planning and zoning authority. As a rule, cities do not exercise such powers except when they are located outside borough boundaries.[68]

An exhaustive comparison of these powers is certainly beyond the scope of this project if not impossible, however, it is possible to select three areas for special consideration.

i) Police Powers. While municipalities possess police powers,[69] tribes possess the power to regulate the conduct of members.[70] The federal government has withdrawn tribal jurisdiction over most felony crimes by enactment of the Major Crimes Act,[71] and Assimilative Crimes Act.[72]

Both the tribe and the municipality are limited from prescribing a punishment for violation of an ordinance in excess of $500 and/or thirty (30) days in jail.[73] Municipalities are prevented from operating "courts" since the Alaska Constitution provides for an integrated court system under state government.[72] This constitutional reservation of power to the state, however, does not prevent municipalities from operating "administrative tribunals" capable of enforcing its ordinances.[73]

Such tribunals, however, are subject to the same constitutional guarantees protecting the rights of the accused, where the ordinance provides for the regulation of acting which traditionally connotes criminality.[74]

In contrast to municipalities, Native governments possess the inherent power to create courts to enforce their ordinances.[75] Such tribal courts are not generally subject to the individual guarantees of the Bill of Rights.[76] To rectify this, Congress passed the Indian Civil Rights Act of 1968,[77] which applies the constitutional protections of the Bill of Rights to Indian governments.

ii) Planning. Both tribes and municipalities possess planning authority. Alaska statutes specifically provides for municipal planning authority. Within organized boroughs, planning is an area-wide function of the borough.[80] Of course, the borough may also delegate such powers to a city within its borders.[81] Outside organized boroughs, first class cities are required, and second class cities may exercise planning powers.[82] In unorganized areas of the state, planning authority rests with the Department of Natural Resources.[83]

Tribal planning authority is a power retained by tribes in the absence of contrary federal law. This authority is already expressly recognized by the state. While the Court in State v. Aleut Corp.,[84] held that ANCSA regional corporations lacked governmental planning authority so as to require the State Division of Lands to give notice of pending land actions, the Court also held that traditionally organized Native villages constituted local authorized planning agencies.[85]

While both entities enjoy substantially similar planning authority, the entities implement this authority in substantially different ways. Muncipalities have authority to directly implement their plans through zoning, platting,[86] and operation of their program. The municipality, however, is not able to direct state agencies to comply with its plan. For example, the prior A.S. 29.33.090(d) required certain state land management programs to comply with municipal plans. This was repealed.[87]

Municipalities also may implement their plans through its licensing power over vehicles, animals, day care facilities, etc.[88]

A tribe's most potent implementation tool is its recognized authority to license. For example, in U.S. v. Mazurie,[89] the Supreme Court upheld a tribe's right to license bars owned by non-Natives on fee simple land within Indian country.[89] Secondly, a village may regulate the nature of member's ownership rights property.[90] Finally, there is some authority to believe that a Native village government may exercise zoning authority over Native land. In Santa Rosa Band of Indians v. Kings County,[91] the Court struck down local zoning ordinances holding that "the extension of local jurisdiction is inconsistent with tribal self-determination and autonomy."[92] This infers, of course, that the local government invaded a power to zone reserved to the tribe.

lii) Taxation. The right of a Native government to tax is a retained sovereign power.[93] The extent of this power is almost wholly uncertain, since few Native governments exercise this power. It would seem that a tribe may impose taxes on business,[94] lawyers,[95] or to accompany tribal permits.[95]

The taxing powers of municipalities are more clearly defined. They may levy sales and use taxes,[97] and property taxes.[98] These taxing powers are subject to a substantial number of exemptions and limitations.[99]

## PART III

## SUGGESTIONS TO INCLUDE NATIVE VILLAGE GOVERNMENTS WITHIN THE ALASKAN LOCAL GOVERNMENT SYSTEM

### A. POLICY CONSIDERATIONS

The decision to allow inclusion of the Native tribal government within the local government system within the State of Alaska local government system is, of course, a policy issue. The Alaska Constitution and the basic principles which underlies Article 10 dealing with local government in Alaska provides certain objective standards for policy evaluation. The local government committee of the Alaska Constitutional Convention articulated five basic principles which guided the drafting of Article 10. These basic principles are:

1. Self-government.
2. A unified local government system.
3. Prevention of overlapping tax authorities.
4. Flexibility.
5. State interest.[1]

The inclusion of Alaskan Native tribal government within the state local government system is consistent with these principles first enunciated in the Constitutional Convention.

1. Self-government. The maximization of local control over local government was a primary concern of the framers. This policy is specifically enunciated in Section 1 of Article 10 of the Constitution which provides that, "the purpose of this Article is to provide for maximum local self-government..." This concern is reflected in other provisions of Article 10. For example, Section 6 provides that the legislature shall provide performance of services that it deems necessary and advisable in the unorganized boroughs "allowing for maximum

local participation and responsibility." Section 9 provides that home rule charters of first-class municipalities shall be approved by popular election. This policy favoring local self-government in municipal matter is consistent with federal policy favoring self-determination of Indian tribes. Fundamental to self-government/self-determination, is the right of people to determine what form their government shall take and to establish rules and regulations regarding the management and operation of that government. For a variety of reasons, several Alaskan Native villages have failed to organize a second-class city under the Alaska state law preferring rather to organize themselves exclusively as Alaska Native villages. In many cases, such organizations reflect a community decision to organize a local government which best reflects the cultural and social character of the respective community. Under this rationale, the state should encourage communities to organize themselves under any authorized governmental form which best represents the respective communities' social, cultural and economic pattern. The inclusion of Native governments within the system of Alaska state local government promote that policy. This action would broaden the number of local options available to communities desiring to organize.

2. Integrated local government system. The framers of the Alaskan Constitution desired to create a single system of local government within Alaska. As noted by this report, however, two parallel systems of local government exist in Alaska, i.e., state chartered municipalities and tribal government. The quality and quantity of interaction between these two types of government varies from community to community. The quality and quantity of possible interaction ranges from substantial cooperative efforts to substantial opposition. Often times coordination between governments is merely a function of interlocking office holders. Where the Native council and the city council are substantially the same, the respective governmental efforts are highly coordinated. In contrast, where the councils are not interlocked there is little coordination and often counterproductive efforts. State and federal program operation is often dependent on this cooperation, since state programs prefer to operate through municipalities and many federal programs operate through tribal governments.

In contrast, non-recognition problems result where a community is exclusively organized as a Native village government. Such communities are not immuned from the same problems which plaque communities organized as municipalities. Where the municipality may draw on the resources of the state to help address such problems, the Native village encounters greater reluctance by the state to render equal assistance. The obvious solution to this problem is for the community to organize as a municipality. The community would in fact only trade problems--i.e., the community would trade a reluctance on part of the state to render assistance in exchange for duplicity and confusion of local government.

The inclusion of the Native government within the local government system, therefore, would further state policy favoring a unified local government system. It would promote cooperation where parallel governments exist and it would alleviate the necessity of creating parallel local governments where none exist now.

3. Prevention of overlapping taxing and authorities. As noted above, the framers of the Alaska Constitution specifically intended to eliminate overlapping tax authorities and promote physical integration within local government. For this reason, Article 10, Section 2, specifies that cities and boroughs are the only local governments authorized to tax under the Alaska Constitution. As noted above, however, this plan is somewhat frustrated by the existence of Native government which possess authority to levy taxes and dues on members. Additionally, the eligibility of Native villages to receive intergovernmental revenue transfers supports the state's objective to facilitate fiscal integration of local government. This lack of fiscal integration within the community leads to a number of problems including duplicate accounting systems, redundant and excessive administrative costs and, in some cases, program duplication. The framers had hoped to avoid such problems in adopting a policy favoring fiscal integration. The inclusion of Native governments within the local government system will help avoid these inefficient fiscal management systems as intended by the framers of the Constitution.

4. Flexibility. Throughout the Constitutional floor debates, the drafters of Article 10 emphasized their desire to provide a "framework" for local government which would be flexible enough to meet community demands throughout a highly pluralistic state such as Alaska. Native governments represent a flexible accommodation to the need for pluralistic representation in local government. It, therefore, follows that the inclusion of such governments fulfill a constitutional policy favoring flexibility in Alaskan local government.

5. State interest. As noted above, the framers of the Alaska Constitution felt that strong local government was a mechanism to facilitate the decentralization of state government. It was fully intended that strong local government could perform traditional state functions much better than a centralized government structure. This plan, however, is dependent on the existence of local government. The state by necessity remains responsible for the provision of basic services in the unorganized areas of the state. Thus, good strong local government serves the state's interest in a long term. The existence in unrecognized, parallel, and competing systems of government at the local level serves to delete the potency of local government and thereby thwarts the efficient implementation of the eventual decentralization of state government. The inclusion of Native governments within the system of local government within the State of Alaska makes available to the state existing government entities capable of pursuing the state's interest. In this sense, the Native government can serve as a conduit for the provision of state services. In a limited sense, the state has already adopted this policy. For example, in the Coastal Zone Management Act, the Rural Development Act, the Municipal Trust Land (14c) Program, the Community Legal Assistance Program, the Community Miscellaneous Assistance Program and various state contracting programs utilize Native government to administer and otherwise implement these programs where substantial community participation is required. The general inclusion of Native governments within the local government system of the State of Alaska will make available to the state a valuable local instrument for the fulfillment of the state interest.

6. Fundamental Rights. The greatest concern over inclusion of Native village governments into the Alaska local government system is the fact that the Native governments are racially defined institutions. As such, it is feared that non-Natives will be relegated to a status of second class citizens in their own communities. This view is founded on two questionable assumptions: 1) non-Natives cannot participate in Native government, and 2) non-Natives have no rights under a Native government.

It is a general rule of law that a Native tribe has the exclusive authority to determine its membership.[2] This power specifically includes the power to provide for adoption of non-Natives into the tribe.[3] This general rule is subject to one exception. The Secretary of the Interior is charged with the responsibility of determining tribal enrollment for the purposes of distributing tribal trust funds.[4]

In contrast, Native governments providing services under federal contracts may also render services to non-Native tribal members, since for the purpose of contracting "Indian" is defined in terms of tribal membership.[5] Benefits provided through state revenue sharing are required by state procedures equally available to non-Native residents of the respective communities. Thus, it is quite possible for non-Natives to fully participate in Native government.

Participation by non-Natives in Native government is quite common, despite efforts of the B.I.A. to discourage the practice. In one case, a Native village constitution goes so far as to guarantee non-member/non-Native heads of households representation on behalf of their Native children before the Native council.[6] In practice, Native councils are reluctant to open village roles to non-Natives who may be transient or are reluctant to establish permanent ties with the community. This is understandable in that membership in a village generally carries with it cultural duties and obligations. This reluctance is analogous to the policy of the federal government to extend citizenship to aliens, or for that matter, the reluctance of the State of Alaska to extend full state benefits to "cheechakos."

The second major concern relates to the individual rights of non-Natives under Native government. The prime guarantee of individual rights under a Native government is the Indian Civil Rights Act of 1968.[7] The Act mandates that a Native government provide many of the same individual protections provided under the U.S. Constitution. These include:

- free exercise of religion
- freedom of speech, press and assembly
- freedom of unreasonable search and seizure
- protection from double jeopardy and self-incrimination
- protection from taking of property without compensation
- right of due process and counsel
- protection from cruel and unusual punishment and excessive bail
- right to equal protection of the laws
- prohibition of bills of attainder or expost facto laws, and
- right to trial by jury

These rights extend to members and non-members alike.[8]

There is some concern that the Act only provide relief through the right of habeas corpus. This concern focuses around dicta contained in Santa Clara Pueblo v. Martinez.[9] In that case, the Court review a tribal ordinance which conferred benefits upon tribal members based upon distinction between patritinial/matritinial ancestors. In dicta, the Court stated that Congress only provided one clear remedy for plaintiffs under the Act - i.e., habeas corpus. A full reading of Martinez, however, reveals that the holding of the case rests upon a test which balances the two current policies of federal Indian law - i.e., self-determination and protection of individual rights. As one commentator remarked, "In litigation under the Indian Civil Rights Act, federal court jurisdiction outside the scope of habeas corpus proceedings has been firmly established.[10]

Conclusion. While the municipalities and tribes do not have co-extensive powers, they have many similar areas of concern where their powers overlap. It should be remembered that the tribal organization is a governmental unit with broader areas of concern and responsibility than the municipality. For example, tribal powers include regulation of property rights, marital relations, and child custody.[100] Tribes provide employment, welfare, economic development, child protection, and various other services generally felt to be beyond the scope of local government. As local government in Alaska develops along the path of decentralization envisioned by the framers, it is likely that municipal governments will also address these subject areas. In any case, it is clear that village and municipal government are not the same thing. It is also evident that they are closer than commonly perceived.

B) PROPOSALS

There are three basic concepts which would allow inclusion of Native governments in the State system of local government. These three concelpts are incorporation, service area designation, and recognition.

i) Incorporation- Incorporation is the formation of a unit of local government. Theoretically it is possible to incorporate Native governments as units of local government under State law. As noted in Part IA, above, this has been attempted twice in the past. Several current second class cities were originally incorporated under the 1957 Act. The Native character of these governments- ie the attributes of tribal self-government- have been so eroded that they are not currently recognized as tribal enities by their people or the federal government.

This is not to say that incorporation is not possible. In Bryan v Itasca[11] the Court stated that one reason it was reluctant to extend local government jurisdiction over Native communities was the fact that many states did not allow incorporation of Native government under state law. This implies, of course, that such incorporation is constitutionally permissible. As noted above, however, Alaska is not bound by the

standards of the U.S. Constitution when it is faced with interpreting the Alaska Constitution.. There is no precedence at all in regards to the position of the Alaska Constitution on this issue. Thus, incorporation of Alaska Native village government would be Constitutionally uncertain.

ii) Service Area Designation. Service area designation would allow the formation of service areas in unicorporated areas so as to provide a local mechanism for the provision of state services. This concept has two limitations. First, the Constitution prohibits the use of service areas where the service contemplated could be rendered through a city of annnexation by a city.[12] This means that the service area could not be formed in cities. Secondly, the service area is a local government unit, and designation of a Native government would be akin to incorporation, ie Constitutionally uncertain. To provide for independent organization of the service area would only be fostering futher creation of parallel local government units.

iii) Recognition. Recognition is a concept borrowed from international law. Itis the process whereby one government acknowledges the authority of another government. It is more than taking note of a mere fact. It is the process whereby two governments seek to establish intergovernmental relations. There are two types of recognition- recognition of the community and recognition of the government. Recognition of the community is acknowledgement that the community is a legal enity capable of being organized under an independent and effective government.[14] Recogniton of the government is acknowlegement that an individual or body of individuals act as the government for the community.[15]

municipalities exist under the authority of the State

The use of the concept of recognition is quite useful in the context of Native governments, since the state is not attempting to create a racially defined institution under its own authority. Rather the State is acknowledging the existence of the Native communities and governments. Thus the Native government gains no authority from the State, but merely enters into cooperative relations with the existing governments

The draft bill ( see Appendix A ) would be sufficent to carry out this task. In addition to recognition, the bill defines the method whereby the State will engage in realtions with the Native Villages. The proposal anticipates that Native villages could participate in State programs to the same extent as second class cities. This is analogous to federal programs which extend participation to states and tribes.[16] Incident to recognition, the bill will clarify the status of Native village laws before state courts.

The bill also proposes cooperative agreements between the State and the Native governments to carry out State programs. This section anticipates the passage of the Tribal-State Compact Act[17] which would allow federal funding of programs conducted under a State-Tribal agreement, and thus reduce the burden on the State treasury for those areas affected by these agreements.

Finally, the bill conditions the realtionship upon the Native government compling with antidiscrimination provisions. This of course exempts federally funded Indian programs. The bill allows the Governor to enforce compliance through withdrawal of recognition.

The bill does not attempt to expand the jurisdiction of the State or the Native village. Section three (3) allows municipalities and villages governments to enter into similar agreements.

## APPENDIX A

### A BILL

For an Act entitled : "An Act relating to Native Village Governments."

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

* Section 1. FINDINGS AND PURPOSE. (a) The legislature has determined that

(1) there exist within the state several communities which have Native village governments whose members are citizens of the State; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the State and federal constitutions.

(b) It is the purpose of this Act to

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) provide for cooperative agreements between the State government and Native village governments to promote the equitable delivery of State services.

* Sec. 2. AS 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS.

Sec. 29. --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes the Native Villages as distinct, independent, political communities exercising original tribal soverienty in dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted governing body of Native Village, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, Provided that such Court shall have jurisdiction to hear such cause

as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.—. 020. ELIGIBILITY FOR STATE PROGRAMS. A Native Village government, for a village which is not incorporated under this title, and is not located within an organized borough is

a) eligible to participate in all State programs to the same extent and in the same manner as a second class city;

b) entitled to notice concerning proposed actions by the state to the same extent as a government of a second class city is entitled to notice; and

c) entitled to consultation with the state on state actions and programs which affect the village to the same extent that the government of a second class city is consulted on state actions and programs.

Sec. 29.--.030. AGREEMENTS. (a) A Native Village government or a group of Native village governments may negotiate agreeements with the Commissioner regarding coordination of State and Native Village facilities and services which may include judicial, law enforcement, and correctional services.

(b) When the Commissioner negotiates an agreement under this section, he shall first first consult with the head of each principal executive department which may be affected by the agreement. The Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval the agreement shall define the respective responsibilities of the State and of the Native village government during the period of time covered by the agreement.

Sec. 29.—.040. NON-DISCRIMINATION. (a) A Native Village government which is a party to an agreement under AS 29.—.030 may not adopt a rule or operate a program which creates or estinquishes a benefit, liability, privilege, immunity or licence dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.—.020 void.

(b) The Governor may withdraw recognition of a Native Village government authorized under AS 29.—.010 whenever he shall make a determination that the Native Village government has adopted a rule or operates a program which creates or extinquishes a benefit, liability, privilege, immunity or licence dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependant a Native Village government's participation in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations .

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.—.050 LIMITATIONS. Nothing in this capter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person of village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the State to adjucicate the ownership or right to possession of property. Nothing in this chapter deprives a Native person

or

Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native Village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.—.060. DEFINITIONS. In this chapter

(1) "Native person" means a person who meets the requirements for membership in a Native Village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native Village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3 AS 29.48.010 (4) is amended to read:

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native Village government recognized under AS 29.—.010.

Introduction

1 - Constitutional Convention Proceedings, Pt. 4, pp. 2616-7.

2 - See State v. Erickson 574 P.2d 1 (Alaska, 1978). Isakson v. Rickey, 550 P.2d 358 (Alaska, 1976); Lynden Transport, Inc., v. State, 522 P.2d 1125 (Alaska, 1974).

I. PART I

1. D. Case, The Special Relationship of Alaskan Natives to The Federal Government, pp. 119-127 (ANF, 1978).

2. Preliminary Report on Borough Government, p. 11 (Alaska Legislative Council, 1960) [hereinafter cited "Preliminary Report"].

3. id.

4. id. at 14

5. id. at 12

6. R. Cease & J. Saroff, The Metropolitan Experiment in Alaska, p. 2 (Praeger, 1968).

7. id.

8. Chapter 11, SLA 1915; amended Chapter 25, SLA 1917; repealed (h.23, SLA 1923.

9. Preliminary Report, supra, at 12-13

10. 25 U.S.C. 476

11. Sen. Rpt. 1080, 73rd Cong. 2d Session, 1 (1934)

12. Preliminary Report, supra, at 14

13. id. at 15

14. id.

15. Chapter 150, SLA 1957; amended Chapter 79, SLA 1959.

16. Con. Cov. Proc., Pt.4, p. 47

17. id. at 2161

18. Ak. Const., Art. X, Sec. 2.

19. Con. Cov. Proc., Pt. 6, p. 59.

20. Con. Cov. Proc., Pt. 4, pp. 2616-7.

21. id., pp. 2613-4

22. See comments by Delegate Lonberg, Con. Cov. Proc., Pt. 4, p. 2651.

23. A.S. 29.08.020

24. Walters v. Cease, 380 P.2d 263 (Alaska, 1964)

25. A.S. 29.18.030

26.

27. Con. Cov. Proc., Pt. 4, pp. 2621-2.

28. id.

29. id. at 2653

30. Con. Conv. Proc., Pt. 6, pp. 45-6

31. Local Government Under The Alaska Constitution, p. 46 (1959, Public Administration Service).

32. City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska, 1971). See also Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska, 1974).

33. Con. Cov. Proc., Pt. 4, p. 2650.

34. Ak. Con., Art. X, Sec. 7.

35. id, Sec. 3.

36. A.S. 29.18.011

37. Con. Conv. Proc., Pt. 4, p. 2654.

38. Id.

39. 484 P.2d 1040 (Alaska, 1971).

40. Con. Conv. Proc., Pt. 4, p. 2653.

41. id, at 2623

42. id, at 2624.

43. 491 P.2d 720 (Alaska, 1971).

44. Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska, 1970).

45. Ak. Const. Art. X, Sec. 2.

46. id, Sec. 15.

47. id, Sec. 5.

48. id.

49. Con. Conv. Proc., Pt. 4, pp. 2719-20.

50. Ak. Const., Art. X, Sec. 2 See Liberati v. Bristol Bay Borough, 384 P.2d 1130 (Alaska, 1978).

51. Wien v. City of Ketchikan, 383 P.2d 721 (Alaska, 1963).

52. Ak. Const., Art. X, Sec. 13.

53. id.

54. Compare Con. Conv. Proc. Pt. 4, pp. 2713 and 2652.

55. Ak. Const., Art. X, Sec. 6.

56. A.S. 29.03.020

57. 1961 Op. Attorney General No. 24

58. A.S. 16

59. A.S. 46.40.110 et. seq.

60. A.S. 14.08.031

61. A.S. 29.89.040

62. D. Case, supra at 130.

63. See generally id., at 119-127.

64. Cohen, Handbook on Federal Indian Law, 122 (1948); 55 ID14 (1934) Powers of Indian Tribes; Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

65. 231 U.S. 28 (1913)

66. P.L. 93-638, Sec. 4(a)

67. P.L. 92-512, Sec. 108(b) (14)

68. P.L. 93-383, Sec. 102(a) (1)

69. P.L. 93-203, Sec. 302

70. P.L. 95-608, Sec. 4(8)

71. 28 U.S.C. 1360 (c)

72. P.L. 90-351, Sec. 601(b)

73. See Fed. Reg. (May 25, 1973) p. 13758; Fed. Reg. (July 10, 1980) p. 46581-2.

74. 25 U.S.C. 476

75. 25 U.S.C. 473(a)

76. 25 U.S.C. 466

77. See generally D. Case, supra, at 38-40

78. 43 U.S.C. 1618

79. House Rept. No. 2244, 74th Cong., Second Session, .2 (1936).

80. Senate Rpt. No. 1080, 73d Cong., Second Session, 1 (1934).

81. 560 P.2d 31 (Alaska, 1977)

82. 465 F. Supp. 1286 (D.C. Alaska, 1978).

83. Act of June 19, 1935 (49 Stat. 388), as amended by Act of August 19, 1965 (79 Stat. 543).

84. P.L. 93-638, Sec. 4(a).

85. Field Solicitor's memorandum, Status of the Inupiat Community of the Arctic Slope for Self-Determination Act contracting and other purposes, May 1, 1979 (unpublished).

86. 25 U.S.C. 450(b).

87. Pueblo of Santa Rose v. Fall, 273 U.S. 315 (1927).

88. Williams v. Lee, 358 U.S. 217 (1959).

89. 541 P.2d 730 (Alaska, 1975).

90. See D. Case, supra, at 136-141.

## PART II

1. Ak. Const. Art. X, Sec. 12
2. A.S. 29.18.090
3. A.S. 29.68
4. A.S. 29.18.050 et. seq. and A.S. 29.68
5. See generally. Fairview Public Utility District No.1 v. City of Anchorage, 368 P.2d 540 (Alaska, 1962)
6. A.S. 29.48.037
7. A.S. 29.43.100
8. A.S. 29.78.010 (18)
9. A.S. 29.33.010 et. seq.
10. A.S. 29.78.010 (19)
11. A.S. 29.38.010
12. A.S. 29.48.020; A.S. 29.38.020; A.S. 29.38.030
13. F. COHEN, supra at 5
14. 2 U.S.C. 1360(c) (PL 83-280) states

    Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant this section (i.e., which arise in Indian country).
15. See PRICE, LAW AND THE AMERICAN INDIAN, 79-84, (1973)
16. Id

39. 420 U.S. 452 (1975)

40. 436 U.S. 191 (1978)

41. 436 U.S. 313 (1978)

42. 419 U.S. 544 (1975)

43. 28 U.S.C. 1360(c)

44. Jim v. C.I.T. Financial Services Corp., 87 N.M. 362, 533 P.2d 751 (N.M., 1975). 28 U.S.C. 1738, requires that:

Acts, records, and judicial proceedings (of any State, Territory or Possession) shall have the same full faith in credit in every Court within the United States and its Territories and Possessions as they have by usage in the Courts of such State, Territory or Possession from which they are taken.

See also In re Buehl, 87 Wash 2d 649, 555 P.2d 1334 (1976); Ragsdale, Problems in Application of Full Faith and Credit for Indian Tribes, 7 N. Mex. L. Rev. 133 (1977)

45. Fox v. Fox, 542 P.2d 918 (Or. App., 1975); Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950)

46. Compare Santa Clara Pueblo v. Martinez, 98 S.Ct. 1670 (1978) and U.S. v. Wheeler, supra.

47. 358 U.S. 217 (1959)

48. 369 U.S. 69 (1962)

49. id, at 75-76

50. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973).

51. P.L. 83-280 (67 Stat. 588), amended to add Alaska, P.L. 85-615 (72 Stat 545). Now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections.

17. Indian Intercourse Act of 1834 (4 Stat. 729)

18. F. COHEN, supra, at 5-6

19. id. at 6n60

20. 5 U.S. 240 (1887)

21. 228 U.S. 243 (1913)

22. 231 U.S. 28 (1913)

23. 290 U.S. 357 (1933)

24. 151 F. Supp 132 (Alaska, 1957)

25. 161 F. Supp 269 (Alaska, 1958)

26. P.L. 85-615

27. 1978 Op. Atty. Gen. File No. J-66-001-67, J-66-503-77. Memo re: State Taxation of Alaska Natives and Business Enterprises Operated by Native Organizations. p.21

28. 466 F. Supp 860 (Alaska, 1979)

29. 369 U.S. 60 (1962)

30. 426 U.S. 373 (1976)

31. Citing U.S. v. Mazurie, 419 U.S. 544 (1975); See also Santa Rose Band of Indians v. Kings County, 532 F.2d 655, (9th Cir., 1975)

32. U.S. v. McGowan, 302 U.S. 535 (1938)

33. U.S. v. Sandoval, supra

34. 43 U.S.C. 1603(e)

35. 43 U.S.C. 1611, 1613

36. See generally 25 U.S.C. 465, 473(a)

37. 368 U.S. 351 (1962)

38. See Matz v. Arrnet, 412 U.S. 481 (1973)

52. See Goldberg, Public Law 280: The Limits of State's Jurisdiction Over Rservation Lands, 22 UCLA Law Review 535 (1975).

53. 426 U.S., 388-89 citing U.S. v. Mazurie, supra.

54. id.

55. id, at 384

56. id.

57. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir., 1975)

58. Morongo Band of Mission Indians v. Area Director, IBILA 79-18-A (1979).

59. See generally Goldberg, supra; Santa Rosa Band of Indians v. Kings County, supra.

60. F. COHEN, supra, at 122

61. D. CASE, supra, at 152-3

62. A.S. 29.08.010

63. A.S. 29.08.020

64. A.S. 29.48.010

65. A.S. 29.48.035

66. A.S. 29.48.030

67. A.S. 29.33

68. A.S. 29.43

69. A.S. 29.48.030 (7); Town of Ketchikan v. Greenbaum, 5 Alaska 396 (1915)

70. 55 I.D. 14 (Powers of Indian Tribe)

71. 18 U.S.C. 1153

72. 18 U.S.C. 1152

73. Compare A.S. 29.48.200 and 25 U.S.C. 1302 (7)

74. Ak. Const. Art. IV, Sec. 1

75. See McKenzie, YOU HAVE THE RIGHT, 25-27 (AFN, 1976); Keiner v. City of Anchorage 378 P.2d 406 (Alaska, 1963); State v. Lundgren Pacity Const. Co. Slip Op. 1980 (Alaska, 1979).

76. Gutherie, Analysis of Amendment to HB 533 proposed by Tanana Chiefs, Legislative Affairs Agency (March 21, 1980), citing Baker v. City of Fairbanks, 471 P.2d 386; Alexander v. City of Anchorage, 490 P.2d 910 (1979)

77. Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (1959)

78. Talton v. Mayes, 163 U.S. 376 (1896)

79. 25 U.S.C. Sections 1301-1303

80. A.S. 29.33.070. et. seq.

81. A.S. 29.33.070(b)(2)

82. A.S. 29.29.43.040

83. A.S. 38.05.037

84. 541 P.2d 730. See P.24 infra, for discussion

85. id, at 737-8

86. A.S. 29.33.070 et. seq.

87. Sec. 45, Chap 85 SLA 1979

88. A.S. 29.48.035

89. 419 U.S. 544 (1975)

90. Johnson v. Chilkoot Indian Village, 957 F. Supp. 384 (D. Alaska, 1978)

91. 532 F.2d 655 (9th Cir., 1977)

92. id, at 663

93. Buster v. Wright, 135 F.947 (8th Cir. 1905). Iron Crow v. Oglala Sioux Tribe, supra; Barta v. Oglala Sioux Tribe, 259 F.2d 553. (8th Cir., 1958), cert. den. 385 U.S. 932 (1959); 55 I.D. 14, 28 (1934) (Powers of Indian Tribes)

94. Buster v. Wright, supra.

95. Maxey v. Wright, 105 F. 1003 (8th Cir., 1900)

96. Morris v. Hitchcock, 194 U.S. 384 (1904)

97. A.S. 29.53.415 et. seq. (boroughs); A.S. 29.53.440 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)

98. A.S. 29.53.010 (boroughs); A.S. 29.53.400, 410 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)

99. A.S. 29.53.020, et. seq.

100. 55 I.D. 14 (1934) (Powers of Indian Tribes). See also Indian Child Welfare Act, P.L. 95-608

## PART III

1. Con. Conv. Proc., Pt. 6, p.478
2. 55 ID 14 (1934), Smith v. Bonifer, 154 F.883 (1909); Ollestead v. Native Village of Tyonek, 560 P.2d 31 (1977).
3. Smith v. Bonifer, supra.
4. 25 USC 163
5. 25 CFR 271.2 (i)
6. Proposed IRA Constitution for Dish-Ina-Nek, Art. 5, Sec. 4
7. 25 U.S.C. 1301
8. Dodge v. Nakai, 298 F. Supp. 26 (D. Ariz., 1969); Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (10th Cir., 1975)
9. 436 U.S. 49 (1978)
10. MANUAL OF INDIAN LAW, B-9 (The American Indian Lawyer Training Program, Inc., 1976)
11. 426 U.S. 373 (1976)
12. Ak. Const., Art. X, Sec. 5
13. See KELSEN, PRINCIPLES OF INTERNATIONAL LAW, 387-410 (2ed ed., 1966)
14. id., at 387-8
15. id., at 395
16. See generally supra. notes 66-70 (Part I)
17. S. 1181, 96th Cong. 2d. Session

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# STATE OF ALASKA POLICY FOR DEVELOPMENT CITIES

# AN AUTOPSY AND EPITAPH

# OF

# THE NEW DEVELOPMENT CITY OF LOST RIVER

A

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# TRIBAL–STATE RELATIONS

## A New Paradigm for Local Government in Alaska



# TRIBAL-STATE RELATIONS:
# A NEW PARADIGM FOR LOCAL GOVERNMENT IN ALASKA

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# INTRODUCTION

Local government in rural Alaska is plagued by the existence of parallel government systems. On one hand, there exists a system of Native governments. On the other hand, the state has encouraged the formation of municipal governments. Often the dual system exists side-by-side in communities of less than 200 persons. In these situations, confusion, and the duplication of administrative costs and services has had a crippling effect on local government. Communities which attempt to avoid the duplication find themselves either ineligible for the respective benefits of the missing government, or forced to create exotic or ad hoc organizations which are marginally eligible for the desired benefits.

This study is an effort to sort out and compare these two systems of government. Additionally, the study makes suggestions on how to correct this situation within existing constitutional restraints.

# PART I

## EARLY AND CURRENT ALASKAN LOCAL GOVERNMENTS

### A. EARLY ALASKAN LOCAL GOVERNMENTS

The earliest "local governments" in Alaska were Native. As Dave Case points out, primal governments varied between the Native cultures.[1] Generally, however, these early governments were loose associations of individuals based upon family relationships and customs. Group decisions were made by consensus.

Similarly, early non-Native local government in Alaska was very informal. After the purchase of Alaska by the U.S. in 1867, the primary mechanism of local government was the extra-legal mining districts.[2] Like the Native governments, these early miner's governments were loose associations based on custom. Generally, decisions were made by majority vote. In 1884, Congress recognized the authority of these mining districts, but the status of Native governments remained in limbo.

In 1900, Congress enacted a civil code for Alaska which included authorization to form towns of over 300 residents.[3] This first form of municipal government was patterned after the mayor-council type of city government common to the "lower 48." Towns were severely limited as to their ability to tax and contract debt and were highly dependent on intergovernmental transfers for financial support. Their primary function seems to have been providing school services. In 1904, some of these limitations were relaxed, but the next major change had to wait until the formation of a territorial government.

In 1905, Congress authorized the formation of independent (city) school districts, and school districts for unincorporated areas.[4] In both cases, the districts exercised fiscal autonomy over current operating expenditures. They directly received a portion of intergovernmental

revenue transfers due the city. They remained dependent on the city or territorial government for tax revenues for capital expenditures.

In 1912, Congress passed the Organic Act creating the Territorial legislature.[5] In the following years, the legislature created a second class of territorial towns, subject to the limitations of the earlier Act of Congress. It was fully intentioned that local government be kept weak so as to prevent a taxing or regulatory threat to commercial and mining interests in the territory.[6] In fact, the Organic Act prohibited organization of "counties" or other regional local governments.[7] In 1915, the legislature upgraded territorial towns so that they would be subject to the same limitations as the towns authorized under the federal legislation. At the same time, the legislature for the first time attempted to assimilate Native village government through the Indian Village Act of 1915. This Act authorized Indian villages to organize as units of local government.[8]

In 1917, the legislature authorized incorporation of school districts in unincorporated areas. Under this new legislation, the incorporated school districts achieved greater fiscal autonomy through authorization to tax, as well as an increase in shared intergovernmental transfer revenues.

The legislature undertook a revision of the territorial municipal code in 1923. The new code replaced federally authorized towns with first class cities which directly elected a mayor, expanded council powers, provided for mayoral vetoes, and established minimum procedures for city government.[9] Later, in 1929, the legislature repealed the Indian Village Act of 1915, and revised the laws relating to second class cities making them substantially equal to first class cities.

By 1934, the federal policy toward Indians had again shifted away from assimilation. This was reflected by the passage of the Indian Reorganization Act, and the subsequent extension of the Act to Alaska in 1936.[10] The Act was intended to vest "tribal organizations with

real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations."[11]

At this same time, the legislature instituted reforms designed to authorize special purpose regional governments. In 1935, the legislature authorized incorporation of "independent school districts" which included both the area inside city limits and the surrounding adjacent areas. The new school districts were independent of city governments and were fiscally autonomous.[12] Also in 1935, the legislature authorized public utility districts which were fiscally autonomous special purpose governments capable of providing garbage, parks, street, fire, telephones, electrical, and other services.[13]

In 1951, the legislature authorized third class cities, which were essentially the same as second class cities, differing only in geographical and population size.[14]

In 1957, the territorial legislature again attempted to incorporate villages under territorial law.[15] An Incorporated Village had limited powers which included power to provide water, electricity, sewers, and fire protection; regulate dogs, curfews, and land use; and provide public works. The State amended the Act in 1959 to invest the incorporated village with general police powers and provided for village magistrates to levy limited fines. At the same time, the legislature defined the incorporated villages as a city of the fourth class.

At the time of statehood, there existed in the state:

- 24 first class cities
- 8 second class cities
- 2 third class cities
- 10 fourth class cities
- 69 I.R.A.'s
- 5 P.U.D.'s
- 8 independent school districts

- 1 incorporated school district
- unknown number of traditional Native councils

Statehood did not drastically alter the local government pattern since Article XV, Section 1 of the Alaska Constitution provided that, the laws of the territory remained in effect until they were repealed, amended or expired.

Finally in 1972, the state undertook a wholesale revision of the municipal code to create the current system. The main impact of the 1972 revision on the smaller rural communities was to strip those communities which organized under the Village Incorporation Act of their "village" status.

## B. CURRENT STATE CHARTERED LOCAL GOVERNMENT

The system of local government authorized under the Alaska Constitution is relatively simple. It is possible to categorize Alaskan local governments into two basic types, i.e., general and special purpose governments. For the sake of analysis, a general purpose government is a government which exercises independent discretion over a broad range of topical concerns. In contrast, a special purpose government is a government which exercises discretion over a specified topical concerns.

### General Purpose Governments.

The general purpose government is the constitutionally preferred unit of local government in Alaska. This policy is specifically stated in Article X, Section 1 of the Alaska Constitution which states that, "The purpose of this article is to provide for maximum local self-government with a minimum of local government units, ..." This policy is implemented in Article X, Section 2 which provides that "All local government powers shall be vested in boroughs and cities," and is further stated in Article X, Section 15 which states "Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law."

This concern for consolidating local powers into single general purpose governments is expressed throughout the Constitutional Convention record. The adoption of "one basic local government system" was intended to prevent "creation of numerous types of local units which can become not only complicated but unworkable."[16] Of immediate concern to the Delegates was the governance of the school boards, public utility districts (P.U.D.s) and health districts. As stated by delegate Victor Fischer:

> "That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[17]

To this end the constitution provides for the creation of boroughs and cities.[18]

The most unique aspect of the Alaskan municipality is the framer's intent to create strong local government units. Systems of government then operating in the majority of the states were felt to be too weak.[19] In his initial address to the convention introducing the Local Government Committee's proposed article, Delegate Vic Fischer expressed the "New Federalist" philosophy favoring general decentralized government. Citing the Congressional Commission on Intergovernmental Relations, delegate Fischer stated:

> "The Commission concerned itself with the need for strengthening of state government and a decentralization of federal power. In this study they found that local government is an important factor in this process and I would like to briefly quote a few paragraphs. In discussing the strengthening of local government, the Committee says, 'The objective of decentralization cannot be obtained by a readjustment of national-state relations alone. It will be fully achieved only when carried through to the lowest levels of government where every citizen has the opportunity to participate actively and directly. The strengthening of local government requires the activities that can be handled by these units be allocated to them together with the financial resources necessary for their support.' Then the report goes on and draws a picture of the tremendous number of overlapping tax jurisdictions and separate local entities we now have in the state and goes on to say, 'More or less hidden in this picture is a paradox that

> consistently plagues the state and bars any easy solution of the problem of achieving the decentralization of government -- too many local governments and not enough local government.' That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[20]

To implement this plan, the committee adopted the so-called "Texas Plan." This approach was explained to the convention by delegate Victor Rivers as follows:

> The old approach to county government was that they existed and had their authorities only in those specifically delegated to them and specifically spelled out to them by the legislature or by the constitution. The other approach which has been adopted and which has operated in a few states, approximately, seven as I recall, particularly in Texas, has been called the Texas Plan, and there, under that plan, they allocate such powers to the intermediate tier of government and the cities are not specifically reserved or eventually withdrawn by the state itself. They have a broad exercise of local authority much as our cities have today. That has been the matter of the choice -- whether we wanted to follow the old pattern in which the constitution and the legislature would delegate certain specific powers to the intermediate form of government, which often is called the county and which we have designated as the borough, or whether we would follow the plan of reserving powers to the state and letting the local government exercise broad general authority within the limits of those reservations.[21]

It is quite clear that the "pure" Texas plan called for application of home rule principals to all local governments. The various classes of cities and boroughs would be defined in law by the quantity and quality of powers reserved by the state.

The record indicates that some delegates to the constitutional convention supported the "pure" Texas Plan.[22] In fact, the concept of a "general law" municipality was not introduced in the floor debate, but seems to have been an assumed constant which carried over from the territorial local government concepts. This is reflected in Article X, Section 9 and 11 which respectively provide that first-class municipalities could assume home-rule status, and that the legislature could extend home rule to other classes of government. The concept of

"general law" municipalities was enacted by statute.[23] It is interesting to note that although the "general law" concept was not discussed in convention floor debates, it has become a fundamental concept upon which the majority of local governments in Alaska are based.

It is also important to note that the framers specifically desired to provide independent authorization for city and borough powers, rather than provide that such powers be delegated to the cities and boroughs by the legislature. The legislature's authority over cities and borough is specifically enumerated. It may only regulate cities and boroughs through its authority to classify and define the respective powers and manner of incorporation.[24] Oddly enough the Constitution provides for legislative definition of borough assemblies' appointment and composition.[25] In contrast, it does not have a similar provision governing city councils. Rather, the Constitution merely provides that the council, however composed, shall be the governing body of the city.[26]

On the other hand, the powers of service areas are delegated. In the case of an incorporated area, the service area's powers are derived from the organized borough.[27] The exercise of this borough power is subject to legislative regulation by the legislature. In contrast, service areas in unorganized areas of the state possess authority delegated and regulated by the legislature.[28]

i) <u>Boroughs</u>: A borough is the intermediate level of government in the State of Alaska. Although the term "borough" is somewhat unique, the notion of an intermediate level of government is common to the American local government scene. The borough "corresponds generally to the county in other states."[29] By statute, the borough is a government for an "area."[30] This is in contrast to a city, which is a government for a "community."[31] The framers of the constitution anticipated that an average size borough would be between 1,000-2,500 square miles.[32] Presumably, an area could include a number of communities and their outlying areas.[33] Clearly, the framers intended to create a system of two-tiered, local coexistent governments.

But the framers also intended local government to be flexible enough to adjust to future developments. It has, therefore, been observed that:

> Boroughs in different parts of Alaska may serve two quite different purposes. In areas which include cities, they may constitute a second tier of government. In other areas, they may themselves be the sole or primary local units.[34]

The Alaska Supreme Court has recognized this by stating that the Constitution does not require the coexistence of boroughs and cities.[35]

There is a strong indication that the original concept of the borough was strongly linked to home rule. This is most notably demonstrated in committee answers to delegate questions regarding the unorganized borough.

> V. Rivers: ... In the extent that the benefits that the legislature sets up will offset the added cost to the people, and the extent of their desire for home rule will govern how far they go in organizing those boroughs, but it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated boroughs...[36]

This sentiment is noticeable in comparing the respective constitutional sections dealing with cities and boroughs. Whereas the constitution specifically states that "Cities shall have the powers and functions conferred by law or charter."[37] (emphasis added) The comparable clause dealing with boroughs is less specific providing that, "The legislature shall classify boroughs and prescribe their powers and functions."[38] (emphasis added) It remains unclear whether such prescription should be by specific enumeration or reservation. Nevertheless, inclusion of reference to boroughs in Article X, Sections 9 and 10 leaves no doubt that general law boroughs were constitutionally contemplated.

ii) Cities. In contrast to boroughs, cities are statutory defined as the local government unit for "communities."[39] The local government

committee of the Constitutional Convention considered the option of abolishing the city form of government. It was felt, however, that such a move was "too drastic a step," and it was felt that the existing territorial units of governments should be perpetuated.[40] On the other hand, it was also stated that,

> "... we visualize the possibility that as the borough becomes a more definite unit of government over the years, which we hope it will, the scope better defined, that all the functions that can best be carried out on the unified basis be transferred over to the borough."[41]

In City of Douglas v. City and Borough of Juneau,[42] the Court recognized that "Unification is consistent with the purpose expressed in Article X, Section 1 of minimizing the number of local government units." But in preserving the city, the convention did not intend to subordinate the city to the borough as indicated by the following exchange:

> HURLEY: The borough then has nothing to say about the services that the city offers its own residents within its boundaries. Is that true?
>
> ROSSWOG: Yes, the city should remain as much the same as today, or practically the same unless there are some gradual changes in the future. They can delegate powers back and forth but the borough would not tell the city that they had to supply certain services or couldn't supply certain services. That is why the two are set up as having the authority.
>
> HURLEY: In essence, then, you have two local government units?
>
> ROSSWOG: Yes, that is right.[43]

Thus, while the momentum set in force by the Constitutional Convention contemplates eventual dissolution of cities in favor of boroughs, the interim is governed by the principals of sovereign coexistence.

Special Purpose Governments

As noted above the integrated/unified local government is the preferred vehicle of local government in Alaska. The constitution,

however, provided for service areas and districts which seem to be semi-autonomous special purpose governments. In understanding the role of special purpose governments, it is necessary to recognize that service areas represent a compromise between the constitutional delegates who argued in favor of wholly integrated local governments, and those delegates who favored continuing the independent school districts, health districts and P.U.D.s formed under the territorial government. In expressing this compromise, delegate Vic Fischer stated:

> Mr. Johnson, it was not the intention of the committee to do away with any existing school districts just by the enactment of this article. (Sec 15). The intent was to leave them within a new framework of government.... what we visualize is putting them under the general fiscal jurisdiction of the larger entity, which includes all the people within the particular school district.[44]

This was again explained by delegate Rivers who stated:

> Mr. President, the idea was that the general powers of government would be with the general elected representatives of the people. Now, as Mr. Fischer has pointed out, the special functions in regards to the use of one group for one special purpose such as health, education or anything else, the power to take the board and take its powers away, the powers of the boards would probably continue except for the taxing power being centralized in the one taxing agency which would thus have its own appraising, its own assisting agency, its own condemnations.[45]

This point was recognized by the Alaska Supreme Court in Macauley v. Hildebrand[46] where the Court held that a home rule borough may not require its school system by ordinance to participate in centralized accounting where the Legislature has delegated express authority to the school board to resist such requirements. The Court based its decision upon the theory that education was an area of "pervasive state authority." The obvious conclusion, therefore, is that service areas may exercise substantial autonomy in areas of "pervasive state authority." In a similar manner, the legislature could provide substantial autonomy to public utility districts since regulation of public utilities is also an area of state concern.[47] Thus, while the constitution provides that "all local powers shall be vested in boroughs and cities",[48] it does not

exclude the exercise of governmental authority by governments other than cities and boroughs.

This balance is further demonstrated in those constitutional provisions which provide that when a borough is organized, existing service districts shall be "integrated" into the borough government.[49] Once a borough is organized, the assembly may create service areas within its borders.[50] This latter power is subject to the single prohibition that services areas cannot be established where such services can be rendered by annexation to an existing service area or city.[51] This prohibition is consistent with the general preference for integration rather than separate incorporation.

It is quite clear that service areas are only "semi-autonomous." As indicated above, the service area would be subject to the exclusive "fiscal jurisdiction" of the assembly. Beyond this, however, the framer's contemplated that service area boards could be set up and exercise substantial powers. This was clarified by delegate Fischer who stated:

> ..., it is the intent of the committee that when you establish a service area you could, say, establish a separate school board,...to supervise the school functions...[52]

Thus, it is possible for a service area to exercise substantial power independent of the general borough assembly.

It must be remembered, however, that the service area may never exercise total autonomy. There seems to be two chief limitations on the service areas. First, the service area may not unilaterally tax. The Constitution specifically provides that only cities and boroughs may tax.[53] As indicated above, this limitation on service areas was perceived by the framers as the sufficient link needed to achieve local government coordination. There remains, however, substantial autonomy even in fiscal matters as indicated by the Macauley v. Hildebrand case. A school district may maintain separate financial records. Similarly, while service areas have limited control over tax revenues, they may possess substantial autonomy with respect to

revenues from intergovernmental transfers. For example, under the terms of A.S. 29.89.030 (2), a health district operating a hospital may qualify for state revenue sharing. Although, the sponsoring municipality would initially receive the revenue sharing payments, the municipality is required to transfer such payments to the service area to be used for health services at the discretion of the hospital "directors".

The second major limitation on a service area's autonomy is related to the operation of the "local activity rule." As the Court stated in Macauley, the legislature may delegate to service areas power beyond the regulation of the parent municipality in areas which are the subject of state concern. It follows, therefore, that service area autonomy is inversely related to "local" concerns. For example, a municipality could certainly regulate the use of municipal property regardless of whether it was assigned to the service area, since municipal property is purely a local concern.[54] Of course, is is not easy to define what is a "local" concern as opposed to a "state" concern. This is even less clear under the borough form of government in that the framers of the constitution intended boroughs to assume greater responsibility in the area of traditional state concerns as state government "decentralized." The framers seemed to have accepted this ambiguity, and left the matter to the legislature. The courts, in turn, have recognized this role for the legislature by holding that municipal regulation is invalid in the face of contrary statutory law.

In spite of these limitations, service areas would seem to be remarkably flexible mechanisms of local government. For example, the Constitution authorized intergovernment cooperative agreements between "any local governments" for joint administration of any functions or powers.[55] Presumably, these provisions would apply to service areas since they are local governments. This view is supported by the fact, that only cities and boroughs are authorized to transfer powers, while "all local governments" are authorized to enter into intergovernmental agreements.[56] Thus, it would seem possible for co-extensive service areas to enter into cooperative administrative agreements for such things as centralized accounting and budgeting, personnel management and property management systems. Such mechanisms could be used rather extensively to provide a wide

range of services for a community without city incorporation. This concept is not beyond the framer's contemplation, in that both pro-integration, and anti-integration factions within the Constitutional Convention characterized cities as "a collection of service areas".[57] It must be remembered, however, that a collection of service areas lack independent taxing authority possessed by cities. Thus, a collection of service areas would be totally dependent on intergovernmental transfers, whether from the borough or the state. Furthermore, a collection of service areas would be subordinate to borough regulation in areas of "local control". The collection of service areas, however, could exercise substantial autonomy in areas of state interest, as defined by the legislature.

Service areas have their greatest utility in the unorganized boroughs. The constitution directs the legislature to provide necessary services in the unorganized boroughs, "allowing for maximum local participation and responsibility."[58] To implement this section, the legislature provided that it may authorize "service areas" in the unorganized borough.[59] It is agreed that such service areas do not possess powers of fiscal autonomy,[60] however, they may exercise other powers delegated by the legislature.

The legislature has seen fit to authorize four types of service areas in the unorganized borough - i.e.: 1) aquaculture service areas; 2) coastal resource service areas; 3) regional educational service areas, and 4) volunteer fire departments.

The legislature authorized the Commissioner of Commerce and Economic Development to declare aquaculture service areas.[61] The purpose of these service areas are to provide fishery enhancement services. The service area board is comprised of representatives of member user groups.

The coastal zone management service areas are general planning units for coastal areas of the state. Whereas, coastal boroughs are automatically designated coastal zone management districts, unorganized

areas may organize a special service area for the conducting district coastal management programs.[62] These programs operate to guide state agencies in the operation of their programs throughout the coastal areas of the state. While the state continues to be the basic provider of basic services, the service area boards operate as a centralized planning agency for the area. The board of the service area is popularly elected.

Third, the regional education attendance areas (REAA) are service areas providing eudcational services within the unorganized borough.[63] Like the coastal zone management areas, the REAA's are controlled by a popularly elected board, but were mandatorally organized by the legislature after a settlement of the "Molly Hootch" case.[64]

Finally, the legislature has "impliedly" authorized organization of volunteer fire departments for unorganized areas of the state through the state revenue sharing program.[65] Under this program, local fire departments may organize under regulations adopted by the state fire marshall. Upon approval and registration of the departments, the organizations are eligible for state funding. Generally, these departments enjoy substantial fiscal autonomy, provided that they confine their activities to fire protection.

As noted above, there is great variety in the organization and operation of these special service areas. At the present time, the authority of these special service areas has not been challenged in court, so that it is impossible to define the limits of the legislature's discretion as to the manner and form that these service areas may take. If the past record is an indication of legislative authority, it can only be stated that the legislature possesses broad discretion in creating and organizing service areas, provided they are defined taxing authority.

## C. ALASKA NATIVE GOVERNMENT ORGANIZATION

As with state chartered local governments, Alaskan Native governments can be categorized as general or special purpose governments. Additionally, there exists "quasi-governmental" entities.

General Purpose Governments.

It is commonly stated that there are two types of general Native governments in Alaska: Traditional Councils and IRA Councils.[66] In practice, there is little difference between the operation of these two types of government. The distinction between the two governments is largely theoretical. This distinction is important, however, when the authority or status of the government comes into question.

i) Traditional Councils. In a strict sense, traditional councils are not traditional to the Alaska Native people. As pointed by David Case, the traditional precontact Native governments were primarily based on family ties.[67] Traditional councils have been formed in reaction to contact with the non-Native culture for local representation of the Native community before outside interest. Many of these councils have adopted formal traditional constitutions while others seem to operate according to an unwritten constitution like the United Kingdom. In all cases, the basic level of organization is the village.

The basis of these government's authority rests in their retained sovereignty, i.e., the principle that absent express Congressional action to the contrary, Indian nations retain the inherent power of internal self-government.[68]

This observation has led to several inquiries regarding the tribal status of Alaskan Native villages. Although the question of tribal status in Alaska is intriguing from an ethnic and political perspective, its resolution has doubtful legal significance. More important that tribal status however, is the general recognition of a group's authority to govern itself. This recognition is directly linked to its dependent status vis-anvis the federal government.[69] In turn, a Native community's dependent status is determined by legislative and executive course of action respecting the Native community in question.

Congress has specifically extended this recognition to Alaska Native villages and has treated them in the same manner as other Indian

tribes. For example, Native villages receive identical treatment as Indian tribes under the Indian Self-Determination Act,[70] the State and Local Fiscal Assistance Act,[71] the Housing and Community Development Act,[72] the Comprehensive Employment Training Act,[73] and the Indian Child Welfare Act.[74] Additionally, Congress has recognized self-governing qualities of Alaska Native communities when it provided for the extension of state civil jurisdiction over Alaska Natives. In applying PL 83-290 to Alaska, Congress expressly reserved that:

> Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community, in the exercise of any authority which it may posess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil cause of action pursuant to this section.[75]

The executive branch has likewise dealt with Alaska Native villages as Native governments where it exercises discretion. The best example of this is the Omnibus Crimes Control and Safe Streets Act which places responsibility of the Secretary of the Interior to determine those Indian tribes which perform law and order functions.[76] Under this authority, the Secretary of the Interior has recognized several Alaska Native villages as exercising the law and order functions including the employment of tribal police, establishment of tribal courts, corrections functions, and the adoption a law and order code.[77]

i) I.R.A.s. A second type of general Native government in Alaska is the "IRA Village Council." IRA stands for Indian Reorganization Act, or the Howard-Wheeler Act, which was passed in the 1930s in an effort to modernize Indian or Native American governments.[78] The Act originally applied only to the "lower 48." Its application in Alaska was somewhat unique. A 1934 version of the Indian Reorganization Act provided that only an "Indian tribe or tribes residing on the same reservation" could organize to adopt constitutions under the Act. Since few reservations existed in Alaska at the time, the Act had, in its original form, doubtful utility in Alaska. To address the special problems of Indian organization in Alaska, Congress amended the Indian Reorganization Act in May of

1936 to specifically extend its provisions to the Territory of Alaska.[79] The operation of the Indian Reorganization Act under the 1936 Alaska amendment was substantially different than the general application of the Act in the "lower 48." The adoption of the Alaska amendment marked the extension of the reservation policy to Alaska. Under the Act, Indian communities could petition the federal government for the creation of reservations.[80] Between 1934 and 1949, several IRA reserves were established. The IRA reserve policy, however, was greatly opposed by non-Native residents of Alaska and through the operation of territorial politics, lawsuits and other pressures on the Bureau of Indian Affairs, the Bureau abandoned the policy of creating IRA reserves in Alaska.[81] Even though the reservation policy was abandoned by the Bureau, the organizational efforts of the Bureau left in its wake a number of organized Native villages without reservations. Those few reservations actually formed pursuant to the Act were later revoked by the Alaskan Native Claims Settlement Act.[82] The net result of this course of events has left a number of Native governments continuing to operate under their IRA constitutions.

The legislative history accompanying passage of the Alaska amendment clearly indicates that Congress intended to recognize the Alaska Native village as analogous to a tribal organization. A House report stated:

> The proposed amendment, number 1 above, set out is necessary because of the peculiar nontribal organization under which the Alaska Indians operate. They have no tribal organizations as the term is understood generally. Many groups that would otherwise be termed tribes live in villages which are the basis of their organization.[83]

In this sense, the Alaska amendment was consistent with the general statutory purpose of the Indian Reorganization Act, which was

> To stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real limited authority and by prescribing conditions which must be met by such tribal organizations.[84]

In light of these Congressional enactments and legislative history, it is clear that the Alaskan Native IRA Village Council is equivalent or

at least analogous to the tribal organization found in the "lower 48." This principle is recognized under Alaskan state law and was enunciated by the Alaska Supreme Court in Ollestead v. Native Village of Tyonek.[85] In that case, the court recognized the tribal status of the Native village of Tyonek council.

It is, therefore, clear that to the extent that they exist, Alaska Native Village Councils organized under Indian Reorganization Act are recognized as local tribal government organizations.

Special Purpose Governments

While it is clear that the general purpose governments of Alaskan Natives are organized at the village level, additional special purpose Native governments exist which complicate the governmental pattern of Alaskan Natives. Most notable in this category is the Tlingit/Haida Central Council.

The specific status of Tlingit/Haida Central Council was litigated in Cogo v. the United States.[86] In that case, an individual brought a lawsuit against the Council to require inclusion in the preparation of the tribal roll under the Tlingit/Haida Settlement.[87] In that case, the council successfully claimed sovereign immunity as a tribal organization. The plaintiffs argued that the Council was not a tribal organization, and, therefore, could not assert tribal sovereign immunity. Specifically, the plaintiff pointed to the language in the Indian Self-Determination Act which seems to indicate that in Alaska, the village council was the tribal organization.[88] The court rejected the plaintiff's claim stating that the language in the Indian Self-determination Act was irrelevant for the purposes of this suit and went on to state that, although the Tlingit/Haida Central Council was certainly not a tribal organization for the purposes of the Indian Self-Determination Act, it was a tribal organization for the purposes of Tlingit/Haida Settlement. This case has clearly established a principle that special purpose tribal governments exist in Alaska, however, the exact extent of such special purpose tribal governments has not been fully delineated.

The organization of the Inupiat Community under the Indian Reorganization Act presents a similar case. Prior to the passage of ANCSA, the Inupiat Community organized several Northern Slope villages to form a regional IRA. The Department of the Interior takes a position for the purpose of the Indian Self-Determination Act, that the Inupiat Community cannot enter into contracts or accept grants without the prior approval of the affected villages.[89] In both cases, the Solicitor has depended upon the terms of the Indian Self-Determination Act itself which defined "Indian Tribe" as:

> any Indian tribe, band, nation, or other organized group or community including any Alaskan Native or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs of services provided by the United States to Indians because of their status as Indians.[90]

In these special cases, it is unclear which is the special purpose government and which is the general purpose government. As a general rule, Indian nations have the power to determine their own form of self-government in accordance with the political and cultural history.[91] This is in accordance with the principle that "the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal governments existed."[92] Under these circumstances, it is necessary to review an organization's status on a case-by-case basis. In light of the Cogo decision, however, it is also necessary to review any relevant specific statutory law to determine if the respective organization has a special function under federal law.

Native Quasi-Governments

In addition to the general purpose governments and the special purpose governments outlined above, there exists entities which, for the lack of a better term, may be called Native quasi-governments. These types of organizations are not governments in the formal sense, however, they exercise a variety of functions which are generally exercised by governments. In rare cases, these types of organizations have been formally recognized as exercising governmental authority.

The most notable example is illustrated in the court case State v. Aleut Corporation.[93] In that case, several Native organizations sued the Alaska Division of Lands to prevent a proposed sale of lands adjacent to their communities. In addition to various villages, the plaintiff's list included the Bristol Bay Native Corporation and the Aleut Corporation, both regional corporations formed under the terms of the Alaska Native Claims Settlement Act. The plaintiffs in that case sued under AS 38.05.305, which provided that the Division should give notice and consult with incorporated municipalities and other organized communities adjacent to lands proposed for sale by the state. The court recognized that ANCSA regional corporations perform a number of quasi-governmental functions in rural Alaska, however, the Court specifically held that for the purposes of the Alaska Lands Act, regional Native corporations formed under ANCSA did not possess the requisite governmental attributes to qualify them for notice and consultation under the terms of the then existing statute. Subsequent to the Alaska Supreme Court decision, the Alaska Legislature amended the Alaska Lands Act to specifically require the Division of Lands to give notice to the regional Native profit corporations prior to a proposed sale of lands by the state. In 1979, the legislature again amended Section 305 to require the Division of Lands to give notice and consult with village corporations formed under ANCSA. These notices are similar to those given to organized municipalities. In light of this legislative history, it would seem that the Alaska Legislature intended to vest in ANCSA corporations certain specific governmental powers in spite of their general corporate character.

A second type of quasi-governmental Native organization is characterized by the regional Native nonprofit corporation. The activities of these regional nonprofits substantially vary. Their activities include Self-Determination Act contracting for the administration of BIA programs; contracting from HUD for the administration of housing projects; contracting under Title VI, the Comprehensive Employment and Training Act, for the operation of Native CETA programs; etc.

The basic model for the regional Native nonprofit organization was established under the terms of the Indian Self-Determination Act. That Act authorizes contracts between the BIA and Native governments or, in their place, Native organizations. Generally BIA programs in Alaska cannot be effectively administered at the village level. The sheer cost of administering such programs at the village level makes such contracting not feasible. In response to this problem, Natives have organized along regional lines to form Native organizations which can effectively contract with BIA for the operation of BIA programs within their region.[94] With the exception of the Inupiat Community and the Tlingit/Haida Central Council, none of these regional Native nonprofit organizations possess de jure governmental authority. Rather, they only provide those services normally provided by BIA or other federal or state agencies under a contract with those agencies. In this way, they are capable of performing governmental functions without the prerequisite governmental stature.

## PART II

## COMPARISONS OF GOVERNMENTAL AUTHORITY

The question of governmental authority is actually a question of the respective jurisdiction of the governments in question. Basically there are two types of jurisdiction: Territorial jurisdiction, i.e., the geographical area over which a government's authority extends; subject matter jursidiction, i.e., the topical areas over which a government has the authority.

### A. TERRITORIAL JURISDICTION

i) Municipalities. The Alaska Constitution provides that boundaries are determined by the Local Boundary Commission.[1] The Local Boundary Commission is charged by statute with establishing boundaries upon municipal incorporation[2] and subsequent boundary alterations.[3]

The territorial jurisdiction of Alaskan cities is ill-defined by Alaskan statutes. The statutes provide for the creation of boundaries,[4] which presumably infers that boundaries constitute the jurisdictional demarcation of a city.[5] This inference is further reinforced by statutes which provide for extra-territorial jurisdiction. A municipality may provide parks, roads, trails, playgrounds, emergency medical services, cemeteries, and airports outside its municipal boundaries.[6] Additionally, cities outside boroughs may exercise extra-territorial curfew regulation.[7]

In contrast, a borough's territorial jurisdiction is clearly defined in regards to each respective power. Certain powers are "area-wide," i.e., a power of an organized borough exercised throughout the borough.[8] These include education, planning, platting, zoning, and tax assessment and collection and such additional powers acquired by the borough through transfer or referendum.[9] The borough may exercise other municipal powers as "non-area-wide powers," i.e., powers exercised only in the area outside of cities.[10] First class boroughs may exercise any municipal power as a non-area-wide power by ordinance.[11] Second

class boroughs may only exercise certain enumerated powers as non-area-wide powers by ordinance. These include regulatory power over fireworks, animals, motor vehicles, snow vehicles, garbage, water pollution. A second class borough may only acquire other municipal if such powers are specified in its charter or subsequently acquired by referendum.[12]

ii) Native Government. Native Village constitutions, whether adopted under the traditional form of government or under the Indian Reorganization Act, generally fail to define the exterior boundaries of their territorial jurisdiction. It is, therefore, necessary to look to common law in order to determine the respective jurisdictions of the tribal organizations.

Generally, it is said that tribal law and custom are applicable within "Indian country."[13] This rule was not altered when Congress extended the State of Alaska's jurisdiction to Alaskan Indian country. Congress expressly reserved that Indian law and custom shall be given full force and effect in the determination of civil causes of action arising within Indian country in Alaska.[14]

This observation, however, begs the question to whether Indian country exists in Alaska, and, if so, what are the limits of Indian country in Alaska? Unfortunately, in Alaska the question whether Indian country exists is largely disputed, and supported by a vacillating history of cases.

As Felix Cohen illustrates in his early attempt to define the term Indian country, the term is a dynamic concept. Originally, the concept seems to have been born out of respect for the territorial integrity of Indian nations.[15] Later, the idea was supported in the Jacksonian policy of Indian removal to reserves, a policy designed to physically separate Indians and the immigrant culture.[16] From thence, the concept found its way into the early Indian Intercourse Acts to indicate Indian lands west of the Mississippi.[17] From this point, the courts and Congress have separately, albeit tangentially, developed the concept of "Indian country."

Congress repealed the definition section of the Act in 1834 and failed to reenact a substitute general definition of Indian country.[18] Later, however, Congress defined the term Indian country in relation to specific crimes.[19] The only current federal statutory definition of Indian country exists in 18 USC 1151 which defines Indian country as:

> (a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation,
>
> (b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state, or
>
> (c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

It should be noted that this definition of Indian country only applies to a set of federal criminal statutes contained in Title 18 of the U.S. Code. The term Indian country, however, is also found in 28 USC 1360 dealing with state civil jurisdiction over Indians. The result is that there is no general statutory definition for Indian country, nor is there a statutory definition for Indian country in the civil sense.

The resulting ambiguity from the lack of a statutory definition of Indian country led to a series of Supreme Court decisions laying down the principal common law definition of Indian country. Felix Cohen states that the first ruling by the Supreme Court on the issue came in Bates v. Clark,[20] which stated in essence that:

> "It follows from this that all the country described by the Act of 1834 is Indian country, remains Indian country so long as the Indians retain their original title to the soil, and ceases to be Indian country when ever they lose that title, in the absence of any different provision by treaty or act of Congress.'

This basic principle was expanded in Donnelly v. U.S.,[21] where the Court stated that executive order reservations constituted Indian

country even though the respective band did not possess original title to the land in question.

Of more importance to the Alaskan situation however, was the case U.S. v. Sandoval,[22] which held that Pueblo lands not held in trust by the United States, but owned in fee simple by a Native community under a Spanish land grant, was in fact Indian country. In his treatise on the federal-Indian relationship, David Case pointed out that the Sandoval doctrine presents a clear analogy to the Alaskan situation. Like the New Mexico pueblos, Alaska Native communities own land in fee simple through their Native corporations. In the Sandoval case, the court looked to the statutory definition embodied in 18 USC 1151 and held that the Pueblos of New Mexico were clearly "dependent communities" within this definition of Indian country. In a similar case, U.S. v. Chavez,[23] the Court defined Indian country as "any unceded lands owned or occupied by an Indian nation or tribe of Indians." If these Court cases are to be literally applied to the Alaska situation, it is clear that Indian country does exist in Alaska. However, the matter has never truly been settled.

The modern federal courts have only addressed the question whether Indian country exists in Alaska on three occasions. In the first case, In re McCord,[24] the Court heard a petition in a proceeding for a writ of habeas corpus arising from a conviction for statutory rape occurring upon the Tyonek Indian Reserve. In that case, the Court followed the Donnelly decision and held that the executive order reservation was in fact Indian country which denied state jurisdiction to prosecute the defendant in the case. The second major case following McCord by one year, was U.S. v. Booth.[25] In that case, the court held that the Metlakatla Indian Reservation did not constitute Indian country because the reservation was not a "reservation in the traditional sense." The Court further distinguished the case from McCord by noting the different conditions and history behind the Metlakatla Reservation. The decision in the McCord case, however, led to a general public outcry of concern over the lack of law and order within Indian country in Alaska. Alerted to this apparent gap in jurisdiction, Congress passed an amendment to

PL 83-280 (P.L. 280) including Alaska among those states where mandatory state jurisdiction extended over Indian country within the borders of the state.[26] The legislative history behind this action clearly indicates that the Congress reacted to the holding in the McCord case, and indicates that Congress clearly desired to overrule and reverse the precedents set by that case.[27] If the application of PL 280 to Alaska was a congressional reaction to McCord, rather than Booth, it is safe to assume that the holding in McCord was a correct statement of the legal crisis prior to the application of PL 280 to Alaska. That Act specifically states that the State of Alaska shall have jurisdiction over Indian country within its borders. It therefore seems incredible to assert that Indian country does not exist in Alaska.

But the doctrinal confusion regarding the existence of Indian country in Alaska has continued. This is primarily due to the nature of the cases in which the claim of Indian country arises. For example, in the People of South Naknek v. Bristol Bay Borough,[28] the plaintiffs claimed a tax exemption for Native townsites within the borough by claiming that the townsites were Indian country and therefore exempt from state taxation. The court firmly refused to attempt an answer as to whether or not the land in question was in fact Indian country. The Court, however, noted the historical confusion over the question of Indian country in Alaska. The Court blamed much of this confusion on "one of the principal Indian jurisdictional cases that has emerged from Alaska," specifically, the Organized Village of Kake v. Egan.[29] Like Naknek, the Kake case arose out of a claim denying state jurisdiction. It is important to note, however, that Kake did not deal with the question of Indian country per se, but addressed a narrower question of whether state law applied to off-reservation Indians. Kake, like Naknek, did not address the question whether Indian country exists in Alaska.

It should be noted that the mere existence of Indian country and consequent tribal jurisdiction is not an exclusive claim to jurisdiction and does not exclude state criminal and civil jurisdiction. As noted earlier, Alaska is subject to the mandatory provisions of PL 280 which authorized the extension of state jurisdiction over Indian country. As

a general rule, however, the application of PL 280 does not create exclusive state jurisdiction nor does it substantially affect tribal jurisdiction. In Bryan v. Itasca County,[30] the Court stated that:

> . . . nothing in its [PL 280] legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to states would result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes into little more than private voluntary organizations.[31]

In reaching this conclusion, the court noted that 28 USC Section 1360(c) provided for full force and effect of any tribal ordinances or customs heretofore or hereafter adopted by an Indian tribe if not inconsistent with any applicable civil laws of the state. In light of these cases, it would seem that territorial jurisdiction over those areas which can be determined to be Indian country, would seem to be concurrent between the state and the tribe.

There remains, however, substantial concern that the Alaska Native Claims Settlement Act placed in question the existence of Indian country in Alaska. Specifically, concern centers around Section 19 of the Act, which revoked existing reservations in Alaska. The supporters of this theory contend that, when the reservations were revoked, the territorial jurisdictions of the respective villages were destroyed. The argument, however, rests upon the proposition that Indian country is dependent upon the existence of reservations. The Supreme Court has clearly announced that there is nothing magic in the term "reservation."[32] Other forms of Indian country exist in addition to reservations. It is also clear that tribal jurisdiction is not dependent upon federal ownership of the territory in question.

The Pueblo cases arising out of the New Mexico situation clearly demonstrate these principles. In the Chavez case, Indian country was defined as "any unceded land owned or occupied by an Indian nation or tribe of Indians." It is not necessary to establish clear unequivocal boundaries. Rather, it is only necessary that the lands in question are occupied by "distinctly Indian communities" recognized and treated by the government as dependent communities entitled to its protection.[33] Applying this

rule to Post-ANCSA Alaska it is quite easy to identify those villages in rural Alaska which continue to be "distinctly Native communities." Such communities retain substantial cultural, social, and economic characteristics identifiable as Native and therefore these villages clearly fall within the definition of a dependent Indian community enunciated in the Chevez decision. Additionally, it must be recognized that ANCSA clarified continued Native title to certain lands within the state. Under the terms of the Act, Alaskan Native aboriginal claims to the land were extinguished.[34] In compensation for the extinguishment of such claims, Alaska Native villages were allowed to select and receive substantial amounts of land surrounding the villages.[35] The main effect of this act was to continue Native occupancy and ownership of a substantial amount of land surrounding Native communities. Thus those lands selected and ultimately conveyed to the village corporations clearly constituted "unceded lands owned and occupied" by the Native villages concerned. Again, the definition of Indian country as specified in the Chavez case is clearly met. As noted earlier, the fact that such lands were conveyed in fee simple was ruled irrelevant in the Sandoval case.

This view is consistent with a recent solicitor's opinion which stated that,

> The continued existence of Indian country in Alaska, in our view, does not conflict with the Settlement Act, and consequently, that Act should not be construed to have abolished Indian country or the possibility that Native villages might qualify as "dependent Indian communities."[36]

The opinion then considered a number of factors including whether the Native village was modern and urban in character, a high percentage of Native residents, the village's elibiligy to receive federal services, and the land tenure pattern, and concluded that,

> In our view, these factors are sufficient to support presumption that the area (Allakaket) is a dependent Indian community and, therefore, Indian country for the purposes of the liquor laws.[37]

Of course, this does not address the substantial concern which may arise upon subsequent land transfers by the respective Native

communities. The problem presents itself in two distinct situations. First, what is the status of lands originally selected by a village corporation and then conveyed by the corporation to non-Natives? Secondly, what is the status of lands subsequently acquired by the Native village?

The basic rule governing subsequently acquired Indian lands and their respective status as Indian country was laid down in United States v. McGowan.[38] In that case, the lands in question were lands owned by the United States and purchased out of funds appropriated by Congress for this purpose. The ruling that such lands were in fact Indian country relied on the role of the government in the establishment of the colony. The role of the federal government in the creation of the Reno Colony is substantially analagous to the role of the federal government in the identification and conveyance of lands received under the terms of ANCSA. Subsequent purchases of private land by Alaskan Native villages in fee simple would by definition not involve the federal government. Under the rationale of McGowan, the diminished federal role in the identification of Indian lands would substantially impact the status of those lands under the McGowan test. Subsequently, acquired land which would not involve federal government participation in their acquisition would not necessarily extend village jurisdiction.

The above type of subsequent acquisition, however, should be sharply contrasted from acquisitions authorized under the Indian Reorganization Act.[39] Lands acquired in this manner would fall under the black letter rule of McGowan, so that lands subsequently acquired pursuant to the terms of the Indian Reorganization Act would clearly extend village jurisdiction to those lands.

The possibility that a village might sell or otherwise dispose of village lands to nonmembers of the community presents a substantially different problem. In the case Seymour v. Superintendent,[40] the United States Supreme Court held that lands conveyed to non-Indians within the exterior boundaries of a former reservation did not lose the character of Indian country. This rests upon the theory that once Congress has set aside certain lands for the use and occupancy of

Indians, such use and occupancy shall not be disturbed. Broadly applying this principle to Alaskan Native villages, it would seem that lands within the Alaskan Native village selections authorized under the terms of ANCSA, would continue to be Indian country in spite of subsequent conveyance of such lands to non-Indians by the village.[41] In contrast to these decisions, however, is the decision in DeCoteau v. District County Court.[42] In that case, the Court held that the Lake Traverse Indian Reservation in South Dakota was terminated and returned to the public domain and, hence, Indian country on the Lake Traverse reservation ceased to exist on this reservation. The Court in DeCoteau noted that the Act in question was a ratification of a prior negotiated agreement which was fully intended to terminate the reservation. By the terms of the agreement itself, the Indians would "cede, sell, and relinquish, and convey" all the remaining land in the reservation. The court distinguished Matz and Seymour as being cases involving unilateral Congressional action rather than possession or sale of land by the Indians. From these two lines of cases it is unclear whether that a sale of Indian lands by a village would result in the relinquishment of tribal jurisdiction over those lands.

iii) Summary Comparison. In summary, it seems clear that the territorial jurisdiction of state municipal governments are basically defined in terms of their boundaries. Borough's territorial jurisdiction may be limited in regards to a number of powers by the existence of cities within its boundaries. Finally, all municipalities may exercise extra-territorial jurisdiction in respect to certain enumerated powers. The procedure for enlarging or diminishing boundaries is statutorily prescribed.

In contrast, a Native village government's territorial jurisdiction is defined in reference to the village's "Indian country." It is most likely that a village's Indian country is coextensive with lands received under ANCSA, and any other lands subsequently acquired with federal participation. It is unclear whether village's Indian country is diminished through unilateral sale or cession of village lands.

## B. PERSONAL JURISDICTION

In contrast to a municipal government, tribal government has very limited personal jurisdiction. It is generally assumed that personal jurisdiction of a municipality extends to all or most individuals within its territorial jurisdiction. This may depend upon the subject matter involved (see below). A tribe's jurisdiction is generally linked to its membership. The U.S. Supreme Court enunciated the basic principles of tribal personal jurisdiction in the companion cases, Oliphant v. Suquamish[43] and U.S. v. Wheeler.[44] In Oliphant, the Suquamish tribe attempted to enforce a local traffic ordinance against a nontribal member. In its decision, however, the Court denied the tribe's claim to jurisdiction over nonmembers. In Wheeler, however, the Court upheld the Navajo Reservation's claim to enforcement jurisdiction over tribal members.

There are basically two ways to interpret the meaning of these cases. In the broad sense, the Oliphant decision can be interpreted as denying tribal jurisdiction over non-members. It is important to note, however, that the Court in Oliphant did not overrule the holding in U.S. v. Mazurie.[45] In that case, the Court upheld the extension of tribal liquor ordinances over non-members of the tribe. Although the cases seem irreconcilable at first glance, there was a substantial difference between these two cases. In Mazurie, the Court upheld the authority of the tribe to prescribe the ordinance and stated that such legislative acts extend and apply to nontribal individuals. The actual enforcement mechanism in the Mazurie case were federal authorities, i.e., the federal courts. In contrast, the tribe in Oliphant was attempting to enforce tribal ordinances through tribal courts. The only way these two cases can be reconciled is to recognize that tribal ordinances extend to non-members but that tribes lack the authority to enforce such ordinances against non-members. The result is that tribes must seek alternative enforcement mechanisms against nontribal members, i.e., the state or federal courts. As noted in Bryan v. Itasca, federal courts are not available in a PL 280 state such as Alaska since federal jurisdiction has

generally been withdrawn. Thus, in Alaska the state courts are the only forum for the enforcement of most tribal ordinances against non-members.

As noted above, "PL 280" requires the state to give "full force and effect" to valid tribal ordinances in civil cases.[46] This supports the notion that a village would have prescriptive jurisdiction over non-tribal members. It also clarifies that state enforcement of tribal ordinances is clearly required by federal law in civil matters.

There remains, of course, the question of criminal cases. PL 280 has no comparable requirement for "full force and effect" of tribal ordinances in criminal cases. There exists, however, two lines of authority on this issue. Some states have extended "full faith and credit" to tribal ordinances by holding that a tribe is a "territory" under 28 USC 1738.[47] On the other hand, many states have refused full faith and credit, but have extended "comity" to tribal ordinances.[48] The issue remains unresolved.[49]

## C. SUBJECT MATTER JURISDICTION

Subject matter jurisdiction refers to the types of issues with which a government may concern itself. Often subject matter jurisdiction is referred to as the "powers" of a government. Title 29 of the Alaska Statutes enunciates, in a comprehensive manner, the powers of state chartered local governments. In contrast, there exists no similar comprehensive and authoritative exposition of tribal powers. Understanding tribal powers requires a thorough review of a substantial body of federal and international common law. Finally, there exists a less formidable body of federal common law governing the interaction of these respective jurisdictions.

### 1) Concurrent Jurisdiction

There are two basic principals governing the interaction between municipal and tribal governments.

The first principle was enunciated by the United States Supreme Court in Williams v. Lee.[50] In that case, the United States Supreme Court held that states have jurisdiction over Indians except where such state jurisdiction infringes upon tribal self-government. This test was specifically applied to Alaska in Organized Village of Kake v. Egan.[51] In that case, the Court analyzed the development of this principle and stated:

> "these decisions indicate that even on reservations, state laws may be applied to Indians unless such application would interfere with reservations, self-government, or impair a right granted or reserved by federal law."

In explaining these lines of decisions, the Supreme Court further stated that, "it must be remembered that the Courts in applying the Williams test, have dealt principally with situations involving non-Indians."[52] In these situations, both the tribe and state fairly claim an interest in asserting jurisdiction. The Williams test was designed to resolve this conflict by providing that the state could protect its interest in its non-Native citizens up to the point where tribal self-government would be affected.[53] In fulfillment of this policy, cases arising between tribal members fell within the exclusive interest of the tribal government.

The second major principle is a modification of the above rule required by the fact that Alaska is governed by the operation of Public P.L. 280.[54] Generally, this law confers upon the state criminal and civil jurisdiction to adjudicate matters between Natives within Indian country. It is important, however, to understand the parameters of PL 280 as recently defined by the courts. The courts have generally attempted to limit the effect of PL 280 because of the devastating impact the law has had on tribal governments."[52] In Brian v. Itasca County, the U.S. Supreme Court in commenting on PL 280 stated:

> "nothing in this legislative history remotely suggest that Congress meant the acts extension of civil jurisdiction to the states should result in the undermining or destruction of such tribal governments as did exist in a conversion of the affected tribes in the little more than "private volunteer organizations," a possible result if

tribal governments and reservation Indians were subordinated to full panoply of civil regulatory powers, including taxation of state and local governments. The act itself refutes such an inference: There is notably absent any conferral of state jurisdiction of the tribes themselves and Section 4 C, 28 U.S. C Section 1360(C) (28 U.S. CS Section 1360 (C)), providing for the "full force in effect" of any tribal ordinances or custums "heretofore or hereafter adopted by An Indian Tribe...if not inconsistent with any applicable civil laws of the state, contemplates the continuing vitality of tribal government."[56]

The court went on in a footnote to further explain this policy of promoting Native governments. In a comment of particular importance to Alaska, the court stated:

"the suggestion is that since tribal governments are disabled under many state laws from incorporating as local units of government, general regulatory control might relegate tribal governments to a level below that of counties and municipalities, thus essentially destroying them, particularly if they might raise revenue only after the tax base had been filtered through many governmental layers of taxation. Present federal policy appears to be returning to a focus upon strenghthening tribal government...and the Court of Appeals of the Ninth Curcuit has impressed the view that courts are not obliged in ambiguous instances to strain to implement an assimilationist policy Congress has now rejected, particularly, where to do so will interfere with the present Congressional approach to what is after all an ongoing relationship."[57]

This general policy, favoring the strengthening of tribal governments has two effects.

First, PL 280 does not confer upon a state general civil regulatory control over Indian country.[58] Although the Supreme Court has failed to fully define what the scope of "regulatory" means, it is clear that taxation of personal property on trust land,[59] zoning authority,[60] and outdoor advertizing61 in Indian country are beyond the state's authority.

The second effect of Brian v. Itasca was that PL 280 only made applicable to Indian country those state laws which "had a general applicability throughout the state." In short, this general principle denies the authority of local governments to exercise authority over Indian country since their authority does not extend throughout the state.[62] This basic principle, if applied in Alaska, could have a crippl-

ing effect on rural Alaskan municipal governments. The result would be the creation of local governments chartered under state law whose authority only extended over non-Indians. The end result would be the creation of parallel local government units incapable of exercising jurisdiction over the respective persons subject to the other local government's personal jurisdiction.

2) Local Government Powers.

The basic rule regarding the powers of a tribal government is that such powers are not in general delegated powers granted by Congress, but rather are inherent powers of a limited sovereignty which has never been extinguished.[63] This has recently been compared with the concept of home rule under Alaska state law.[64]

In contrast, Alaskan municipalities are of two types. A home rule municipality, like an Indian tribe possesses all local government powers not reserved from it by state law.[65] A general law municipality possesses powers delegated to it by state law.[66] Basically, general municipalities exercise four types of powers.

A general law municipality possesses "general powers" related to the municipal corporate identity. These powers include the following powers: be sued; employ municipal officers and officials; levy taxes and special assessments; enforce ordinances; prescribe penalties for violations; acquire manage, control, use, and dispose of personal and real property; promote legislation for the municipality; expend funds for community purposes; and borrow money and issue evidence of undebtedness.[67] By statute, all municipalities possess the unilateral authority to exercise these powers.

Second, general law municipalities "regulatory powers," which relate to: public rights-of-way facilities to services, traffic and general transportation including buses, taxis, etc., animal control, sales of goods, foods, and alcoholic beverages, dangerous insect and rodent control, recreational devices, building codes, public nuisance abatement,

garbage & solid waste collection, water and air pollution, licensing of day-care facilities, police powers, or other general health safety and well-being welfare functions.[68]

As a general rule, cities possess the unilateral authority to exercise the regulatory powers. Boroughs, however, are subject to a narrower grant of authority depending on whether the power is area-wide or non-area-wide (see Part II (i) above).

Third, Alaska Statutes outline a number of municipal facilities and services which general law municipalities may provide. These include services and facilities relating to streets and sidewalks, sewage treatment facilities, harbors, flood control, health and hospital services, cemeteries, police and jail services, cold storage, telephone, lights, power, heat, water, transportation, community centers, libraries, recreation facilities, airport facilities, garbage facilities, fire protection, parking, urban renewable, consumer protection, and historical sites, buildings and monuments.[69] Any city may exercise the powers necessary to provide these facilities, however, boroughs must assume the powers to provide these facilities and services in a like manner required for the exercise of regulatory powers. Third class boroughs are not specifically authorized to provide such facilities and services.

Fourth, general law municipalities are authorized to exercise what are commonly called area-wide powers, i.e., education, and planting, platting, and zoning authority. Generally, first and second class boroughs have the statutory authority to unilaterally provide exercise such powers on an area-wide basis.[70] All third class boroughs may provide educational services on an area-wide basis and may, upon voter approval, exercise planning and zoning authority. As a rule, cities do not exercise such powers except when they are located outside borough boundaries.[71]

An exhaustive comparison of these powers is certainly beyond the scope of this project, however, it is possible to select areas for special consideration.

i) Police Powers. While municipalities possess police powers,[72] tribes possess the power to regulate the conduct of members.[73] The federal government has withdrawn tribal jurisdiction over most felony crimes by enactment of the Major Crimes Act,[74] and Assimilative Crimes Act.[75] Both the tribe and the municipality are limited from prescribing a punishment for violation of an ordinance in excess of $500 and/or thirty (30) days in jail.[76]

Municipalities are prevented from operating "courts" since the Alaska Constitution provides for an integrated court system under state government.[77] This constitutional reservation of power to the state, however, does not prevent municipalities from operating "administrative tribunals" capable of enforcing ordinances.[78] Such tribunals, however, are subject to the same constitutional guarantees protecting the rights of the accused, where the ordinance provides for the regulation of acting which traditionally connotes criminality.[79]

In contrast to municipalities, Native governments possess the inherent power to create courts to enforce their ordinances.[80] While tribal courts are not generally subject to the individual guarantees of the Bill of Rights,[81] they are subject to the guarantees of the Indian Civil Rights Act of 1968,[82] which applies the constitutional protections of the Bill of Rights to Indian governments.

ii) Planning. Both tribes and municipalities possess planning authority. Alaska statutes specifically provide for municipal planning authority. Within organized boroughs, planning is an area-wide function of the borough.[83] Of course, the borough may also delegate such powers to a city within its borders.[84] Outside organized boroughs, first class cities are required, and second class cities may exercise planning powers.[85] In unorganized areas of the state, planning authority rests with the Department of Natural Resources.[86]

Tribal planning authority is a power retained by tribes in the absence of contrary federal law. This authority is already expressly recognized by the state. While the Court in State v. Aleut Corp.,[87]

held that ANCSA regional corporations lacked governmental planning authority so as to require the State Division of Lands to give notice of pending land actions, the Court also held that traditionally organized Native villages constituted local authorized planning agencies.[88]

While both entities enjoy substantially similar planning authority, the entities implement this authority in substantially different ways. Muncipalities have authority to directly implement their plans through zoning, platting,[89] and operation and licensing. The municipality, however, is not able to direct state agencies to comply with local plans. For example, the prior A.S. 29.33.090(d) required certain state land management programs to comply with municipal plans. This was repealed.[90]

Municipalities also may implement their plans through its licensing power over vehicles, animals, day care facilities, etc.[91]

A tribe's most potent implementation tool is its recognized authority to license. For example, in U.S. v. Mazurie,[92] the Supreme Court upheld a tribe's right to license bars owned by non-Natives on fee simple land within Indian country. Secondly, a village may regulate the nature of member's ownership rights in property.[93] By defining members property rights, a tribe can restrict uses of property which are delitereious. Finally, there is some authority to believe that a Native village government may exercise zoning authority over Native land. In Santa Rosa Band of Indians v. Kings County,[94] the Court struck down local zoning ordinances holding that "the extension of local jurisdiction is inconsistent with tribal self-determination and autonomy."[95] This infers, of course, that the local government invaded a power to zone reserved to the tribe.

iii) Taxation. The right of a Native government to tax is a retained sovereign power.[96] The extent of this power is almost wholly uncertain, since few Native governments exercise this power. The courst, however, have upheld tribal taxes on business,[97] occupations,[98] or to accompany tribal permits,[99] regardless of whether the tax was levied against members or non-members.

The taxing powers of municipalities are more clearly defined. They may levy sales and use taxes,[100] and property taxes.[101] These taxing powers are subject to a substantial number of exemptions and limitations.[102]

Conclusion. While the municipalities and tribes do not have co-extensive powers, they have many similar areas of concern where their powers overlap. It should be remembered that the tribal organization is a governmental unit with broader areas of concern and responsibility than the municipality. For example, tribal powers include regulation of property rights, marital relations, and child custody.[103] Tribes provide employment, welfare, economic development, child protection, and various other services generally felt to be beyond the scope of local government. As local government in Alaska develops along the path of decentralization envisioned by the framers, it is likely that municipal governments will also address these subject areas. In any case, it is clear that village and municipal government are not the same thing. It is also evident that they are closer than commonly perceived.

## PART III

## SUGGESTIONS TO INCLUDE NATIVE VILLAGE GOVERNMENTS WITHIN THE ALASKAN LOCAL GOVERNMENT SYSTEM

The decision to allow inclusion of Native village government within the state local government is, of course, a policy issue. Several factors must be considered in making this decision. First is the question whether such action is consistent with the Alaska Constitution. Second, the actions of other states must be considered. Thirdly, the backdrop of federal law needs to be considered. Finally, the state interest in non-Native citizens needs to be addressed.

### A. THE CONSTITUTION

Substantial concern exists as to whether the proposed action is consistent with the Alaska Constitution. The proposal raises two issues. First, the proposal must be analyzed to determine whether it is consistent with the constitutional scheme for local government. The local government committee of the Constitutional Convention articulated five basic principles with which the proposal may be compared, i.e., self-government, unified system, prevention of overlapping tax authorities, flexibility, and state interest. Additionally, the proposal raises a question whether it is consistent with the equal protection clause of the Alaska Constitution.

1. Self-government. Maximum local control over local government was a primary goal of the framers. This policy is specifically enunciated in Section 1 of Article 10 of the Constitution which provides that, "the purpose of this Article is to provide for maximum local self-government..." This concern is reflected in other provisions of Article 10. For example, Section 6 provides that the legislature shall provide for the performance of services that it deems necessary and advisable in the unorganized boroughs "allowing for maximum local participation and responsibility." (emphasis added) Section 9 provides that home rule charters of first-class

municipalities shall be approved by popular election. This policy favoring local self-government in municipal matter is consistent with federal policy favoring self-determination of Indian tribes. Fundamental to self-government/self-determination, is the right of people to determine what form their government shall take and to establish rules and regulations regarding the management and operation of that government. For a variety of reasons, several Alaskan Native villages have failed to organize as second-class city under the Alaska state law. The prefer rather to organize themselves exclusively as Alaska Native villages. In many cases, such organization reflects a community decision to organize a local government which best reflects the cultural and social character of the respective community. Under this rationale, the state should encourage communities to organize themselves under any authorized governmental form which best represents the respective communities' social, cultural and economic pattern. The inclusion of Native governments within the system of Alaska state local government promotes this policy. This action would broaden the number of local options available to communities desiring to organize, thereby leaving greater control at the local level.

2. Integrated local government system. The framers of the Alaskan Constitution desired to create a single system of local government within Alaska. As noted by this study, however, two parallel systems of local government exist in Alaska, i.e., state chartered municipalities and tribal government. The quality and quantity of interaction between these two types of government varies from community to community. The quality and quantity of possible interaction ranges from substantial cooperative efforts to substantial opposition. Often times coordination between governments is merely a function of interlocking office holders. Where the Native council and the city council are substantially the same, the respective governmental efforts are highly coordinated. In contrast, where the councils are not interlocked there is little coordination and counterproductive efforts often result. State and federal programs often depend on the existence of local cooperation. Nonrecognition of Native governments is a impediment to this local cooperation.

Non-recognition problems also result where a community is exclusively organized as a Native village government. Such communities are not immuned from the same problems which plaque communities organized as municipalities. Where the municipality may draw on the resources of the state to help address such problems, the Native village encounters greater reluctance by the state to render equal assistance. The obvious solution to this problem is for the community to organize as a municipality. The community would in fact only trade problems--i.e., the community would trade a reluctance on part of the state to render assistance in exchange for the duplicity and confusion which results from parallel governments.

The inclusion of the Native government within the local government system, therefore, would further state policy favoring a unified local government system. It would promote cooperation where parallel governments exist and it would alleviate the necessity of creating parallel local governments where none exist now.

3. Prevention of overlapping taxing and authorities. As noted above, the framers of the Alaska Constitution specifically intended to eliminate overlapping tax authorities and promote physical integration within local government. For this reason, Article 10, Section 2, specifies that cities and boroughs are the only local governments authorized to tax under the Alaska Constitution. As noted above, however, this plan is somewhat frustrated by the existence of Native government which possess authority to levy taxes and dues on members and non-members. Additionally, the eligibility of Native villages to receive intergovernmental revenue transfers frustrates the state's objective to facilitate fiscal integration of local government. This lack of fiscal integration within the community leads to a number of problems including duplicate accounting systems, redundant and excessive administrative costs and, in some cases, program duplication. The framers had hoped to avoid such problems in adopting a policy favoring fiscal integration. The inclusion of Native governments within the local government system will help avoid these inefficient fiscal management systems.

4. Flexibility. Throughout the Constitutional floor debates, the drafters of Article 10 emphasized their desire to provide a "framework" for local government which would be flexible enough to meet community demands throughout a highly pluralistic state such as Alaska. Native governments represent a flexible accommodation to the need for pluralistic representation in local government. It, therefore, follows that the inclusion of such governments fulfill a constitutional policy favoring flexibility in Alaskan local government.

5. State interest. As noted above, the framers of the Alaska Constitution felt that strong local government was a mechanism to facilitate the decentralization of state government. It was fully intended that strong local government could perform traditional state functions much better than a centralized government structure. This plan, however, is dependent on the existence of local government. Since the state does not recognize Native governments, these local mechanisms are unavailable to the state. The inclusion of Native governments within the state system of local government makes available to the State existing government entities through which the State may operate. In this sense, the Native government can serve as a conduit for the provision of state services. In a limited sense, the state has already adopted this policy. For example, in the Coastal Zone Management Act, the Rural Development Act, the Municipal Trust Land (14c) Program, the Community Legal Assistance Program, the Community Miscellaneous Assistance Program and various state contracting programs utilize Native government to administer and otherwise implement these programs which require substantial community participation. The general inclusion of Native governments within the local government system of the State of Alaska will make available to the state a valuable local instrument.

6. Equal Protection. It is unfortunate that the Alaska Constitutional Convention failed to address the issue of Native local governments. In the heady atmosphere of the convention, the delegates seemed to assume that the state mechanism would be comprehensive. The record fails to indicate that the convention ever considered that viable Native governments would continue. In this vacuum it is difficult to analyze the

constitutionality of state legislation which seeks inclusion of Native government in the local government system. Generally, however, there exists concerns whether such legislation would violate the equal protection clause of the Alaska Constitution.[2] Since this is a novel question in Alaska, we must look to sister states for guidance.

The Supreme Court of Minnesota was forced to deal with the issue in State v. Forge.[3] In that case, non-Indians sought to challenge the constitutionality of a compact between the state and the Chippewa Tribe over ricing and fishing. The state legislation vested certain rights in members of the Chippewa tribe that did not extend to state citizens in general. The court upheld the statutes in the face of a challenge based on the equal protection guarantees of the Minnesota Constitution.

In deciding that the state action did not violate the state constitutional guarantee of equal protection, the Court noted that the compact related to the reconciliation of claims between the state and the Indian tribes. As such, the classifications made by the state law rationally related to the competing claims of the state and the tribes.[4] It is important to note that the court's finding was based upon Indian treaty rights, which could not be used as a basis for Alaskan legislation. Nevertheless, the Court noted that:

> Even in the absence of treaty rights, the United States Supreme Court has frequently upheld legislation that singles out Indians for particular and special treatment.[5]

Subsequent to State v. Forge, the United States Supreme Court dealt with the issue directly in United States v. Antelope.[6] In that case, Antelope was tried for murder under the Major Crimes Act. The defendant argued correctly that if he were not an Indian, he would have been charged under the Assimulative Crimes Act for manslaughter. The court held that the statute did not create an impermissible racial classification since the constitution specifically authorizes particular and special treatment of Indians.[7]

There is one distinction, however, which may distinguish Alaska's and Minnesota's Constitution. The standards of the equal protection clause under the Minnesota Constitution are synonymous with the U.S. Constitution's equal protection clause.[8] In contrast, however, the standards of protection under Alaska's equal protection clause is not synonymous with that of the U.S. Constitution.[9] Absent an express ruling to the contrary, however, the Minnesota interpretation is probably an accurate indicator of the Alaskan position.

## B. OTHER STATES

Other states have attempted to establish direct tribal-state relations in one of two basic ways - 1) incorporation, or 2) recognition and compact.

1) Incorporation. Incorporation is the formation of a unit of local government. As noted above, such incorporation may result in the formation of either a general or special purpose government. Theoretically, it is possible to incorporate Native governments under state law. In Bryan v. Itasca, the court stated that one reason it was reluctant to extend local government jurisdiction over Native communities was the fact that many states did not allow incorporation of Native government under state law.[10] This implies, of course, that it is possible for a state to allow such incorporation if it removes its self-imposed prohibitions.

As noted above, this has been attempted twice in Alaska's past. Several current second class cities were originally incorporated under the 1957 Village Incorporation Act. The villages lost their village status through the 1972 municipal code revision.[11] In general, the attributes of tribal self-government are no longer present, so that neither the people, the state, nor the federal government recognize these governments as tribal entities.

Direct state incorporation of general purpose Native governments is not common. There are, however, a few instances of such state action.

One example is New Mexico, which provides for the incorporation of Peubleo Indian communities.[12] The courts, however, have ruled that the pueblo's did not gain any powers, rights or duties under this statue, but rather their powers stem from their authority as Indian tribes.[13]

In contrast, Maine has recently enacted the Maine Indian Claims Settlement Act[14] which does not incorporate the tribal enities, but rather delegates to them "all the rights, privileges, powers and immunities" of a state municipality.[15] This includes the authority to enact ordinances, collect taxes and provide general services like any municipality. Conversely, the tribe is subject to all duties, obligations, liabilities and limitations of a municipality in the operation of municipal authority. A major exception is the internal organization of the tribes.

The tribes' jurisdiction extend over "Indian territory" as defined by the Act, which includes newly created reservations (akin to townsites) and surrounding lands conveyed in fee simple to the new Native corporations.[16] As enities possessing municipal authority, the tribal councils have jurisdiction to prescribe criminal and civil ordinances over non-Natives, but may only judicially enforce certain ordinances against members and handle small claims matters between members.[17] The state courts have jurisdiction to hear all other cases.[18] Law enforcement is handled through a cross-deputization of tribal and state police.[19]

The state has also sought to protect nonmember's rights by making municipal authority dependent upon nondiscriminatory delivery of services and guaranteeing enfranchisement in county, state and federal elections.[20]

In considering the Maine Settlement, two major points must be made. First, the Main Settlement was prompted by litigation over both the land claims and governmental claims of the Maine Indians. By comparison, the Alaska Settlement only addressed land claims, and left unresolved the governmental claims of the Alaskan Native people. This oversight is generally attributable to the common perception of P.L.-280 in the pre-ANSCA period. It must be remembered that ANCSA preceded

Bryan v. Itasca,[21] which was decided in 1976. Prior to 1976, the general feeling was that P.L. 280 replaced tribal authority. The court in Bryan v. Itasca, however, clearly rejected this analysis, and reasserted that P.L.-280 merely resulted in concurrent state/tribal jurisdiction.

Secondly, except of the delegation of municipal powers, the Maine Settlement Act does not substantially change the respective authority of the state and tribes. Generally, the Act serves as a restatement of the law as currently understood. Thus, the Maine statutory scheme may serve as a useful model for incorporation of general purpose Native government under a state's authority.

In contrast to general purpose incorporation, some states have sought to declare Indian tribes as special purpose governments. For example, Florida, like Connecticut, has established a state reservations which in effect is an extension of a federal Seminole reservation.[22] In addition, however, the state has declared the whole Seminole Reservation (both federal and state portions) and the Miccosukee Reservation as "special improvement districts."[23] While the state recognizes that the tribes may regulate their members and lands as other tribes,[24] the state law provides that the tribal councils (organized as I.R.A.s) shall be the governing body of the districts, and are granted law enforcement, housing, and health powers, along with providing a variety of state services.[25]

It is interesting to note, that Florida is not the only state which has set up state Indian reservations. Connecticut has also established state reservations.[26] Management of the reservations is through an Indian Affairs Council and tribal councils, both of which have state regulatory powers over the reservation.[27] The State Administrative Procedure Act specifically applies to regulatory decisions of the councils. Texas also has authorized state Indian reservations.[28] Furthermore, Texas has extended state recognition of a federally nonrecognized tribe, and committed the state to seek federal recognition.[29] Even more unique than this, Texas has delegated bonding

authority to tribal councils.[30] Under state law, lands held in trust by the state and the rents, royalties, revenue and income from such lands, may be pledged to back the bonds.[31]

While the above states have attempted various types of incorporation, many states have taken the intermediate step of creating State Commissions on Indian Affairs.[32] A fairly representative example is Minnesota which created an Indian Affairs Board.[33] While the tribes are not brought within state government directly, the board is a state commission comprised of various state commissioners, state legislators, and tribal officials. The commission does not attempt to exercise governmental authority over tribes. Rather it acts as a liaison between state and tribal service programs.

Simiarly, in California, state law authorizes the formation of school districts within Indian reservations.[34] Unlike Florida, either the tribal governing body or an independently selected body is the governing body of such a district.

2) Recognition and Compact. Recognition is a concept borrowed from international law. It is the process whereby one government acknowledges the authority of another government. It is more than taking note of a mere fact. It is the process whereby two governments seek to establish intergovernmental relations. There are two types of recognition - recognition of the community and recognition of the government. Recognition of the community is acknowledgement that the community is a legal enity capable of being organized under an independent and effective government.[35] Recognition of the government is acknowledgement that an individual or body of individuals act as the government for the community.[36]

The use of the concept of recognition is quite useful in the context of Native governments since the state is not attempting to create a racially defined institution under its own authority. Rather the State is acknowledging the existence of the Native communities and governments. Thus,

the Native government gains no authority from the State, but merely enters into cooperative relations under its existing authority.

States typically implement recognition of Native governments in one of two ways. Either a state may extend general purpose recognition to Native governments, and provide for a systematic procedure for entering into compacts, or the state may adopt an incremental policy of limited recognition for specified purposes.

The Interlocal Cooperation legislation in Nevada,[37] Washington[38] and South Dakota[39] are good examples of legislation which reflect this first policy. Typically, these statutes allow state and local governments to enter into agreements providing for the joint exercise of powers, procedures for entering into such agreements, and financing of joint programs. In the above three states, the Interlocal Act simply defines entities eligible to enter into these agreements to include Indian tribes. Nevada has clarified this inclusion by enacting legislation which guarantees the rights of self-government of Indian tribes,[40] and provides that the administrative jurisdiction of state agencies is not extended over Indian country.[41]

In contrast, other states have adopted an incremental approach to recognition and compacts with Native government. A good example of this approach is Minnesota. A dispute between the State of Minnesota and the Chippewa Tribe arose over ricing and game regulation. The dispute led to a substantial amount of litigation which in turn led to an out-of-court settlement in the form of a ricing and game management compact between the state and the tribe.[42] The compact is a limited effort by the state and tribe to cooperate in these limited subject areas, and does not attempt to establish an ongoing general relationship.

A more common area of limited state-tribal cooperation is in the area of law enforcement. In New Mexico, for example, state law provides general cross-deputization of state and tribal police.[44] Under this agreement, pueblo and Navaho tribal police also carry an appointment under

state law, and may, therefore, enforce state law within Native communities. State police also carry a tribal appointment.

C. FEDERAL LAWS

In considering inclusion of Native governments within the state local government system, the backdrop of federal law will have substantial effect. Of prime concern is the extent state law attempts to regulate the internal organization of Native government organization. Secondly, there is future legislation to be considered.

First, the Williams' doctrine prohibits states from regulating the internal self-government of Indian tribes.[45] Thus, the state could not mandate incorporation of Native governments under Title 29. Rather, the state could only authorize such incorporations upon consent of the tribe.

The Alaska constitution authorizes only three forms of local government - cities and boroughs which are capable of possessing all local government powers; and service areas/districts which are only capable of possessing enumerated powers.[46] Therefore, the legislature is limited to these modes of organization. The legislature may classify, define powers, and define manner of incorporation. Thus, in order to provide for the incorporation of a Native government under state law, the legislature must create a class of city, borough or service area, and define the powers of such government in a manner consistent with the Native government character.

If the legislature provided for state incorporation of Native governments as boroughs, however, the constitutional provisions vesting in the legislature the authority to regulate composition and apportionment of borough assemblies[47] would be inconsistent with the Williams' doctrine, which prevents state regulation of internal organization. This inconsistency is irreconcilable.

On the other hand, if the legislature provides for incorporation as a city, there exists no comparable constitutional claim to internal regulation The state would merely create a class of city over which it disclaims authority to regulate composition.

The remaining option is the service area. The use of service areas in the unorganized areas of the state is relatively simple. Since such service areas operate by delegation of authority, the legislature may simply adopt the Florida or Maine plan and delegate to Native governments certain powers. In contrast, service areas within organized areas are subject to borough regulation. While the legislature may authorize boroughs to create a class of service area appropriate to the Native government, the character of borough regulation is equally important. Borough regulation which violates the Williams' test would invalidate the plan. To avoid this, the legislature may declare that the furtherance of Native self-determination is a matter of state interest, and under the local activity rule, the legislature could preempt borough regulation of Native service area composition.

Thus it is conceivable that the state could provide for incorporation of Native government as cities and service areas whether within or without organized boroughs.

The second consideration is the proposed Tribal-State Compact Act which is currently before the U.S. House of Representatives (see Appendix C). The implementation of the tribal-state paradigm would be substantially affected by the terms of the Act. In its current form, the bill specifically authorizes states and local governments to enter into agreements with Native governments. Such legislation is needed in non-P.L. 280 states because of recent court decisions invalidating such agreements.[48]

In addition to merely authorizing tribal-state agreements, Sec. 102 of the proposed Act provides federal assistance to the entity assuming new obligations under the terms of a tribal-state compact. If passed, the Act will provide a mechanism to assist the state in its constitutional

plan of decentralization. By entering into eligible arrangements, the state may take advantage of available federal funding to facilitate implementation of state programs. Such agreements are more likely to operate in rural areas of the state where program costs are greatest. Use of such federal funding will decrease the burden on the state budget that such programs represent. While the state enjoys its present wealth, the need for federal assistance is less, yet, as projected state revenues decline in the future, the need for federal assistance will increase.

## D. NON-NATIVES

The greatest concern over inclusion of Native village governments into the Alaska local government system is the preception that the Native governments are racially defined institutions. As such, it is feared that non-Natives will be relegated to a status of second class citizens in their own communities. This view is founded on two questionable assumptions: 1) non-Natives cannot participate in Native government, and 2) non-Natives have no rights under a Native government.

It is a general rule of law that a Native tribe has the exclusive authority to determine its membership.[49] This power specifically includes the power to provide for the adoption of non-Natives into the tribe.[50] This general rule is subject to one exception. The Secretary of the Interior is charged with the responsibility of determining tribal enrollment for the purposes of distributing tribal trust funds.[51]

In contrast, Native governments providing services under federal contracts may also render services to non-Native tribal members, since, for the purpose of contracting, "Indian" is defined in terms of tribal membership.[52] Benefits provided through state revenue sharing are required by state procedures to be equally available to non-Native residents of the respective communities. Thus, it is quite possible for non-Natives to fully participate in Native government.

Participation by non-Natives in Native government is quite common, despite efforts of the B.I.A. to discourage the practice. In one case,

a Native village constitution goes so far as to guarantee non-member/ non-Native heads of households representation on behalf of their Native children before the Native council.[53] In practice, Native councils are reluctant to open village roles to non-Natives who may be transient or are reluctant to establish permanent ties with the community. This is understandable in that membership in a village generally carries with it cultural duties and obligations. This reluctance is analogous to the policy of the federal government to extend citizenship to aliens.

The second major concern relates to the individual rights of non-Natives under Native government. The prime guarantee of individual rights under a Native government is the Indian Civil Rights Act of 1968.[54] The Act mandates that a Native government provide many of the same individual protections provided under the U.S. Constitution. These include:

- free exercise of religion
- freedom of speech, press and assembly
- freedom of unreasonable search and seizure
- protection from double jeopardy and self-incrimination
- protection from taking of property without compensation
- right of due process and counsel
- protection from cruel and unusual punishment and excessive bail
- right to equal protection of the laws
- prohibition of bills of attainder or expost facto laws, and
- right to trial by jury

These rights extend to members and non-members alike.[55]

There is some concern that the Act only provides relief through the right of habeas corpus. This concern focuses around dicta contained in Santa Clara Pueblo v. Martinez.[56] In that case, the Court reviewed a tribal ordinance which conferred benefits upon tribal members based upon a distinction between patrilinial/matrilinial ancestors. In dicta, the Court stated that Congress only provided one clear remedy for plaintiffs under the Act - i.e., habeas corpus. A full reading of

Martinez, however, reveals that the holding of the case rests upon a test which balances two current policies of federal Indian law - i.e., self-determination and protection of individual rights. As one commentator remarked, "In litigation under the Indian Civil Rights Act, federal court jurisdiction outside the scope of habeas corpus proceedings has been firmly established.[57]

## CONCLUSIONS

It is clearly feasible to include Native village government into the state local government system. This may be done in one of two ways - either through compacts (see Appendix A) or direct incorporation (see Appendix B).

The first draft bill (see Appendix A) would be sufficient to authorize tribal state compacts. In addition to recognition, the bill defines the method whereby the State will engage in relations with the Native villages. The proposal provides that Native villages could participate in state programs to the same extent as second-class cities. It does not delegate to tribes general local government powers but does recognize the existing tribal powers retained by Native governments. The bill will clarify the status of Native village laws before state courts.

The bill also proposes cooperative agreements between the state and the Native governments to carry out state programs. This section anticipates the passage of the Tribal-State Compact Act which would allow federal funding of programs conducted under a State-Tribal agreement, and thus, reduce the burden on the state treasury for those areas affected by these agreements.

Finally, the bill conditions the relationship upon the Native government's compling with anti-discrimination provisions. This, of course, exempts federally funded Indian programs. The bill allows the Governor to enforce compliance through withdrawal of recognition.

The bill does not attempt to expand the jurisdiction of the State or the Native village. Section three (3) allows municipalities and village governments to enter into similar agreements.

The second draft bill (see Appendix B) would also provide for state-tribal compacts. In addition to this recognition, the bill allows direct incorporation of the Native government as a third class city. As a third class city, the government would have the attributes of a municipality and a Native village government. To avoid conflicts with the Williams doctrine, state law which regulates the internal operation of a city government are not made applicable to the third class city.

Other provisions of the bill are comparable to the first draft.

## APPENDIX A

## A BILL

For an Act entitled: "An Act Relating to Native Village Governments."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes Native Villages as distinct, independent, political communities exercising original tribal soverienty in

dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted Native village government, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. ELIGIBILITY FOR STATE PROGRAMS. A Native village government, for a village which is not incorporated under this title, and is not located within an organized borough is,

a) eligible to participate in all state programs to the same extent and in the same manner as a second-class city;

b) entitled to notice concerning proposed actions by the state to the same extent as a government of a second-class city is entitled to notice; and

c) entitled to consultation with the state on state actions and programs which affect the village to the same extent that the government of a second-class city is consulted on state actions and programs.

Sec. 29.--.030. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judical, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The

Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.040. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.050. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or

village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing this this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.060. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC, Sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

## APPENDIX B

## A BILL

For an Act entitled: "An Act Relating to Native Village Governments Establishing Third Class Cities."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) Provide for incorporation of Native village.

(3) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

## CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes the Native villages as distinct, independent, political communities exercising original tribal soverienty in dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted governing body of Native village, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. INCORPORATION OF THIRD CLASS CITIES.

a) A Native village government as defined in this chapter shall be eligible to incorporate as a third class city.

b) Nothing in this chapter shall prevent such Native governments from exercising any power retained by that government by virtue of its tribal authority.

Sec. 29.--.030. ORGANIZATION OF COUNCIL.

a) A third class city shall be organized pursuant to the organic documents for the Native village government seeking incorporation under this chapter.

b) The following provisions of this title shall not apply to third class cities.

1) A.S. 29.23.200-250 (organization of city council).

2) A.S. 29.48.130-260 ( administrative procedures).

c) A third class city shall possess all powers of a second class city outside boroughs as provided in A.S. 29.43.

Sec. 29.--.040. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judical, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.050. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a

rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.060. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing this this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.070. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC, Sec 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

96TH CONGRESS
2D SESSION

# S. 1181

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1980

Referred to the Committee on Interior and Insular Affairs

# AN ACT

To authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Tribal-State Compact Act of 1980".

## DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the policy of this Nation to continue to preserve and protect the tribes of the American Indian people. The policy of this Nation is premised on the status of tribal governments as a continuing part of the American political fabric. Accordingly,

the United States has a responsibility to establish a legal framework which will enable the tribes and the States to achieve maximum harmony and facilitate their cooperative efforts in the orderly administration of their governments. Federal enabling authority for the establishment of viable intergovernmental agreements between the tribes and the States based on mutual consent must be established.

DEFINITIONS

SEC. 3. For purposes of this Act:

(a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community which is exercising powers of self-government and which is recognized by the Secretary of the Interior as eligible for services provided by the United States to Indians because of their status as Indians.

(b) "State" means any of the States of the United States, including cities, counties, municipalities, or other political subdivisions thereof.

(c) "Secretary" means the Secretary of the Interior unless otherwise designated in this Act.

(d) "Indian country" shall be defined in accordance with the provisions in section 1151 of title 18, United States Code.

# TITLE I—AUTHORIZATION OF COMPACTS AND AGREEMENTS

SEC. 101. (a) Notwithstanding the Act of August 15, 1953 (67 Stat. 588), as amended, or any other Act transferring civil or criminal jurisdiction over Indians within Indian country from the United States to the various States, or establishing a procedure for such transfers, and notwithstanding the provisions of any enabling Act for the admission of a State into the Union, the consent of the United States is hereby given the States and the Indian tribes and the same are hereby authorized to enter into compacts and agreements between themselves on matters relating to (1) the enforcement or application of civil, criminal, and regulatory laws of both within their respective jurisdiction, and (2) allocation or determination of governmental responsibility of States and tribes over specified subject matters or specified geographical areas, or both, including agreements or compacts which provide for concurrent jurisdiction between the States and the tribes, and (3) agreements or compacts which provide for transfer of jurisdiction of individual cases from tribal courts to State courts or State courts to tribal courts in accordance with procedures established by the laws of the tribes and States.

(b) Such agreements and compacts shall be subject to revocation by either party upon six months written notice to

the other unless a different period of time is agreed upon. No agreement may provide for a period for revocation in excess of five years unless first approved by a majority of the adult enrolled Indians within the affected area voting at a special election as prescribed in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), but such approval shall not curtail the right of the parties to revoke the agreement by mutual consent within a shorter period of time.

(c) Agreements or compacts entered into under the provision of this section must be filed with the Secretary within thirty days of consummation. In the event an agreement is not so filed, it shall be subject to immediate revocation by either party. The Secretary shall cause the jurisdictional provisions of any such agreement, compact, or revocation to be published in the Federal Register.

(d) Such agreements, compacts, or revocation thereof shall not affect any action or proceeding which arose prior to the effective date of such an agreement, compact, or revocation, and no such action or proceeding shall abate by reason of such agreement, compact, or revocation unless specifically agreed upon by all parties to any such action or proceedings and by the parties to the agreement or compact.

(e) Nothing in this Act shall be construed to: (1) enlarge or diminish the jurisdiction over civil or criminal matters which may be exercised by either State or tribal governments

except as expressly provided in this Act; (2) authorize or empower State or tribal governments, either separately or pursuant to agreement or compact, to expand or diminish the jurisdiction presently exercised by the Governmert of the United States to make criminal, civil, or regulatory laws for or enforce those laws in the Indian country; (3) authorize or empower the government of a State or any of its political subdivisions or the government of an Indian tribe from entering into agreements or exercising jurisdiction except as authorized by their own organizational documents or enabling laws; (4) authorize agreements or compacts which provide for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (5) to enter into agreements or compacts for the transfer of unlimited, unspecified, or general civil and criminal jurisdiction of an Indian tribe, except as provided under section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326).

(f) Nothing in this Act shall be construed as impairing or restricting the right of the United States, States and Indian tribes to enter into negotiations with each other with respect to settlement of property rights arising from aboriginal ownership, treaties or other Federal laws or judicial decisions.

FUNDING AND IMPLEMENTATION—FEDERAL ASSISTANCE

SEC. 102. (a) In any agreement or compact between an Indian tribe and a State authorized under this Act, the United States, upon agreement of the parties and the Secretary, may provide financial assistance to such party for costs of personnel or administrative expenses in an amount up to 100 per centum of costs actually incurred as a consequence of such agreement or compact, including indirect costs of administration which are clearly attributable to the services performed under the agreement or compact. In determining the amount of Federal assistance, if any, to be provided the Secretary may consider among other things:

(1) Whether or not the party assuming an obligation under the agreement or compact is already obligated or entitled to perform the function which is the subject of the compact.

(2) Whether or not the Federal assistance will cause or enable the contracting party to perform the function at a standard above that which it is already obligated to perform.

(3) The financial capacity of the contracting parties to underwrite the expenses without Federal assistance.

(4) The extent to which the success or failure of the compact may depend upon Federal assistance.

(5) The extent to which the proposed compact or agreement will contribute to fostering of community relations between Indian and non-Indian communities.

(6) The extent to which the proposed compact or agreement will enhance protection of resources of both Indian and non-Indian communities.

(7) The comparative costs if the function which is the subject of the compact or agreement were to be performed by the United States.

(8) The extent to which Federal funding is already supplied through revenue sharing, grants in aid, or other Federal program moneys.

(b) Whenever a party to such agreement or compact seeks financial assistance from the United States, to offset their costs, such party shall prepare a detailed statement of the projected costs; a copy of such statement shall be supplied to the other party; and the original of such statement shall be supplied to the Secretary at the time said agreement or compact is tendered to him for his approval.

(c) In any agreement or compact in which one of the parties qualifies for Federal assistance, the other party shall be supplied with copies of all vouchers for payment at the time they are submitted and shall be fully informed of all payments made by the United States to the recipient party. In the event disputes arise between the parties, either party

may request an audit. The books and records of the party receiving Federal assistance which are relevant to the agreement or compact shall be open to inspection by authorized representatives of the United States.

(d) In the funding of governmental operations authorized under this Act, the Secretary may enter into agreements or other cooperative arrangements with any and all other Federal departments, agencies, bureaus, or other executive branches for transfer of funds or contributions of funds appropriated for programs within the category of the functions to be performed by the parties under such agreements or compacts, and such departments, agencies, or bureaus are hereby authorized to use such funds in the implementation of this Act.

(e) All Federal departments, agencies, and other executive branches are authorized to provide technical assistance and material support and assign personnel to aid tribal and State authorities in the implementation of the agreements or compacts they may enter into under the terms of this Act.

(f) The Secretary is hereby authorized to promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

(g) There are authorized to be appropriated such sums as may be necessary during fiscal year 1981 not to exceed $10,000,000 and each subsequent fiscal year in order to

carry out the agreements or compacts entered into pursuant to this title. Such funds shall be expended by the Secretary only after determination that there are no funds available from alternative sources as provided in subsection (d) of this section. The Secretary shall provide for such records as may be necessary for the accounting and justification of the funds expended under this authorization.

## TITLE II—PLANNING AND MONITORING BOARDS

SEC. 201. (a) The Secretary is hereby authorized and directed to encourage the tribes and the States to establish councils, committees, boards, or task forces comprised of representatives of the States and individual tribes, or on a statewide or regional basis, to discuss and confer upon jurisdictional questions which exist between the parties, and to provide Federal representatives at such conferences.

(b) In furtherance of this objective, the Secretary is authorized and directed to provide adequate representation of tribal members at such conferences, and such further conferences among the tribes as may be necessary for their separate deliberations, and to participate in the payments of expenses in employment of reporters, transcription of statements, and preparation of reports as may be appropriate.

(c) Beginning October 1, 1980, funds appropriated pursuant to the Act of November 21, 1921 (42 Stat. 208), may be utilized for the purposes of this title.

## TITLE III—JUDICIAL ENFORCEMENT

SEC. 301. Any party to an agreement or compact entered into in accordance with this Act may bring a civil action to secure equitable relief, including injunctive and declaratory relief, for the enforcement of any such agreement or compact, but no action to recover damages arising out of or in connection with such agreement or compact shall lie except as specifically provided for in such agreement or compact. The United States district courts shall have original jurisdiction of any civil action authorized by this section. States and Indian tribes, by entering into compacts or agreements in accordance with this Act, shall be deemed to have consented to suit with respect to the subject matter of such compacts or agreements unless the agreement or compact specifically states otherwise.

Passed the Senate May 30 (legislative day, January 3), 1980.

Attest: J. S. KIMMITT,

*Secretary.*

## FOOTNOTES

PART I

1. D. Case, The Special Relationship of Alaskan Natives to The Federal Government, pp. 119-127 (ANF, 1978).
2. Preliminary Report on Borough Government, p. 11 (Alaska Legislative Council, 1960) [hereinafter cited "Preliminary Report"].
3. id.
4. id. at 14
5. 37 Stat. 512 See Preliminary Report, at 12.
6. R. Cease & J. Saroff, The Metropolitan Experiment in Alaska, p. 2 (Praeger, 1968).
7. id.
8. Chapter 11, SLA 1915; amended Chapter 25, SLA 1917; repealed (h.23, SLA 1923.
9. Preliminary Report, supra, at 12-13
10. 25 U.S.C. 476
11. Sen. Rpt. 1080, 73rd Cong. 2d Session, 1 (1934)
12. Preliminary Report, supra, at 14
13. id., at 15
14. id.
15. Chapter 150, SLA 1957; amended Chapter 79, SLA 1959.
16. Con. Cov. Proc., Pt.4, p. 47
17. id. at 2161
18. Ak. Const., Art. X, Sec. 2.
19. Con. Cov. Proc., Pt. 6, p. 59.
20. Con. Cov. Proc., Pt. 4, pp. 2616-7.
21. id., pp. 2613-4
22. See Comments by Delegate Lonberg, Con. Cov. Proc., Pt. 4, p. 2651.
23. A.S. 29.08.020
24. AK. Const., Art. X, Sec. 3 & 7.
25. AK. Const., Art. X, Sec. 4.
26. AK. Const., Art. X, Sec. 8.
27. AK. Const., Art. X, Sec. 5.
28. AK. Const., Art. X, Sec. 6.
29. Walters v. Cease, 380 P.2d 263 (Alaska, 1964)
30. A.S. 29.19.030
31. A.S. 29.18.011
32. Con. Cov. Proc., Pt. 4, pp. 2621-2.
33. id.
34. Local Government Under The Alaska Constitution, p. 46 (1959, Public Administration Service).
35. City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska, 1971). See also Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska, 1974).
36. Con. Cov. Proc., Pt. 4, p. 2650.
37. Ak. Con., Art. X, Sec. 7.
38. id, Sec. 3.
39. A.S. 29.18.011
40. Con. Conv. Proc., Pt. 4, p. 2654.

41. id.
42. 484 P.2d 1040 (Alaska, 1971).
43. Con. Conv. Proc., Pt. 4, p. 2653.
44. id, at 2623
45. id, at 2624.
46. 491 P.2d 720 (Alaska, 1971).
47. Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska, 1970).
48. Ak. Const. Art. X, Sec. 2.
49. id, Sec. 15.
50. id, Sec. 5.
51. id.
52. Con. Conv. Proc., Pt. 4, pp. 2719-20.
53. Ak. Const., Art. X, Sec. 2 See Liberati v. Bristol Bay Borough, 384 P.2d 1130 (Alaska, 1978).
54. Wien v. City of Ketchikan, 383 P.2d 721 (Alaska, 1963).
55. Ak. Const., Art. X, Sec. 13.
56. id.
57. Compare Con. Conv. Proc. Pt. 4, pp. 2713 and 2652.
58. Ak. Const., Art. X, Sec. 6.
59. A.S. 29.03.020
60. 1961 Op. Attorney General No. 24
61. A.S. 16.10.380
62. A.S. 46.40.110 et. seq.
63. A.S. 14 08.031
64. Hootch v. Alaska State-Operated Schools, 536 P. 2d 793 (Alaska, 1975)
65. A.S. 29.89.040
66. D. Case, supra at 130.
67. See generally id., at 119-127
68. Cohen, Handbook on Federal Indian Law, 122 (1948); 55 ID14 (1934) Powers of Indian Tribes; Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).
69. U.S. v. Sandoval 231 U.S. 28 (1913)
70. P.L. 93-638, Sec. 4(a)
71. P.L. 92-512, Sec. 108(b) (14)
72. P.L. 93-383, Sec. 102(a) (1)
73. P.L. 93-203, Sec. 302
74. P.L. 95-608, Sec. 4(8)
75. 28 U.S.C. 1360 (c)
76. P.L. 90-351, Sec. 601(b)
77. See Fed. Reg. (May 25, 1973) p. 13758; Fed. Reg. (July 10, 1980) p. 46581-2.
78. 25 U.S.C. 476
79. 25 U.S.C. 473(a)
80. 25 U.S.C. 466
81. See generally D. Case, supra, at 38-40
82. 43 U.S.C. 1618
83. House Rept. No. 2244, 74th Cong., Second Session, .2 (1936).
84. Senate Rpt. No. 1080, 73d Cong., Second Session, 1 (1934).
85. 560 P.2d 31 (Alaska, 1977)
86. 465 F. Supp. 1286 (D.C. Alaska, 1978).

87. Act of June 19, 1935 (49 Stat. 388), as amended by Act of August 19, 1965 (79 Stat. 543).
88. P.L. 93-638, Sec. 4(a).
89. Field Solicitor's memorandum, Status of the Inupiat Community of the Arctic Slope for Self-Determination Act contracting and other purposes, May 1, 1979 (unpublished).
90. 25 U.S.C. 450(b).
91. Pueblo of Santa Rose v. Fall, 273 U.S. 315 (1927).
92. Williams v. Lee, 358 U.S. 217 (1959).
93. 541 P.2d 730 (Alaska, 1975).
94. See D. Case, supra, at 136-141.

PART II

1. AK. Const. Art. X, Sec. 12
2. A.S. 29.18.090
3. A.S. 29.68
4. A.S. 29.18.050 et. seq. and A.S. 29.68
5. See generally. Fairview Public Utility District No.1 v. City of Anchorage, 368 P.2d 540 (Alaska, 1962)
6. A.S. 29.48.037
7. A.S. 29.43.100
8. A.S. 29.78.010 (18)
9. A.S. 29.33.010 et. seq. A third class borough may only exercise taxing and education powers. A.S. 29.41.010
10. A.S. 29.78.010 (19)
11. A.S. 29.38.010
12. A.S. 29.48.020; A.S. 29.38.020; A.S. 29.38.030
13. F. COHEN, supra at 5
14. 2 U.S.C. 1360(c) (PL 83-280) states
    Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant this section (i.e., which arise in Indian country).
15. See PRICE, LAW AND THE AMERICAN INDIAN, 79-84, (1973)
16. id
17. Indian Intercourse Act of 1834 (4 Stat. 729)
18. F. COHEN, supra, at 5-6
19. id. at 6n60
20. 5 U.S. 240 (1887)
21. 228 U.S. 243 (1913)
22. 231 U.S. 28 (1913)
23. 290 U.S. 357 (1933)
24. 151 F. Supp 132 (Alaska, 1957)
25. 161 F. Supp 269 (Alaska, 1958)
26. P.L. 85-615
27. 1978 Op. Atty. Gen. File No. J-66-001-67, J-66-503-77. Memo re: State Taxation of Alaska Natives and Business Enterprises Operated by Native Organizations. p.21
28. 466 F. Supp 860 (Alaska, 1979)
29. 369 U.S. 60 (1962)
30. 426 U.S. 373 (1976)

31. Citing U.S. v. Mazurie, 419 U.S. 544 (1975); See also Santa Rose Band of Indians v. Kings County, 532 F.2d 655, (9th Cir., 1975)
32. U.S. v. McGowan, 302 U.S. 535 (1938)
33. U.S. v. Sandoval, supra
34. 43 U.S.C 1603(e)
35. 43 U.S.C. 1611, 1613
36. U.S. Solicitor's Opinion, (Oct. 1, 1980), p. 2.
37. id.
38. 302 U.S. 535 (19380.
39. See generally 25 U.S.C. 465, 473(a)
40. 368 U.S. 351 (1962)
41. See Matz v. Arrnet, 412 U.S. 481 (1973)
42. 420 U.S. 452 (1975)
43. 436 U.S. 191 (1978)
44. 436 U.S. 313 (1978)
45. 419 U.S. 544 (1975)
46. 28 U.S.C. 1360(c)
47. Jim v. C.I.T. Financial Services Corp., 87 N.M. 362, 533 P.2d 751 (N.M., 1975). 28 U.S.C. 1738, requires that: Acts, records, and judicial proceedings (of any State, Territory or Possession) shall have the same full faith in credit in every Court within the United States and its Territories and Possessions as they have by usage in the Courts of such State, Territory or Possession from which they are taken. See also In re Buehl 87 Wash 2d 649, 555 P.2d 1334 (1976); Ragsdale, Problems in Application of Full Faith and Credit for Indian Tribes, 7 N. Mex. L. Rev. 133 (1977)
48. Fox v. Fox, 542 P.2d 918 (Or. App., 1975); Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950)
49. Compare Santa Clara Pueblo v. Martinez, 98 S.Ct. 1670 (1978) and U.S. v. Wheeler, supra.
50. 358 U.S. 217 (1959)
51. 369 U.S. 69 (1962)
52. Id, at 75-76
53. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973).
54. P.L. 83-280 (67 Stat. 588), amended to add Alaska, P.L. 85-615 (72 Stat. 545). Now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections.
55. See Goldberg, Public Law 280: The Limits of State's Jurisdiction Over Rservation Lands, 22 UCLA Law Review 535 (1975).
56. 426 U.S., 388-89 citing U.S. v. Mazurie, supra.
57. id.
58. Id, at 384
59. id.
60. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir., 1975)
61. Morongo Band of Mission Indians v. Area Director, IBILA 79-18-A (1979).
62. See generally Goldberg, supra; Santa Rosa Band of Indians v. Kin County, supra.
63. F. COHEN, supra, at 122
64. D. CASE, supra, at 152-3
65. A.S. 29.08.010

66. A.S. 29.08.020
67. A.S. 29.48.010
68. A.S. 29.48.035
69. A.S. 29.48.030
70. A.S. 29.33
71. A.S. 29.43
72. A.S. 29.48.030 (7); Town of Ketchikan v. Greenbaum, 5 Alaska 396 (1915)
73. 55 I.D. 14 (Powers of Indian Tribe)
74. 18 U.S.C. 1153
75. 18 U.S.C. 1152
76. Compare A.S. 29.48.200 and 25 U.S.C. 1302 (7)
77. Ak. Const. Art. IV, Sec. 1
78. See McKenzie, YOU HAVE THE RIGHT, 25-27 (AFN, 1976); Keiner v. City of Anchorage 378 P.2d 406 (Alaska, 1963); State v. Lundgren Pacity Const. Co. Slip Op. 1980 (Alaska, 1979).
79. Gutherie, Analysis of Amendment to HB 533 proposed by Tanana Chiefs, Legislative Affairs Agency (March 21, 1980), citing Baker v. City of Fairbanks, 471 P.2d 386; Alexander v. City of Anchorage, 490 P.2d 910 (1979)
80. Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (1959)
81. Talton v. Mayes, 163 U.S. 376 (1896)
82. 25 U.S.C. Sections 1301-1303
83. A.S. 29.33.070. et. seq.
84. A.S. 29.33.070(b)(2)
85. A.S. 29.29.43.040
86. A.S. 38.05.037
87. 541 P.2d 730. See P.24 infra, for discussion
88. id, at 737-8
89. A.S. 29.33.070 et. seq.
90. Sec. 45, Chap 85 SLA 1979
91. A.S. 29.48.035
92. 419 U.S. 544 (1975)
93. Johnson v. Chilkoot Indian Village, 957 F. Supp. 384 (D. Alaska, 1978)
94. 532 F.2d 655 (9th Cir., 1977)
95. id, at 663
96. Buster v. Wright, 135 F.947 (8th Cir. 1905). Iron Crow v. Oglala Sioux Tribe, supra; Barta v. Oglala Sioux Tribe, 259 F.2d 553. (8th Cir., 1958), cert. den. 385 U.S. 932 (1959); 55 I.D. 14, 28 (1934) (Powers of Indian Tribes)
97. Buster v. Wright, supra.
98. Maxey v. Wright, 105 F. 1003 (8th Cir., 1900)
99. Morris v. Hitchcock, 194 U.S. 384 (1904)
100. A.S. 29.53.415 et. seq. (boroughs); A.S. 29.53.440 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
101. A.S. 29.53.010 (boroughs); A.S. 29.53.400, 410 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
102. A.S. 29.53.020, et. seq.
103. 55 I.D. 14 (1934) (Powers of Indian Tribes). See also Indian Child Welfare Act, P.L. 95-608

PART III

1. Con. Conv. Proc., Pt. 6, p.478
2. AK. Const., Art. I, Sec. 1, provides that this constitution is dedicated to the principles...that all persons are equal and entitled to equal rights, opportunities, and protection under the law;...
3. 262 N.W. 2d 341 (Minn., 1977)
4. id., at 348
5. id., at 348n24 citing Morton v. Mancavi, 417 U.S. 535 (1974) and McClanahan v. Arizona State Tax Comm., 411 U.S. 164 (1973)
6. 430 U.S. 641 (1977)
7. U.S. Const., Art. 1, Sec. 8
8. 262 N.W. 2d, at 347n.23
9. State v. Erickson, 574 P. 2d 1 (Alaska, 1978); Isakson v. Rickey, 550 P. 2d 358 (Alaska, 1976); Lynden Transport, Inc. v. State, 522 P. 2d 1125 (Alaska, 1974)
10. 426 U.S., at 388-9
11. A.S. 29.08.050(b)
12. N.M. Stat. Ann. Sec. 53-9-1.
13. Toledo v. Pueblo de Jemez, 119 F. Supp. 429 (D.N.M., 1954)
14. 30 M.R.S.A. Sec. 6201 et. seq.
15. 30 M.R.S.A. Sec. 6206
16. 30 M.R.S.A. Sec. 6206
17. 30 M.R.S.A. Sec. 6206
18. 30 M.R.S.A. Sec. 6204
19. 30 M.R.S.A. Sec. 6210
20. 30 M.R.S.A. Sec. 6206
21. 426 U.S. 373 (1976)
22. Fl. Stat. Sec. 285.06
23. id., Sec. 285.17
24. See id., Sec. 285.061 (2). See Solicitor's Opinions, No. M-36907 (Nov. 14, 1978) Criminal Jurisdiction on Seminole Reservations in Florida.
25. Fl. Stat. Sec. 285.18
26. Conn. Gen. Stat., Sec. 47-63, et. al.
27. Conn. Gen. Stat., Sec 47-65(d)
28. Texas Stat., Chapter XLIV, Acts of the 5th Legislature, 1854
29. Texas Stat., Art. 5421z, Sec. 11A
30. Texas Stat., Art. 5421z, Sec. 12
31. Texas Stat., Art. 5421z, Sec. 18
32. These states include California, Delaware, Idaho, Montana, Maryland, Massachusetts, Michigan, Minnesota, North Dakota, Oregon, South Dakota, Wisconsin, and Wyoming.
33. Minn. Stat., Sec. 922 et. seq.
34. Cal. Code Educ. 4084
35. KELSEN, PRINCIPLES OF INTERNATIONAL LAW, 387 (2nd ed., 1966)
36. id., at 399
37. Nev. Rev. Stat. Sec. 277.080 et seq
38. R.C.W. 39.34
39. S.D. Compiled Laws Ann. Sec. 1-23-24 et seq
40. Nev. Rev. Stat. Sec. 233A.120
41. Nev. Rev. Stat. Sec. 233A.130

42. See State v. Forge, 262 N.W. 2d 341 (Minn. 1977); Minn. Stat. 97.431
43. Or. Rev. Stat. Sec. 390.845
44. N.M. Rev. Stat. 29-1-11. See also Tribal-State Compact Act of 1978. Hearings on S.2502 before the U.S. Senate Select Committee on Indian Affairs, 95th Cong., 2d Sess. 35-36, 183-189, and 252-259 (1978) Statements on cross-deputization in other states.

45. See generally Part II(B)(1) supra.
46. See generally Part II(B) supra.
47. AK. Const., Art. X, Sec. 4
48. See White v. Califano, 437 F. Supp. 543 (1977); Black v. District Court, 158 Mont. 523 (1973); Kennerly v. District Court, 400 U.S. 423 (1971)
49. 55 ID 14 (1934), Smith v. Bonifer, 154 F.883 (1909); Ollestead v. Native Village of Tyonek, 560 P.2d 31 (1977).
50. Smith v. Bonifer, supra.
51. 25 USC 163
52. 25 CFR 271.2 (i)
53. Proposed IRA Constitution for Dish-Ina-Nek, Art. 5, Sec. 4
54. 25 U.S.C. 1301
55. Dodge v. Nakai, 298 F. Supp. 26 (D. Ariz., 1969); Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (10th Cir., 1975)
56. 436 U.S. 49 (1978)
57. MANUAL OF INDIAN LAW, B-9 (The American Indian Lawyer Training Program, Inc., 1976)

# T'átk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

Re: Proposed Community Legal Assistance Grant Application

Senator Arliss Sturgulewski
Pouch V
Juneau, Ak. 99811

November 25, 1980

Dear Senator,

Enclosed please find the City of Saxman's Community Legal Assistance Grant application for your review and comments.

After spending some time with you and Patrick Poland discussing the approach to the regarded application, I believe the best approach is one which utilizes an economic development strategy as the medium for demonstration of Michael Walleri's Tribal-State Relations, A New Paradigm for Local Government in Alaska on the community level.

Some background information which will be helpful to you in seeing the application of this approach is listed below.

Recently, the City of Saxman and the Cape Fox Corporation (CFC) entered into an agreement which demonstrated the determination of the CFC Board of Directors and the City Council to set policy that bound public/private sector involvement into the rehabilitation of the industrial area, specifically the Saxman Village Port & Terminal, within Saxman, which qualified the proposed appropriate and compatible growth by enunciating community participation. This was another leap into actualized acumen which afforded vivid opportunity for continued relations.

The City Council has, additionally, established the thoroughfare for the future development of the facility by revoking the franchise under which the Saxman Village Port & Terminal (SVPT) operation was authorized (Resolution 80-11); resolved that if the SVPT is removed from its current status, it be returned to its original condition when placed into receivership (Resolution 80-13); resolved to protect the only public transportation terminal in S.E. Alaska through a consensus agreement with CFC and the existing receiver (Resolution 80-16) and to authorize the City to grant to CFC a franchise for the management and operation of the facility through the development of a joint-management agreement (Resolution 80-14).

The general election of October 7, 1980 directed the City Council through the vote to implement Resolutions 80-13 and 80-14. The election also produced voter approval to regulate commerce within its jurisdiction and to provide for the establishment of a Saxman Tribal land use program through an inter-cooperative joint-management agreement between the City of Saxman and the Organized Village of Saxman, the Saxman IRA Council.

The City of Saxman and the Organized Village of Saxman have jointly submitted through the Saxman Comprehensive Community Development Plan(s) (SCCDP) preapplication to HUD's CDBG program for $1.5 million over hte next three years utilizing a total leveraging of over $3.5 million, which among other projects would provide rehabilitation funds for the facility and acquisition funds for surrounding properties. A request for determination of eligibility to make application under Hud's Urban Development Action Grant program which would over the ten year period of the SCCDP provide up to

$15 million with a HUD mandated 1 to 9 lo 1 to 10 leveraging factor meaning a potential, if invited to apply, of up to $150 million over the next decade into the community, was submitted.

The Central Council of the Tlingit and Haida Indian Tribes of Alaska and the Bureau of Indian Affairs, which recently wrote the City after the submission of the SCCDP, "We were very impressed with the document and plan to fully utilize the valuable information contained within the plan.", have actively supported the planning approach employed by the inter-cooperative efforts of the City, CFC, and the Saxman IRA.

Upon the signing of the consensus agreement (Resolution 80-16), the SCCDP will be submitted to EDA with a preapplication and request for determination of eligibility to make application under EDA's Special Economic Development and Adjustment Assistance to establish a $1 million permanent/revolving loan fund for the organization and development of the Saxman Tribal and Community Development Corporation (SCCDP, Chap. 1.x.10), a community owned and represented enterprise, which will inter-relate with the City, CFC, and the Saxman IRA.

Through the legal research project as proposed in cooperation with LGAD and the Tanana Chiefs Conference, the infrastructure for inter-cooperation and interaction and the assurance and guarantee of autonomous weel-being will be developed and implemented through community participation and representation.

If you have any questions as to this proposal, please feel free to call on me.

Respectfully Submitted,

Michael J. Tavoliero

Michael J. Tavoliero
City Manager of Saxman, Alaska

# COMMUNITY LEGAL ASSISTANCE GRANT APPLICATION*

## INSTRUCTIONS

- Review the attached sample application form; then,

- Complete this application form by answering all questions.

I, Michael J. Tavoliero (your name and title) of the City of Saxman, Alaska (name of city or organization)

P.O. Box 8676 (address) Ketchikan (city) 99901 (zip code) 225-4166 (telephone number)

request a Community Legal Assistance Grant from the Department of Community and Regional Affairs to pay for See attached narrative (name of attorney)'s legal services.

## MONEY QUESTIONS

Amount of money requested $20,000.00

Please describe your organization's financial condition. (Include a recent financial report if available.)

(See attached narrative)

Amount of money in checking account(s) $ 15,773.93

Amount of money in savings account(s) $ 1,049.84

TOTAL $ 16,823.77

How much of the above total could be used for this project?

$ 00.00 (See attached narrative)

*authorized by AS 44.47.200-230, and 19 AAC 40.010-050

PROJECT QUESTIONS

What legal problem do you want to solve? (Please be specific.)

The City of Saxman, Alaska, has recently completed its comprehensive community development plan(s) (a ten year plan). There exists a need to develop and establish intercooperative and/or mutual agreements between the City of Saxman and the Saxman I.R.A. Council, a Native government, to promote the equitable, fair and maximum delivery of State/Federal services and programs through economic development strategies in a severely impacted economic area through the optimal and functional utilization of public/private sector involvement and fund leveraging which will not offend either State/Federal constitutional guarantees. (See attached narrative)

What has been done to solve the legal problem? (describe agencies contacted, correspondence written, and amount of money already spent.)

This is the third written request under this program for legal assistance. The original applications dealt with a more general topic area than found within this application. These applications have not received a determination from LGAD due to a question as to whether or not their approval would have been "premature" as to the need as stated. All questions as to a premature need for legal assistance are at this time moot, because the main point, completion of the EDA funded marketing/feasibility study, is no longer at issue.) In the period during the submitted application considerations, the City of Saxman continued to remain in contact with LGAD and reasserted the need for legal assistance. (Please note that outside of the first grant submission, which did in fact receive a determination, but that determination was based upon EDA consultation which was subsequently reversed and never followed up, no determination was made on the next application due to LGAD not receiving a letter of agreement from the City and its counsel stating that the original contract for legal services was still applicable. In light of these inconsistencies, the City requests that if this application is properly submitted, it receive immediate approval and award.) (See attached narrative)

How would the requested Community Legal Assistance Grant solve the legal problem?

By approving and awarding the requested Community Legal Assistance Grant, the City of Saxman will be able to resolve the problems contained within the problem statement and effectively provide a model demonstration for the paradigm as presented by Mr. Michael Walleri. (See attached narrative)

How will the legal problem be solved if you do not receive a Community Legal Assistance Grant?

The legal problem as presented cannot be resolved by the City of Saxman without the approval and award of this legal assistance application. All objectives found within the attached narrative under OBJECTIVES require legal analysis, assistance and representation. The City of Saxman does not have the necessary expertise to undertake this project without legal counsel. The City of Saxman is seeking this legal assistance to compensate for the loss of time by staff in conducting this project as well as providing a model demonstration site for the application of Mr. Walleri's paradigm.

November 24, 1980
date

_____
your signature

Please send this application, and a written and signed agreement with your attorney to:

Division of Local Government Assistance
Department of Community & Regional Affairs
Building B
225 Cordova Street
Anchorage, Alaska 99501

Telephone: 276-1721

**PROBLEM STATEMENT**

The effective manager in an intergovernmental context is one who knows the legal competence and institutional capacities of his/her own government and meshes these capacities with those being cooperatively managed and shared from the private, State and Federal side. In situations where competing governmental claims to authority occur, the political and governmental capabilities and related services capabilities of different governmental entities need to be optimally and functionally assured.

In looking at the legal significance attached to enhancing the role of Native/local governments in the delivery of public services and their relationship to private sector involvement, there exists a need to utilize governmental and economic strategies which require an unprecedented level of intergovernmental interaction. the building of Native/local managerial capacity within this environment essentially revolves around acknowledgement and awareness of governmental prerogatives, agendas, and flow of authority between the State government, the local government and the Native government. In other words, the various levels of government having specific responsibilities to discharge relative to their government and constituencies cannot address the mutual problems inherent within the State and Native self-determination approaches without the aggregate (State/Native) community participation. Likewise, the fiscal restraints on Native/local government dictates that managers cannot manage in isolation from either government effectively.

As Michael Walleri has stated within the attached materials as to Alaskan communities being organized as municipalities and Native village governments, "This rich" (and somewhat frustrating) "variety in organization has led to a great deal of confusion regarding the roles of the various governments. Individually, these governments lack the resources to effectively exercise their proscriptive and enforcement powers." As well as their political and economic development.

Mr. Walleri continues, "Generally, the State agencies prefer to operate through municipalities. Federal agencies prefer Native governments. But state operated, federally funded programs may include Native villages, while federal municipal assistance programs include municipalities. The net result is a community's eligibility for a particular project or program depends on its organizational characteristics. Consequently, many communities have created paper local governments to prove eligibility for a given program. This willy-nilly organizational effort has created a multifurcated governmental scheme of overlapping and disjointed jurisdictions."

In the City of Saxman, this multifurcated governmental scheme of overlapping and disjointed jurisdiction is coupled with ineffective management and substantial economic deterioration and distress due to the lack of an efficient level of intergovernmental interaction.

OBJECTIVES

The City of Saxman, Alaska, proposes to contract through a joint contract/agreement the services of Ellis Law Offices, Inc. and Michael Walleri to do a legal research/analysis project which addresses the problems and utilizes Mr. Walleri's Tribal-State Relations, A New Paradigm for Local Government in Alaska, as the second phase of the originally contemplated intergovernmental and interentity legal research project which produced Mr. Walleri's paradigm. The ultimate objective of this second phase project will be to establish intercooperative and/or mutual agreements between the City of Saxman and the Saxman I.R.A. Council, a Native government to promote the equitable and maximum delivery of State/Federal services and programs through economic development

strategies in a severely depressed and impacted economic area through the optimal and functional utilization of public/private sector involvement and fund leveraging as a demonstration model.

A. SPECIFIC DEMONSTRATION MODEL SITE

The Saxman Village Port & Terminal (formerly the Ketchikan & Northern Terminal), owned by the City of Saxman, has been in receivership for more than fifteen years. The facility status and future viability is threatened by a history of disencentives, barriers and inactivity fostered by the policy prohibition for rehabilitation and revitalization through local community participation and minority business enterprise development and the exhibition of outside discretion of policy which directly and indirectly excluded local community participation and minority business enterprise from effectively and effeciently organizing the infrastructural management and operation system to address the institutional disencentives, barriers and inactivities, such as a restrictive and inflexible receivership, lack of technical assistance necessary to offset debt obligation through the leasing of properties on which the facility is situated, lack of transportation and marketing consultation, and a consistent and continuous "wait and see" policy adherred to by the Economic Development Administration, as necessary and needed for the rehabilitation and revitalization of the facility.

The Saxman Village Port & Terminal facility was originally funded in 1963, under the Area Redevelopment Administration as a freight terminal. The City of Saxman purchased and constructed the facility through revenue bonds, of which approximately $1 million plus $.3 million in current accrued interest is still owed. Due to financial and management difficulties, the facility was put into receivership by the Federal government, and is now operated by the same receivership. The facility, originally constructed to handle freight, was until recently utilized by Foss Alaska Line (FAL) for containerized barge freight. Realized revenues have been to maintain the facility, albeit in a minimal and to the detriment of future viability; thus, net revenues for debt service were not available.

The primary leasee of the facility, FAL, encountered numerous difficulties in dealing with the receiver. This is from the standpoint of the receiver's inability due to judicial restrictions, a lack of funding and technical assistance, and insufficient and underqualified staff necessary to satisfactorily manage the overall facility management and operation requirements. The lease between the receiver and the lessee, FAL, expired in early 1980. Based on a position by the lessee that without the management and operation requirements to implement improvements and other necessary actions, continued leasing was inappropriate.

The City of Saxman, because of its ownership of the real property on which the facility is situated, determined in 1977 that an analysis of the facility's legal status and its receivership operations should be pursued. Having obtained a grant from the Bureau of Indian Affairs, a study was commissioned entitled "Report on the Status of the Saxman Terminal", which was completed in February, 1978. It was recoomended by the report that the City of Saxman immediately institute a request for a 15 year principle and interest moratorium. This would be conditioned upon a development program designed to eventually create sufficient revenues so that when required improvement construction financing had been amortized, full payment on the revenue bonds could then be accomplished. The report, also recommended, if and when the Federal government is committed to a moratorium program, a marketing study, analyzing the Southeastern Alaska transportation economics, would be necessitated. The study would determine through interviews with present and prospective users, improvement goals and alternative revenue potentials. The City of Saxman's commitment, as to improvements and the receivership terminated in accordance with a court order entered upon a stipulated moratorium or forgiveness agreement as to the original revenue bond obligation.

The marketing study was initiated through a technical assistance grant through EDA in the spring of 1979. After its final draft review, the study recommended two financial alternatives of which one considered the possibility that the Cape Fox Corporation assume the role in the future operations and financing the facility through joint development and joint funding assistance program planning and implementation which will be consistent with the principles, policies, procedures and practices of the Saxman Comprehensive Community Development Plan(s), a direct prod ct of community participation.

Conversely, the study's other financial alternative recommended the liquidation of the facility at its current fair market value, which would preclude its use as a public transportation facility, as well as, minimize public sector control and public long-term benefits that might be derived from the facility. (The original contract is assumed, by this writer, as inherited through the catylist of legistlative recombinant genetics by EDA, to have been predicated on the primary goals of economic mobilization and employment opportunities, which were a consideration of the revenue bond obligation by the City of Saxman. With the failure of the facility in 1965 and the bond debt declared in default, this consideration and goal of the project was rescinded.

The Local Government Assistance Division (LGAD), the Community Legal Assistance Grant Program coordinating agency, having been consultated directly and indirectly by EDA in the previous grant application determination processes, deferred award based on the prematurity of need for legal assistance, when the City of Saxman had inquired, requested or made application up to this point.

Simultaneously, during the City of Saxman's relationship with LGAD as to the above legal assistance project, the City requested LGAD as to the advisable feasibilty of analyzing a Native/local intergovernmental relationship to eliminate governmental and jurisdictional multifurcation and encourage and enhance an aggregated eligibility characteristic strategy for the optimal and functional delivery of programs and services and development of community resources. LGAD informed the City after further investigation into the project's potential that the Tanana Chiefs Conference was also interested in the concept and its village government specialist, Michael Walleri, was submitting a proposal for a legal research project as (Mr. Walleri is a member of the Alaska State Bar) proposed by LGAD and, if appropriate and acceptable, in cooperatiom with the City of Saxman.

The project developed a specialized paradigm, the set of all governmental and jurisdictional forms based on the theme of Tribal-State inter-relationships, a legal and political touchstone conceptualization, which, if utilized, in a specific demonstration site, would yield an effective management capacity and mitigate adverse economic impact through the actualization of an intergovernmental interaction model which would establish aggregated eligibility charac eristics and, if employed, strategically develop community resources through the optimal and functional delivery of State/Federal programs and services. This present application serves as the second phase of the originally contemplated intergovernmental and interentity legal research project, which produced Mr. Walleri's paradigm.

B. IMPLEMENTATION OF THE PARADIGM

1. PROJECT TASK OBJECTIVES

a. Analyze current legal status of inter-public.private entity involvement and interaction (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03 and 4.x.03);

b. Minimize negative multiplier factors effect and reduce through legal mechanism (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2,x.02 through 2.x.03 and 4.x.03);

c. Analyze letting of taxation to avoid leasing and best comprehensive lease payment of tax advantage and prepare a detailed tax analysis (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, and 4.x.03);

d. Review, analyze and prepare best approach to State/Federal Revenue Sharing, State Equalization, Hold Harmless Monies and other Tribal/municipal assistance funds (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, 3.x.03, 4.x.03);

e. Analyze governmental and legal status and devise method of implementing greater degree of coordination of governmental functions (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, 3.x.01 through 3.x.06 and 4.x.03);

f. Analyze and prepare relative service capabilities and aggregated eligibility characteristics and the ability to proceed with implementation (See Saxman Comprehensive Community Development Plan(s); Chaps. 2.x.02 through 2.x.03, 3.x.01 through 3.x.06 and 4.x.03);

I. Outline strategy of implementation of service functions;

II. Assess service capabilities of entities;

g. Develop approach, legal review and intercooperative agreements to maximize implementation based on demonstration model for current utilization and with respect to §7(h) and other applicable sections of the Alaska Native Claims Settlement Act of 1971 as amended (See Saxman Comprehensive Community Development Plan(s); Chaps. 2.x.02 through 2.x.03 and 4.x.03);

h. Act on the behalf of the community ---- in negotiating with the receiver or other court appointed representatives of the Saxman Village Port & Terminal (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, 4.x.03);

i. Assist the community ---- in negotiating with the Federal government and other agencies with regard to financial obligations and needs of the Saxman Village Port & Terminal (See Saxman Comprehensive Community development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03, 4.x.03);

j. Assist the community ---- in negotiating with potential tenants (the Native village (ANCSA) corporation and others) or other users of the Saxman Village Port & Terminal (See Saxman Comprehesive Community Plan(s); Chaps. 1.x.05 through 1.x.10, 2.x.02 through 2.x.03, 4.x.03(01,03,04,07-15,20,21;23,24,28);

k. Perform all other legal services necessary to achieve the effective and efficient realization and actualization of the ultimate objective (See Saxman Comprehensive Community Development Plan(s); Chaps. 1.x.01 through 1.x.10, 2.x.02 through 2.x.03), 4.x.03(01,03,04,07-15,20,21,23,24,28);

2. PROJECT PREFORMANCE OBJECTIVES

a. Provide intergovernmental stability and interaction within a legal framework (See Saxman Comprehensive Community Development Plan(s); Articles 1.1,

2.2, and 3.2);

b. Provide a realistic demonstration model site applying aggregated eligibility characteristics and economic development strategies through intergovernmental intercoperation and interaction (See Saxman Comprehensive Community Development Plan(s); Articles 1.2,2.2 and 3.2);

c. Develop legal framework which allows optimal and functional stimulation of private investment and participation through consortia approaches of public/private sector involvement and fund leveraging (See Saxman Comprehensive Community Development Plan(s); Articles 1.2,2.2, and 3.2);

d. Promote the development and/or facilitate equal employment opportunities, economic enterprise and small business activity and provide equal service representation through community participation acessibility (See Saxman Comprehensive Community Development Plan(s); Articles 1.2,2.2, and 3.2).

PAST ACTIVITY IN RESOLVING THE PROBLEM

To attempt to fix a dollar value on the amount of money the City of Saxman has spent, not to mention lost in attempting to solve the problem as stated would take a major financial study beginning over fifteen years ago with the Saxman Village Port & Terminal until now. Starting with the City's bond obligation, the lack of technical assistance, and the ubiquitous inconsistencies and impracticalities of an undefined intergovernmental jurisdiction, the study would only offer loss guesstimations.

However, over the past few years, more than $100,000.00 has been spent in attempting to develop this project. Affected entities are the Economic Development Administration, the Bureau of Indian Affairs, the State of Alaska's Department of Community & Regional Affairs' Local Government Assistance Division, the Tanana Chiefs Conference, the City of Saxman, and the Saxman I.R.A. Council.

The City of Saxman has currently reached a consensus agreement with the receiver and the Cape Fox Corporation in returning local control to the community of the Saxman Village Port & Terminal. The City and the Saxman I.R.A. Council have jointly submitted preapplications to HUD under the CDBG and UDAG progams for specific funding for the economic development strategy and revitalization of the Saxman Village Port & Terminal and other interrelated community development projects. These projects are contained within the Saxman Comprehensive Community Development Plan(s).

Legal assitance is required to optimally and functionally assure overall success of the economic and governmental development interactions as proposed.

Mr. Walleri has recently completed the first phase of his legal research project as proposed by LGAD in cooperation with the City of Saxman. The outline of this project will be based on the paradigm as presented by Mr. Walleri and the principles, policies, practices and procedures of the Saxman Comprehensive Community Development Plan(s). While the Tanana Chiefs Conference has expressed an interest in pursuing the second phase of this project, the Tanana Chiefs Conference has agreed that the City of Saxman is the more appropriate site for a demonstration model. For this reason the City of Saxman urges approval of this legal assistance grant application in order to proceed as soon as possible.

# T'átk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

Re: SAXMAN VILLAGE PORT & TERMINAL (SVPT)
CONSENSUS AGREEMENT
FINAL DRAFT REPORT

A. PURPOSE AND INTENT

1) THE PURPOSE AND INTENT OF THIS CONSENSUS AGREEMENT is to stimulate private investment and participation through public/private sector financial leveraging strategies in the City of Saxman, Alaska; to encourage revitalization and rehabilitation of the SVPT through involvement of public sector development of management, entrepreneurial and administrative capabilities hand-in-hand with private sector implementation of management approaches, funding sources, financing techniques and government programs to facilitate public/private sector development; increase the role of minority business enterprise (MBE) participation; promote Article III - PURPOSE of the Articles of Incorporation of KAA and TL'ATK Development Corporation; seek appropriate compensation and restitution for the sustained losses of revenues and employment opportunites caused by the lack of use and occupancy compensation attached to the free and unencumbered property upon which the SVTT is situated as a fair and equitable consideration in the future status of the SVPT; and to promote and insure community participation and representation as a necessary element in the future viability of the SVPT.

B. CONSENSUS

1) THE CONSENSUS OF THE UNDERSIGNED PARTIES is based on the background of the SVPT (infra). It is common consensus that the SVPT demonstrates sudden and severe economic dislocation and long term economic deterioration and further demonstrates a deteriorated and reduced economic potential in the City of Saxman, a city of less than 25,000; that the submitted CDBG and UDAG preapplications are consistent with the Saxman Overall Economic Development Plan, as amended, 1980, and the attached Saxman Comprehensive Community Development Plan(s) (SCCDP), also submitted to HUD; that based on the deteriorated and reduced economic state of the SVPT the immediate discontinuance of its rail and barge operations and renovation of its bonded warehouse are required; that potential viability of the SVPT (leading to financial solvency and debt service pending stipulated moratorium or forgiveness agreement) can only be accomplished through joint-funding assistance and development over a long term redevelopment plan, a short term interim management and operation plan, and implementation in a cooperative manner through a marketing and business campaign for long range improvements between public/private sector involvement and participation; that based on the demonstrated commitment of the City of Saxman, it is the primary goal of the Consensus Agreement to terminate (or substitute with an entity, such as, the Cape Fox Corporation) the existing receivership in order to implement the guidelines and development programs and projects of the SCCDP on or before January 1, 1981 and formally requests EDA to allow and support the full and meaningful purpose and intent through community participation of comprehensive community planning and development to transpire, without the self-determined influence and control of the existing receivership, thereby, mitigating community and minority business enterprise (MBE) participation barriers and disencentives.

C. CONCLUSION AND RECOMMENDED POLICY

1) THIS CONSENSUS AGREEMENT BETWEEN THE UNDERSIGNED PARTIES IS PRECATORY IN NATURE AND IS PRESENTED AS A FORMAL NOTICE OF AGREEMENT TO THE ECONOMIC DEVELOPMENT ADMINISTRATION; and,

-T'átk Saxman

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CONSENSUS AGREEMENT
FINAL DRAFT REPORT



C. CONCLUSION AND RECOMMENDED POLICY

2) THIS FORMAL NOTICE OF AGREEMENT TO THE ECONOMIC DEVELOPMENT ADMINISTRATION includes a request to comply with the mandated purposes and intents of cited applicable and appropriate Federal law and regulation as referenced within the SCCDP, Title 1, Article 1.3 et al; and,

3) THIS CONSENSUS AGREEMENT BETWEEN THE UNDERSIGNED PARTIES provides the impetus and consistency for Federal/State participation in the implementation, funding, technical assistance, and the accomplishment of comprehensive community planning and development of the following:

A CONSENSUS AGREEMENT NEGOTIATED AND ENTERED INTO BY a) THE APPOINTEE TO THE EXISTING RECEIVERSHIP BY THE ECONOMIC DEVELOPMENT ADMINISTRATION, b) THE CITY OF SAXMAN, ALASKA, AN EQUAL OPPORTUNITY EMPLOYER, AND c) THE CAPE FOX CORPORATION, A FINANCIALLY AND PROFESSIONALLY MANAGED SAXMAN COMMUNITY-BASED ANCSA VILLAGE (MINORITY BUSINESS ENTERPRISE) CORPORATION FOR THE PURPOSES OF TERMINATING (OR SUBSTITUTING) THE EXISTING RECEIVERSHIP OF THE SAXMAN VILLAGE PORT & TERMINAL (formerly THE KETCHIKAN & NORTHERN TERMINAL) AS HEREIN SET FORTH AND THROUGH THE INCLUDED AND REFERENCED TITLES, ARTICLES, CHAPTERS, SECTIONS AND OTHER PARTS OF THE SAXMAN COMPREHENSIVE COMMUNITY DEVELOPMENT PLAN(S) AS CITED AND THE SCCDP COMPREHENSIVE PREAPPLICATION GUIDE, PART IV, A THROUGH D; THE SCCDP COMPREHENSIVE PROGRAM (CDBG) (UDAG), PART IV, A THROUGH C, AND THE CAPE FOX CORPORATION ANNUAL REPORT FOR JULY, 1979 THROUGH JUNE, 1980, ON THIS ____DAY OF NOVEMBER, 1980.

_____

William G. Moran, Sr. Receiver

_____

William K. Williams, Mayor, City of Saxman, Alaska

_____

Larry J. Johnson, Sr., Chairman of the Board of Directors, Cape Fox Corporation

# T'áth Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

Re: SAXMAN VILLAGE PORT & TERMINAL (SVPT)
CONSENSUS AGREEMENT
BACKGROUND

BACKGROUND

1) The status of the Saxman Village Port & Terminal (SVPT) facility's future viability is threatened by a history of disincentives, barriers, and inactivity fostered by the policy prohibition for rehabilitation and revitalization through local community participation and minority business enterprise development and the exhibition of outside discretion of policy which directly and indirectly excluded local community participation and minority business enterprise from effectively and efficiently organinzing the infrastructural management and operation system to address the institutional disincentives, barriers, and inactivities, such as, a restrictive and inflexible receivership, lack of technical assistance necessary to offset debt obligation through the leasing of those properties upon which the facility is situated, lack of transportation and marketing consultation, and a consistent and continuous "wait and see" policy adherred to by the Economic Development Administration, as necessary for the rehabilitation and revtalization of the facility; and,

2) The SVPT facility was originally funded in 1963, under the Area Redevelopment Administration as a freight terminal. The City of Saxman financed the facility through GOB/revenue bonds, of which approximately $1 million plus another $.3 million in current accrued interest is still owed. Due to financial and management difficulties, the facility was put into receivership by the Federal Government, and is now operated by the same receiver. The facility, originally constructed to handle freight, was intil recently utilized by Foss Alaska Line (FAL) for containerized barge freight. Realized revenues have been to main ain the facility, albeit in a minimal manner and to the detriment of future viability; thus net revenues for debt service were not available; and,

3) The primary lessee of the facility was Foss Alaska Line (FAL). F L encountered numerous difficulties in dealing with the receiver. This is from he standpoint of the receiver's inability due to judicial restrictions, a lack o' funding and technical assistance, and insufficient and underqualified staff nec ssary to satisfactorily manage the overall facility management and operation requi ements. The lease between the receiver and FAL expired in early 1979. based on a position by FAL that without the management and operation requirements t implement improvements and other necessary actions, continued leasing was inappropriate; and,

4) The City of Saxman, because of its ownership of the real property upon which the facility is situated, determined in 1977 that an analysis of the facility's legal status and its receivership operations should be pursued. Having obtained a grant from the Bureau of Indian Affairs, a study was commissioned entitled, "Report on the Status of the Saxman Terminal", which was completed in February, 1978. It was recommended by the report that the City of Saxman immediately institute a request for a 15 year principle and interest moratorium. This would be conditioned upon a development program designed to eventually create sufficient revenues so that when required improvement construction financing had been amortized, full payment of the revenue bonds could then be accomplished. The report, also recommended, if and when the Federal Government is committed to a moratorium program, a marketing study, analyzing the Southeastern Alaska transportation economics, would be necessitated. The study would determine through interviews with present and prospective

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Re: SAXMAN VILLAGE PORT & TERMINAL (SVPT)
CONSENSUS AGREEMENT
FINAL DRAFT REPORT



BACKGROUND (continued)

users, improvement goals and alternative revenue potentials. The City of Saxman's commitment, as to improvements and the receivership terminated in accordance with a court order entered upon a stipulated moratorium or forgiveness agreement as to the original revenue bond obligation; and,

5) The hereinabove mentioned marketing study was initiated through a technical assistance grant through EDA in the spring of 1979. After its final draft review, the study recommended two financial alternatives of which one considered the possibility that the Cape Fox Corporation assume the role in the future operations and financing the facility through joint development and joint funding assistance program planning and implementation which will be consistent with the purposes, principles, policies, procedures and practices of the Saxman Comprehensive Community Development Plan(s) (SCCDP). Conversely, the study's other financial alternative recommended the liquidation of the facility at its current fair market value, which would preclude its use as a public transportation facility, as well as, minimize public sector control and public long term benefits that might be derived from the facility. (The original contract between the Area Redevelopment Administration and the applicant is assumed to have been predicated on the furthering of economic mobilization and employment opportunities, which were a consideration of the revenue bond obligation by the City of Saxman. With the failure of the facility in 1965 and the bond debt declared in default, this consideration and goal of the project was rescinded.); and,

6) As a demonstration of the City's commitment and as an actual program within the Saxman Comprehensive Community Development Plan(s), the City jointly with the Organized Village of Saxman, the Saxman IRA Council, submitted November 4, 1980 to the Department of Housing and Urban Development the SCCDP attached to preapplications under the Community Development Block Grant (CDBG), and a request for Determination of Eligibility to make application under the Urban Development Action Grant (UDAG) programs. This action on the part of both local and Tribal government is consistent with the 1980 Saxman Overall Economic Development Plan, as amended, and NOI submitted August 15, 1980 to State-Federal A-95 Review. Further, the programs and projects within the SCCDP over a ten year timeframe are comprehensive and consistent with the Economic Development Administration's primary goal of stimulating local economics, generating equal employment opportunities, and increasing the role of minority business enterprise participation; and,

7) Based on the eligibility characteristics of the community as presented by the SCCDP and as demonstrated through documentation of EDA and other sources, the community has endured for more than fifteen years sudden (and reverbrative ripple effect during this time till present) and severe economic dislocation and long term economic deterioration resulting from the facility's failure. Of more recent applicability and demonstration of meeting special needs arising from actual and continually threatened unemployment, the departure of the facility's sole tenant, Foss Alaska Line (FAL), in the summer of 1980, adversely impacted the community leaving compounded sudden and severe economic dislocation; and,

-Tl'átk Saxman

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Re: SAXMAN VILLAGE PORT & TERMINAL (SVPT)
CONSENSUS AGREEMENT
BACKGROUND



BACKGROUND (continued)

8) This consensus agreement between the City, CFC and the receiver has been included within the SCCDP to meet the primary goal of terminating (or substituting) the existing receivership in order to implement a economic development strategy (EDS) through comprehensive planning. In order for this EDS to be successful, the full and meaningful purpose and intent of this action plan (SCCDP) must be allowed and supported without the self-determined influence and control of the existing receivership as predicated by EDA. In other words devoid of community participation and minority business enterprise involvement, the barriers, disencentives and inactivity currently continuing to turn the facility into a complete economic loss will remain alive and well in the community.

# T'átk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

Re: Letter of November 25, 1980

Senator Arliss Sturgulewski
Pouch V
Juneau, Ak. 99811

Patrick Poland
Deputy Director
Division of Local Government Assistance
225 Cordova, Bldg. B
Anchorage, Ak. 99501

December 3, 1980

Dear Senator and Mr. Poland,

Please note an error in my letter to you dated November 24, 1980.

Page -2-, first line is incorrect. It should read, "$15 million with a recommended 2 to 3 leveraging factor, however, 1 to 9 to 1 to 10 leveraging factors are not uncommon, meaning a potential,"

Sorry about this error.

Sincerely,

Michael J. Tavoliero

Michael J. Tavoliero
City Manager of Saxman, Alaska

SAXMAN COMPREHENSIVE COMMUNITY

DEVELOPMENT PLAN(S)

PROGRAM(S) ABSTRACT

THE CITY OF SAXMAN HAS THE GREATEST UNDEVELOPED POTENTIAL FOR RESIDENTIAL, COMMERCIAL AND INDUSTRIAL GROWTH ON REVILLAGIGEDO ISLAND.

ALTHOUGH THE PRESENT POPULATION IS SLIGHTLY MORE THAN 400 PEOPLE, ITS FUTURE GROWTH CAPACITY IS EASILY CAPABLE OF ACCOMODATING 1500-2000 BY THE YEAR 1990.

THE PURPOSE OF COMMUNITY PLANNING ON THE COMPREHENSIVE LEVEL IS AN ACTION ORIENTED PROCESS UTILIZING THE AGGREGATED ELIGIBILITY CHARACTERISTICS OF THE COMMUNITY IN A JOINTLY-FUNDED ASSISTANCE SIMPLIFICATION APPROACH IN PROGRAMS IN THE SAME FUNCTIONAL CATEGORIES THROUGH COMMUNITY (MONITORING, EVALUATION, REVIEW AND FEEDBACK (MERF)) PARTICIPATION.

The Saxman Comprehensive Community Development Plan(s) (SCCDP) is a ten year action document consisting of four separate, yet tangential (sub)plans. The (sub)plans consist of:

1. The Saxman Village & Native Community Plan;
2. The Saxman Village & Muntcipal Service Plan;
3. The Saxman Community Resources & Services Plan;
4. The Saxman Comprehensive Community Development Plan.

As a jointly funded economic (community) strategy, it is a jointly funded assistance program(s) approach which utilizes upon submission(s) and application(s) 169 Federal & State funding assistance sources assuring the optimal and functional administrative consolidation of closely related programs for 38 projects within the community.

As the aggregated eligibility characteristic utilization strategy of the community, it promotes the community's comprehensive fundability (i.e. the municipal corporation, the IRA Council (Tribal government), and the ANCSA profit corporation) towards the realization of three primary goals, self-government, self-determination, and self-sufficiency, by its submission as the community's master contracting document.

The Saxman Village & Native Community Plan demonstrates the historical, political, economic, social and cultural data & information with optimal assurance of the basic community and tribal rights for limited sovereignty, self-government, self-determination and self-sufficiency and the cooperative efforts of and in coordination with other entities outside the traditional Saxman Native community and village."

The Saxman Village & Municipal Services Structure Plan utilizes 6 infrastructural goals consistent with the statement of community needs which are based on community administrative services; utility and energy services; resource & development services; manpower and training services; education and cultural services; and health and human needs services. This infrastructural approach employs management and policy functions (specially designed) hybrid systems.

The Saxman Community Resources and Service Plan utilizes the broad goals of the Saxman Village & Municipal Services Plan with the aim of achieving an optimal and functional degree of assurance for the maintenance and effective and efficient delivery of services through organized community action.

The Saxman Comprehensive Community Development Plan is the implementation of action and the instrumentation of carrying out the plan(s).

The SCCDP is the City of Saxman's master contracting document once "plugged into" the Federal and State funding and funding assistance program(s) network will act as contract and guideline using all administrative and legislative requirements and procedures to insure the primary purpose of comprehensive community planning.

# POLICY IMPLICATIONS OF SELECTED TITLE 29 REVISIONS

A brief summary of various policy issues related to specific suggested changes to Title 29 has been completed at the request of Tam Cook. The purpose of this overview is to supplement work being done by the Title 29 technical group, and does not attempt to address either the legal acceptability or the mechanics of these suggested revisions.

The subjects of this policy overview are:

a. removal of specific limitations on home-rule powers;

b. elimination of the First Class Borough;

c. elimination of differences in scope of powers of different classes of municipalities;

d. specific suggestions on changes to the statutes on planning, platting and zoning; and

e. specific recommendations on changing Title 29 to encourage small, Native communities to participate in municipal government.

The following addresses a. above:

Removal of Specific Limitations on Home-Rule Powers.

The removal of limitations on home-rule powers would release a home-rule government from having to follow a specific statutory provision. There are very definite technical and policy implications surrounding this removal of restrictions. In some cases, these limitations provide a statutory basis for relationships between governments, and as such provide a common ground for intergovernmental activity. (If Title 29 is revised to allow all classes of municipalities discretion in the exercise of powers, the review of limitations on home-rule powers should be done with an awareness of a broader need for or applicability of those limitations.)

(1) AS 29.09.140. BOROUGH TRANSITION. This section sets out the method by which service areas and existing governments are to be incorporated into newly incorporated municipalities.

Focusing primarily on the assumption of powers and bonded debt by the new municipality, this section is designed to protect the financial status of the government, by providing both continuity of fiscal responsibility during transition and preventing the existing government from taking on new debts during the transition period. For these reasons, it is probably desirable to continue to have all classes of municipalities bound by these provisions.

(2) AS 29.12.010. CHANGE OF MUNICIPAL NAME. This section sets out the procedure to be followed in changing the name of a municipality. The considerations around a name change are legal and technical; aside from these legal concerns, there are no further policy issues.

(3) AS 29.12.040. ANNEXATION AND EXCLUSION; LOCAL BOUNDARY COMMISSION.

(4) AS 29.12.080-160. MERGER AND CONSOLIDATION.

(5) AS 29.12.420-500. DISSOLUTION. These statutes (Numbers (3), (4), and (5) above) deal with the relationships between municipalities or between a municipality and a surrounding unincorporated area, and with the dissolution of a municipality. These statutes establish a portion of the legal framework governing how municipalities relate to territory outside of their immediate authority. As such, these provisions should remain applicable to all municipalities.

However, wording of one of the provisions within these statues needs to be clarified. AS 29.12.040(b)(3) states that the local boundary commission establish procedures whereby an area may be annexed to a municipality without an election "if all property owners and voters" within the area petition the annexing municipality. This should probably be revised simply to read "all voters", as other annexations are accomplished using voter approval only. This is especially confusing in the case of non-resident property owners, as the desires of absent owners of property and area residents may be quite different.

Finally, there is a question as to why AS 29.19.190-500 UNIFICATION OF LOCAL GOVERNMENTS, is not included as a requirement

that home-rule municipalities must follow. These sections establish a procedure by which a borough and cities within that borough may unify. As such, it sets out a system of interaction between different municipal units, and should be applied equally to all municipalities, if it is to be retained. (A second question concerns some of the duplication between AS 29.19.040. MERGER AND CONSOLIDATION, and AS 29.19.190-500. UNIFICATION OF LOCAL GOVERNMENTS. Are both of these necessary or can these provisions be combined into one section?)

(6) AS 29.15.080 CHARTER AMENDMENT. This section requires that a municipality's voters have the right to propose a charter amendment by initiative. It is desirable to retain this option, unless the section on municipal charters is revised to require a broad statement on the inclusion of initiative rights.

(7) AS 29.24.010. CONFLICT OF INTEREST. Requires that a conflict of interest ordinance be adopted or else the conflict of interest provision of this section is automatically applicable. It is not precisely clear what the conflict of interest provision is and how it is enforced.

(8) AS 29.24.020. MEETINGS PUBLIC. This section requires that meetings of all municipal bodies be public. Discussion at the September committee meeting suggested that the definition of "meetings and "public bodies" be clarified; i.e., what constitutes executive session, what about a meeting between a borough mayor and borough attorney, and so on. In general, once these questions are resolved, the provision that meetings are public should be retained for all municipalities.

(9) AS 29.24.060. ASSEMBLY COMPOSITION AND APPORTIONMENT. This section, effective January 1, 1981, revises the system of assembly composition used by some boroughs prior to that date. Therefore, it is necessary to make the new standards for assembly composition and apportionment apply uniformly.

AS 29.24.070-120. ASSEMBLY COMPOSITION AND APPORTIONMENT PROVISIONS. These sections establish the mechanics of assembly apportionment. If a home-rule borough's charter provides for reapportionment and assembly composition, that home-rule borough is not bound by this chapter (as long as the intent in AS 29.24.060 is met.) Perhaps this exclusion could be broadened to other classes of boroughs by stating that these provisions apply unless other provisions, which meet AS 20.24.060, have been adopted by ordinance or charter.

(10) AS 29.24.150. EXPULSION OF BOROUGH ASSEMBLYMEN.

(11) AS 29.24.200. REMOVAL OF BOROUGH MAYOR FROM OFFICE.

(12) AS 29.24.290. EXPULSION OF CITY COUNCILMEN FROM OFFICE.

(14) AS 29.24.035. REMOVAL OF (CITY) MAYOR FROM OFFICE. These sections establish the basis and method by which an assembly or council may of its own volition remove an elected officer from office. The reasons for removal are defined narrowly as a conviction for an offense described in AS 15.56 as a "corrupt practice". Found in the state's election code, "corrupt practices" are defined in relation to willfully subverting the election process through a variety of actions. AS 15.55 (the correct citation, not AS 15.56) also states that the person convicted of such a corrupt practice may also be deprived of office. As this language is permissive, the person may not actually be deprived of office in a court action. Therefore, this provision allows an assembly or council to remove a mayor, assemblyman, or councilman from office upon their conviction of a corrupt practice. Further, this is the <u>only</u> grounds for council or assembly action.

If this section was eliminated, an assembly or council would have no ability to remove an elected official from office. If only the limitation on home-rule powers was eliminated, it might mean that home-rule municipalities could enable their assemblies or councils to remove elected officials for other than election law violations. (Note AS 29.24.710 allows an assembly or council to declare an office "vacant" for certain reasons. This section (710) should be reviewed from a policy viewpoint).

The most advisable policy option might be to simply state, for all classes of municipalities, that conviction of election law violations deprives an individual of elected office. This would seem to be the strongest method of making sure elected officials and those running for office "play by the rules". If this cannot be accomplished, at least the limitation on home rule powers should be retained, but perhaps these sections can be combined into a single section dealing with removal from office by a means other than recall.

(13) AS 29.24.340(a). ELECTION AND TERM OF MAYOR. This paragraph allows home rule cities to prescribe residency requirements for the office of mayor. Other classes of cities are specifically empowered to establish a residency requirement of up to three years. Evidently, home rule cities may exceed this residence requirement.

(There is some question in general on the length of residency requirements - perhaps any limitation over one year is not legally sound.)

This paragraph only limits all classes of cities from establishing any qualifications on holding office other than a residency requirement. As a general guarantee of the rights of an individual to run for office, and a reflection of faith in the electorate's ability to judge those seeking office, this limitation should probably be retained.

(15) AS 29.24.680. PROHIBITIONS RESPECTING APPOINTMENT AND REMOVAL OF PERSONNEL. This section is primarily a non-discrimination clause. As home-rule municipalities may act as they wish unless prohibited by law, the express prohibition against discriminatory action found in AS 29.24.680 may make the limitation on home-rule powers unnecessary, while ensuring home-rule municipalities are prevented from engaging in discriminatory actions.

(16) AS 29.24.700. MUNICIPAL REPORTS. This section lists the reports that all municipalities must file to be eligible for

state assistance under AS 29.62 - the revised state shared revenue program. This entire section could probably be accomplished as regulations in the revenue sharing program, rather than establishing a statutory reporting requirement. This is especially true in light of AS 29.33.230, which also requires all municipalities to complete an audit. (See (29) below).

(17) AS 29.27.010(a)(12). MUNICIPAL EXEMPTION ON CONTRACTOR BOND REQUIREMENTS. This subparagraph requires municipalities to exempt by ordinance contractors providing construction or repair of municipal public works projects from performance bonds. This is evidently to prevent such exemptions from bonding to be granted by a manager or department of a municipality. The accountablity of those decisions to the public is probably the principal reason for this limitation. However, this seems to be a minor point, in that the city remains responsible for public works projects and must "make good" on a contractor's non-performance. Thus, a municipality has a financial reason to grant exemptions from bonding only when warranted, whether the exemption is granted by ordinance or by administrative action.

(18) AS 29.27.060. CODIFICATION. This section requires all municipalities to codify ordinances within three years of incorporation and every five years thereafter. As a compulsion on home-rule municipalities to codify their ordinances, this section is probably unnecessary.

(19) AS 29.30.010, 020(6), 030. MUNICIPAL ELECTIONS. The effect of these sections is to <u>prevent</u> a home-rule municipality from altering voter qualifications of AS 29; prevent a home-rule municipality from allowing a person to serve as a borough mayor and assemblyman, or as a city mayor and assemblyman, at the same time; and prevent a home-rule municipality from calling a special election upon less than 20 days notice. (AS 29.30.330 states that an election to fill a vacancy created by recall will be held at least <u>10</u> days and not more than 45 days from the recall election. Appears somewhat contradictory)

As far as establishing minimum standards in the conduct of local elections, these restrictions on home-rule automomy appear warranted.

(20) AS 29.30.060(f) APPEALS ON REMOVAL FROM OFFICE. (I think the correct citation is not 29.30.060, but only subsection (f) of that section.) This subsection simply states that there is no appeal to removal from office that is accomplished by an assembly or council pursuant to an elected official's conviction on an election violation. This limitation is probably unnecessary; if a home rule municipality wants to provide for an appeal there is no reason that it should not do so.

(21) AS 29.30.210-330. RECALL. This article describes the procedure to be used in recall of elected officials. The addition of a sentence stating that these provisions must be followed by home-rule municipalities unless another process is adopted by ordinance would seem to satisfy the concern that home-rule municipalities must provide for some recall procedure. They could then be relieved of the burden of following the specific procedures set out in this article.

A secondary concern is whether the procedure in Title 29 establishes the minimum procedure that a home-rule municipality must meet. That is, should a home-rule government be prohibited from requiring more signatures on a recall petition than is found in state law? If the recall procedure set out in AS 29.30.210-330 is a minimum set of standards that a home rule recall ordinance must meet or surpass, it should be stated in the enabling legislation suggested above.

(22) AS 29.33.020. EXTRATERRITORIAL JURISDICTION. This section provides limited powers of extraterritorial jurisdiction. The limitation on home-rule municipalities of acting otherwise than allowed simply clarifies the legislative intent that only these specific extraterritorial powers be implemented. Unless a broader scope of extraterritorial planning and service delivery

powers for home-rule municipalities is desired, it is probably best to leave this restriction intact.

(23) AS 29.33.030. EMINENT DOMAIN. This section allows municipalities to exercise the power of eminent domain as provided in AS 9.55.250-460 (Code of Civil Procedure) with the further provision that each exercise of eminent domain powers be approved by the voters. Requiring eminent domain to be exercised in conformance with AS 9.55.250-460 places tight constraints on the eminent domain power. The requirement that each exercise of eminent domain be approved by the voters may be philosophically attractive but with the publication, compensation, public declaration and judicial appeal processes included in AS 9.55.250-460, may be unnecessary as a constraint on the misuses of eminent domain.

This section could be effectively broken into two subsections, the first requiring all municipalities to exercise eminent domain in conformance to AS 9.55.240-460, and the second subsection including further restrictions. Home-rule municipalities would be limited only by the first subsection.

(24) AS 29.33.080. GARBAGE AND SOLID WASTE SERVICES. The limitations operating on home-rule governments are found in subsection (b), which states that a municipality may not prevent a pre-existing, validly certified waste collection or disposal service from operating within the municipality unless the municipality buys out all or a portion of that operation.

Due process requirements, court definition of the "taking" rights, and the restrictions on the exercise of eminent domain would seem to implement some of the concerns behind this limitation. The effect of this limitation is desirable; the technical group should state whether the intent of this limitation would be achieved through other requirements if this limitation was removed.

(25) AS 29.33.090(b). EFFECT OF AREAWIDE EXERCISE OF BOROUGH POWERS. This subsection primarily limits the powers of

home-rule cities within boroughs in that home-rule cities are prohibited from exercising a power that is exercised by a surrounding borough on an areawide basis. (Other portions of this subsection enumerate powers that boroughs may provide areawide or non-areawide at their option; this is a permissive section and would probably allow home-rule boroughs the same powers without their specific mention.

This subsection should be split and the provision applicable to home-rule cities within boroughs clarified and stated separately.

(26) AS 29.33.090(c). BOROUGH BUILDING CODE JURISDICTION WITHIN CITIES. This reference is non-existent. Building codes are treated in AS 29.33.090(a)(14); this sentence states that the exercise of building code powers may be adopted according to AS 29.33.090(b). The home-rule limitation should be dropped, and the reference to AS 29.33.090(a)(14) added to those powers specifically listed in subsection (b).

(27) AS 29.33.100-160. UTILITIES. These sections set out the procedures around the creation of municipal utilities, granting of franchises, rights of franchise holders, rights of the public, rate setting and so on. As municipal utilities are not regulated by the Public Utilities System, this section forms the basic statutory framework enabling municipal utilities to be formed.

Unless the technical group thinks that an adequate guarantee of public interests in the creation of utilities and franchises and rate-setting is available outside of these sections, the requirement that home-rule municipalities conform to these provisions is probably useful.

(28) AS 29.33.220. EXPENDITURES OF BOROUGH REVENUE. This section sets basic parameters of municipal expenditures, while allowing home-rule municipalities wide latitude in fiscal priorities. The section states that revenues levied and collected areawide must be used areawide, while revenues collected in areas outside cities can only be expended on functions outside cities. This

FOR _____

DATE _____ TIME _____ A.M. P.M.

2933.090(b)

p. 9 - end of 1st paragraph - effect is ambiguous.

PHONE NO. p. 12 - sentence missing

| | | | |
|---|---|---|---|
| TELEPHONED | | PLEASE CALL | |
| CALLED TO SEE YOU | | WILL CALL AGAIN | |
| WANTS TO SEE YOU | | RUSH | |

MESSAGE AS 29.36.040 needs to be stated here or only in the education article.

p. 14 - last sentence - These entire sections should be deleted. Strength last 2 lines.

SIGNED

LA-A 16

does not appear to be a necessary constraint on home-rule powers. If the citizens of a community wish to support a particular non-areawide function on an areawide basis, they should be allowed to do so. This section also appears to contradict the ability of a borough to pledge the full faith and credit of a borough's areawide tax base to support capital improvements in a service area or the area outside cities (upon areawide voter approval) as provided in AS 29.51.040.

(29) AS 29.33.230. POST AUDIT. This section requires that all municipalities complete an audit or financial statement annually. This provision should be retained as applicable to both home-rule and general law municipalities, unless the policy group feels municipalites should have the ability to prepare audits on some other basis, such as every two years. In any event, the limitation should be set out in law, as a minimal guarantee of financial accountability to the public.

(30) AS 29.36.010(b). AREAWIDE BOROUGH POWERS. This section prohibits home-rule cities within boroughs from exercising the following mandatory borough powers; education powers; planning, platting and zoning powers; and tax assessment and collection. This is a prohibition on exercise of powers dealing with relations between governmental units which needs to be retained. If more latitude for cities within boroughs is desired, this section should be reworded to allow boroughs to delegate a power by ordinance to a city, such as is found in AS 29.33.090(b).

(31) AS 29.34.050, AS 29.36.230(d). RESPONSIBILITY FOR EDUCATION ON MILITARY RESERVATIONS. (Note: incorrect citation-AS 39.36.320 should read AS 29.36.230(d)]. AS 29.34.040 sets out the relationship between a borough school district and responsibility for on-base education. As this reflects a real constraint on the exercise of local education powers by the federal government, this section is probably unnecessary. That is, a home-rule government might not be able to act otherwise than provided, even if it wished to do so.

As the citation to AS 29.36.230(d) concerns only third class boroughs, it is unnecessary to include as a limitation on home-rule municipalities.

(32) AS 29.36.130(c) ACQUISITION OF ADDITIONAL AREAWIDE POWERS. This subsection describes the procedure for the transfer of a power exercised by a city to a borough upon voter approval of a new borough areawide power. This subsection should probably be divided into two parts, with the first four sentences dealing with an areawide election and election results in one subsection, and the discussion of transfer of powers elevated to become a separate section. The home rule limitation should then be applied only to that section dealing with the orderly transfer of power from one municipality to another.

(33) AS 29.39.020-060. POWERS OF CITIES OUTSIDE BOROUGHS. These sections apply the mandatory borough powers of education; tax collection; and planning, platting and zoning to cities outside of incorporated boroughs. Section .020 extends the power of assessment and tax collection to such cities and section .030 gives cities the authority to establish differential tax zones. These sections are primarily permissive, although section .020 states that tax collection functions must be implemented as provided in AS 29.45. The only apparent reason for identifying this section as a home-rule limitation seems to be that requirement that home-rule cities comply with AS 29.45. The technical group must determine whether this limitation should be stated here, or whether it needs to be stated only in AS 29.45.530.

Sections .040 and .060, however, mandate that home rule cities outside boroughs establish schools and provide planning, platting, and zoning. There is a major policy question over the mandate that home-rule and first-class cities outside boroughs establish school districts. This section was established prior to the creation of REAAs. Now, the incorporation or reclassification of cities to home-rule or first class status would mean the fragmentation of existing districts. (The City of Bethel is a

good example-the headquarters of the Lower Kuskokwim School district are located in Bethel. In order for Bethel to take advantage of home-rule or first class city status, Bethel would be required to establish its own school district.)

Section .040 could be made permissive rather than mandatory. This would allow cities to establish their own school districts if, in their own view, such local services were preferrable to existing REAA education services.

If such a change were to be recommended, the applicability of the home-rule limitation would depend upon whether the restriction that education be provided in conformance with AS 29.36.040 relates to borough school districts, the technical group may recommend that the limitation on home-rule cities be retained to make that reference effective.

Section .060 makes the exercise of planning, platting and zoning powers mandatory for home-rule cities outside of boroughs. The policy question here is not one of removing a prohibition on the actions of home-rule cities but whether planning should be mandated for cities outside boroughs. (As in the previous section, the limitation may need to be retained in order to require home-rule cities outside boroughs to conform to AS 29.42.010-245 Planning Powers of Boroughs - by reference.)

(34) AS 29.42.040(d). ZONING OF STATE LAND FOR HOMESITE ENTRY. This section was repealed by Sec. 45, Ch 85, SLA 1979.

(35) AS 29.42.080(b). APPLICABILITY OF LOCAL PLATTING REGULATIONS TO STATE LAND IN A MUNICIPALITY. This subsection limits the power of municipalities to require subdivision improvements on state land disposals. Unless state policy is changed to support compliance with local subdivision improvement requirements in the state's own land disposal program, this limitation on platting powers of home-rule municipalities will have to be retained. (The technical committee might determine that, because of state supremacy considerations, this limitation is unnecessary. Local governments may not have the authority to require the state to build subdivision improvements, even without subsection [b]).

(36) AS 29.45.010-450. BOROUGH AND CITY PROPERTY TAXES. This citation should probably be changed to AS 29.45.010-540 rather than AS 29.45.010-450, as the sections following .450 also deal with the implementation of a property tax. This Article provides the complete framework for the exercise of local property taxing authority, including the rights of the public in relation to their local taxing authority. Unless the policy group decides that home-rule governments should be free to establish their own taxing systems, this limitation should be retained. Even if the limitation on home-rule powers was lifted, those sections of AS 29.45 dealing with taxation of state-owned property and those sections detailing the taxing powers of cities within boroughs might have to be kept in force.

(37) AS 29.45.020. TAXPAYER NOTICE. This limitation is included in the previous citation. However, if the general limitation on the taxing powers of home-rule governments was lifted, this section might have to remain limited. Section .020 requires that municipalities which levy a property tax must provide notice of the effective tax rate, and of the state's contributions to local revenue through a variety of state funding mechanisms, on an annual basis. The intention of this section is to make the state's role in funding local services apparent to the local taxpayer.

As an aside, the Municipal Assistance Fund, administered by the Department of Revenue, should probably be added to the list of state programs reported in the Notice to Taxpayers. In fiscal 1980, this fund distributed over $16 million to communities.

(38) AS 29.45.580(d). INTEREST ON SALES TAX. This citation apparently needs to be changed to AS 29.45.570(d). Apparently, the only provision of the statutes relating to sales tax collection which home-rule boroughs must follow is that interest on delinquent sales tax accounts is levied at at 8% annual rate. Should home rule boroughs be limited to this rate? If not, the limitation should be removed.

In a broader sense, there are some apparent inconsistencies regarding the property and sales taxes, and their application to home-rule governments. There is no stated limitation that home-rule boroughs must follow the sales tax procedures set out in AS 29.45.570-590, except for the subsection 570(d). There is no state restriction on how home-rule cities within boroughs may levy a sales tax, except for an earlier blanket provision that no city may exercise a power exercised by a borough on an areawide basis. How does AS 29.45.610-630, which grants sales tax powers to cities inside boroughs, relate to home-rule cities? Are home-rule cities within boroughs limited to sources taxed by the borough, and in the manner provided by boroughs (AS 29.45.610)? This may be somewhat confusing, in that AS 29.39.020 gives cities outside boroughs the same powers of rate setting, identification of items to be taxed, etc., as are enjoyed by boroughs. Do home-rule cities within boroughs have that same flexibility?

(39) AS 29.48.090. EXEMPTION FROM SPECIAL ASSESSMENT. This section mandates that municipalities exempt the residential property of senior citizens from special assessments, and provides a procedure for municipalities to follow in granting those exemptions. In that if both require local governments to grant exemptions and sets out a procedure to be followed, this limitation is probably required.

(40) AS 29.51.520-530. BONDED DEBT FOR SCHOOL CONSTRUCTION. This citation should read AS 29.51.420-430. Section .420 specifically allows home-rule governments to exceed limitations in their charters on the issuing of bonds, if additional funds are needed for school construction. Section .430 then establishes a mechanism that would guarantee state repayment of the principal and interest of the bonds authorized under the previous section.

This section was written specifically for the City of Petersburg, and was never implemented. The entire section should be deleted, especially now that the state has revised its School Foundation Program to fund 100% of local construction debt service.

(41) AS 29.51.210(b). SECURITY FOR BONDS. This subsection specifically states that general obligation bonds for a revenue-producing utility may be additionally guaranteed by the revenue from that utility. The section goes on to provide that bonds so secured are not subject to debt limitations contained in a home-rule charter. The effect of this "limitation", then, is to give a home-rule municipality powers beyond its charter.

A policy question that might be considered is whether such a provision should be allowed by statute at all. The effect of this section is to allow a home-rule municipality to pledge the general obligation of its tax base, while not having to conform to any limits on bonded debt that may be in its charter. If the revenue-producing service cannot meet the debt service payments, the service costs of that debt fall back on the community's tax base.

The intention of this section may be to "create" a bond that functions like a revenue bond but has general obligation bond guarantees. While this may produce lower interest rates at the bond market than a strict revenue bond could command, the fiscal intention of the local residents may be of more importance in those few instances where this may be implemented.

In any event, the application may be rather limited. Discussion with Pat Poland and Terry Early at the Department of Community and Regional Affairs indicates that very few charters include debt limitation.

(42) AS 29.51.390. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. This section provides that only the governing body of a municipality can contract for the services of bond attorneys, bond and financial consultants. The policy question involved in deleting this limitation is whether such contracts for financial planning services should only be entered into by the assembly, or whether a manager's office should also have that authority, as may be authorized by charter. If the charter does not require all contracts to be approved by the council or assembly, is there any purpose in singling out these types of services? Public

accountability purposes are still served by the fact that capital programs must still be approved by the governing body, and bonds approved by local voters.

(43) AS 29.62. MUNICIPAL TAX RESOURCE EQUALIZATION.

(44) AS 29.62. STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES.

This article details the state's revised revenue sharing program. The "limitation" inherent in this article concerns eligibility for the revenue sharing programs. As such, there is probably no need for a citation as a limitation on home rule powers. If a community wants to participate in the program, it will conform to the application procedure included in the statutes which established the revenue sharing program. (Much of this article might be accomplished by program regulations rather than statute.)

(45) AS 29.71.010. ADVERSE POSSESSION. This section states that municipalities cannot be divested of real property through adverse possession. While this statute applies to home-rule municipalities, it is probably not necessary to cite this section under the list of limitations on home-rule powers.

(46) AS 29.71.020. TAXATION OF MUNICIPALITIES. Again, this section has no direct "limitation" on home-rule actions. Section .020 provides that the state cannot tax municipalities, unless the intention to tax is clearly stated in the state statute or regulation. There is probably no need to include this citation under the general heading of "limitations" on home-rule powers.

# SCOMM

# #23:8

[illegible] AGENCY MEMORANDUM

TO: Laura Davis
Assistant Attorney General

FROM: Melissa Aber Fouse
Secretary, Title 29 Revision Commission

SUBJECT: Working Draft, Title 29

Enclosed are drafts numbers one and two of Title 29 as it has been revised so far. Also I have included an index of the sections by old heading number and title.

The asterisks prefacing the section numbers in draft #2 indicate the sections with changes. Four asterisks indicate major changes and 1 asterisk indicates merely wording changes for conformity's sake.

LAA 15

M E M O R A N D U M

08 January 1980

TO: Sharon Sturrock
Accounting

FROM: Melissa Aber Fouse
Title 29 Revision Commission

SUBJECT: Technical Group Meeting

This is to certify that the Title 29 Revision Commission held a meeting on the 5th and 6th of January, 1981. The meeting was held in Anchorage. Attending were:

Ted Berns
Gerald Lee Sharp
Alan Teeche
Jim Nordale
John Messenger
Richard Garnett III (1 day)
Tamara Brandt Cook
Melissa Aber Fouse

NOTICE OF MEETING
October 6, 1980

A Policy Advisory Group as been appointed to oversee the revision of the Municipal Code, Title 29 of the Alaska Statutes. The Policy Advisory Group is composed of thirteen members. Of these, nine public members represent a broad range of local officials interested in Title 29. The public and legislative members of the Title 29 Policy Advisory Group are:

Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
Ron Larson, Mayor, Matanuska Susitna Borough
Jim Kohler, Manager, City of Yakutat
Gene Moore, Manager, City of Kotzebue
Donna Sherby, Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough
Representative Charles H. Parr, Fairbanks
Representative Margaret A. Branson, Kenai Peninsula
Senator Bob Mulcahy, Kodiak
Senator Arliss Sturgulewski, Anchorage

The third meeting of the Policy Advisory Group is scheduled for 10 and 11 November 1980. The meeting will begin at 9:00 a.m. in the Chena Room of the Traveler's Inn, Fairbanks, Alaska. The proposed agenda for this meeting is:

November 10th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:
   a. Report by Palmer McCarter on material prepared for newsletters.
   b. Report by Bob Lohr or Phil Smith on special problems of rural communities.
   c. Presentation of proposed drafts by the Technical Committee.
   d. Other old business.

# TITLE 29 REVISION COMMISSION
## Policy Advisory Group Meeting

### Minutes of December 15, 16, & 17, 1980

The fourth meeting of the Policy Advisory Group - Title 29 Revision Commission was held December 15, 16, & 17, 1980 in the Adventure Room of the Captain Cook Hotel, Anchorage, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Advisory Group were: Senator Arliss Sturgulewski, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, James Kohler and Jonathan Solomon. Present substituting for Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. The Technical Committee was represented by Ted Berns and Russell Walker as members of both groups. Present from the staff of Legal Services was Tamara Brandt Cook, Legislative Counsel.

Guests and members of the public attending were: Stephanie Scott, Haines Borough; Cris Fowler, AOGA; Robert Walker, Exxon; Carl Mogli, Napakiak; David Dye, Community Planning, Department of Community and Regional Affairs; and Jim Gottstein.

There were no presentations by guests or members of the public.

Chairman Sturgulewski reported on attending the meeting of the Rural Development Council. She says they are concerned with the definitions of "rural" and the relationship of rural communities with Title 29.

The chair requested copies of the Alaska Municipal League Policy Statement issued as a result of its November convention in Fairbanks.

The minutes of the previous meetings were approved as distributed with no corrections or additions.

Under Old Business, Patrick Poland reported that the news release prepared by Legal Services had been distributed and was expected to appear in the December issue of the RuralCAP newsletter. The newsletter distributed by the University of Alaska at Fairbanks was not expected to be published in December but the news release would be included when it was published.

The subcommittee report regarding AS 29.09.180 (Organization Grants) as postponed due to Marilyn Dimmick not being present.

The subcommittee report on AS 29.30.040 (Voter Qualification) was postponed to 17 December.

Ted Berns reported on the Technical Committee's three day meeting saying they had covered a great deal of material in those three days and he hoped that the Policy Group would be able to review all the material produced by that meeting.

Tamara Brandt Cook reported on the format of the presentation of the bill. She said that a draft would be prepared, going first to the revisor of statutes, then to the legal editor and would then be put into final form for presentation to the rules committee for introduction into the legislature.

Turning to the proposed drafting changes submitted by the Technical Committee, it was agreed that the original motion to approve all changes unless otherwise noted would be held in force.

Approved by the Policy Group without changes were: AS 29.24.050, 29.24.125, 29.24.160, 29.24.206, 29.24.210, 29.24.240. Approved with minor wording changes were: AS 29.24.140, 29.24.145, 29.24.150, 29.24.175, 29.24.200, 29.24.250. Sections with substantive changes made by the Policy Group were: AS 29.24.170 and 29.24.205.

The meeting was recessed at 4:30 p.m. until 8:30 a.m. 16 December.

At 8:30 a.m. the meeting was called to order at the Captain Cook Hotel in the Quarterdeck 19 conference room. Policy Advisory Group members attending were: Senator Arliss Sturgulewski, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, and Jonathan Solomon. Representing Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. Guests and members of the public attending were Stephanie Scott, Haines Borough; Robert Walker, Exxon; Cris Fowler, AOGA; David Dye, Community Planning, Department of Community and Regional Affairs, and Carl Hogli, Napakiak.

There were no presentations by guests or members of the public.

Approved by the Policy Group without changes were: AS 29.24.160, 29.24.200(e), 29.24.210, 29.24.390, 29.24.430, 29.24.450, 29.24.480, 29.24.510, 29.24.515, 29.24.570, 29.24.620, 29.24.630, 29.24.640, 29.24.670, 29.33.030, 29.33.190, 29.33.210, 29.33.220, 29.42.020, 29.42.030, 29.42.060, 29.42.070, 29.42.085, 29.42.090, 29.42.100, 29.42.115, 29.42.120, 29.42.130, 29.42.150. Accepted by the Policy Group with wording changes were: AS 29.24.010, 29.24.530, 29.24.680, 29.24.690, 29.33.090, 29.42.010, 29.42.050, 29.42.080, 29.42.160. Sections with substantive changes made by the Policy Group were: 29.24.420, 29.33.010, 29.33.020, 29.33.070, 29.33.130, 29.33.140, 29.33.150, 29.33.160, 29.33.200, 29.29.060. A drafted section sent back to the Technical Committee for further review was 29.42.040. Drafted changes not accepted by the Policy Group were AS 29.33.120 and 29.33.110.

Section 29.39.060 (Planning & Land Use Regulation) was earmarked as a policy issue to be reviewed later.

The meeting was recessed at 4:30 p.m. due to lack of a quorum.

At 8:30 a.m. 17 December 1980 the Policy Advisory Group meeting was again called to order in the Captain Cook Hotel, Quarterdeck 19 conference room. Members attending were: Senator Arliss Sturgulewski, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, and Jonathan Solomon. Representing Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. Guests and members of the public attending were Stephanie Scott, Haines Borough; Robert Walker, Exxon; Cris Fowler, AOGA; Carl Mogli, Napakiak; David Dye, Community Planning, Department of Community and Regional Affairs; and Timothy Troll, City Manager of St. Mary's. John Messenger represented the Technical Committee briefly, explaining the changes to the sections regarding bonding.

Sections accepted without changes by the Policy Advisory Group were: AS 29.39.060, 29.39.070, 29.39.080, 29.45.010, 29.45.020, 29.45.050, 29.45.100, 29.45.140, 29.45.150, 29.45.220, 29.45.240, 29.45.250, 29.45.260, 29.45.300, 29.45.310, 29.45.320, 29.45.400, 29.45.410, 29.45.440, 29.45.450, 29.45.460, 29.45.570, 29.45.590, 29.48.010, 29.48.020, 29.48.030, 29.48.040, 29.48.050, 29.48.060, 29.48.070, 29.48.080, 29.48.090, 29.48.105, 29.48.115, 29.48.120, 29.51.280, 29.51.340, 29.51.370, 29.51.390, 29.51.420, 29.51.430, 29.51.440, 29.51.250, 29.51.380, 29.51.370, 29.51.050, 29.51.150, 29.51.305, 29.51.240, 29.51.350, 37.30.100. Sections accepted with wording changes were: AS 29.27.080, 29.36,170, 29.36.270, 29.45.210, 29.51.410. Sections accepted with substantive changes made by the Policy Group were: AS 29.45.030, 29.45.545. Sections not accepted were AS 29.45.030 and 29.48.090. A section sent back to the Technical Committee for new language was 29.45.610. The Policy Group moved to repeal AS 29.45.060.

The chair directed the Technical Committee to review the following: Can a city be inside/a part of a service area? Staff is to review service area language throughout the Title. The Technical Committee is to bring back wording to allow the transition from any class of city to Home Rule.

Stephanie Scott representing the Haines Borough spoke in defense of third class boroughs. The Haines Borough objects to the recommendation that third class boroughs be eliminated. She distributed a letter from the mayor of the Haines Borough asking what the basis for the recommendation was. The Haines borough wants a list of the reasons for the elimination of the third class borough. Marilyn Miller said that the Alaska Municipal League concurred with the elimination of third class boroughs, or at least opposed the formation of any more third class boroughs. The City of Haines also concurs with the elimination of third

class boroughs. Ted Berns made a motion that the Policy Group go on the record as concuring with the Alaska Municipal League's position that third class boroughs be eliminated. The motion carried. The chair directed the Technical Committee to draft language which eliminates the formation of third class boroughs but which does not alter the status of the Haines Borough.

The question of Organization Grants is to be held for the next meeting of the Policy Group.

The chair directed the Department of Community and Regional Affairs to look into dissemination of information regarding non-taxable property to state assessors.

Tim Troll says the 14c3 negotiations are affected by the current municipal properties statute and approves of the recommended change.

The dates of the next Policy Advisory Group meeting were set for the 17th and 18th of January, 1981 in Juneau. The Technical Group will have one more meeting as well.

The meeting was adjourned at 4:30 p.m. 17 December 1980.

Respectfully submitted,

Melissa Aber Fouse
Secretary, Title 29 Revision Commission

MEMORANDUM 22 December 1980

TO: Sharon Sturrock
Accounting

FROM: Melissa Aber Fouse
Secretary, Title 29 Revision Commission

SUBJECT: Policy Advisory Group Meeting

There was a meeting of the Policy Advisory Group of the Title 29 Revision Commission 15, 16, and 17 December 1980 in Anchorage, Alaska. Attending were:

Senator Arliss Sturgulewski
Senator-elect Charles Parr (2 days)
Representative Margaret Branson
Ted Berns
Russell Walker
Marilyn Dimmick
Gene Moore
Terry Cook
James Kohler (1 day)
Ronald Larson
Jonathan Solomon*

*Mr. Solomon told me on 17 December that there had been no planes in or out of Fort Yukon for 5 days and that there was the possiblity that he may be stranded in Anchorage for several days.

maf

**MEMORANDUM** 12 December 1980

TO: Sharon Sturrock
Accounting

FROM: Melissa Ann Fouse
Title 29 Revision Commission

SUBJECT: Room Rental for Policy Group Meeting

The Policy Group of the Title 29 Revision Commission will be meeting 15, 16, and 17 December 1980 in Anchorage at the Captain Cook Hotel. The rate for the rental of the room is $175.00 per day and coffee is $25.00 extra per pot. I need a field warrant of $650.00 to prepay the three day's rent and six pots of coffee. The Captain Cook will bill us for the balance if we incurr any other charges.

Thank you.

TO: Laura Davis
Attorney General's Office

FROM: Melissa Aber Touse
Title 29 Revision Commission

SUBJECT: Title 29 Revision

Attached are drafts presented to the Policy Group by the Technical Group at their meeting 10 and 11 November 1990. These changes were approved with minor wording revisions.

Also attached are membership lists of those persons serving on the committees.

M E M O R A N D U M 09 December 1980

TO: Title 29 Policy Group

FROM: Tamara Brandt Cook
Legislative Counsel

SUBJECT: Changes to Drafts Suggested by the Policy Group

Here are revisions to the drafts proposed by the Technical Committee incorporating changes suggested by the Policy Group during your meeting held on November 10th and 11th. In addition to these revisions, two sections are being held by the Policy Group for further review: AS 29.09.180 (Organization Grants), and AS 29.30.040 (Voter Qualifications).

I would appreciate any comments which you may have regarding these revisions.

Also enclosed is a memo from the Alaska Association of Municipal Clerks.

TBC:maf

Encl.

M E M O R A N D U M 09 December 1980

TO: Sharon Sturrock
Accounting

FROM: Melissa Aber Fouse
Title 29 Revision Commission

SUBJECT: Title 29 Technical Group Meeting

This is to let you know there was a meeting of the Title 29 Revision Commission Technical Group on 4, 5, and 6 December, 1980. Attending were:

Ted Berns
Russell Walker
John Messenger
Jim Nordale
Gerald Lee Sharp
Allan E. Tesche
Richard Garnett, III
Tamara Brandt Cook
Melissa Aber Fouse

maf

TO: Senator-elect Don Gilman

FROM: Melissa Aber Fouse
Title 29 Revision Commission

SUBJECT: Revisions to Title 29

Here are copies of the drafting changes that have been submitted to and approved by the Title 29 Revision Commission Policy Group to date. Also included are a news release prepared by our office, a progress report (as of 7 October) and the minutes of the last Policy Group meeting.

These should give you a good idea of what has been accomplished to date.

Please let us know if there is any further information we can provide you with.

LAA 15

19 November 1980

TO: TECHNICAL GROUP

FROM: Meliana House
Secretary, Title 29 Commission

John Messenger has once again kindly consented to let us use his conference room for our meeting. The dates of the meeting are the 4th, 5th and tentatively the 6th of December, 1980. The address of John's office is 420 "L" Street, Suite 404, Anchorage.

LAA 15

M E M O R A N D U M 19 November 1980

TO: Title 29 Technical Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

SUBJECT: Changes to Drafts Suggested by the Policy Group

Here are revisions to the drafts proposed by the Technical Committee incorporating changes suggested by the Policy Group during their meeting held on November 10th and 11th. In addition to these revisions, two sections are being held by the Policy Group for further review: AS 29.09.180 (Organization Grants), and AS 29.30.040 (Voter Qualifications).

I would appreciate any comments which you may have regarding these revisions. I am planning on sending copies of the revisions to the Policy Group early in December.

TBC:maf

Enclosures

TO: Technical Group

FROM: Melissa Aber Fouse
Secretary, Title 29 Commission

SUBJECT: SB 582

We are sending you SB 582 on the request of Lee Sharp wbh plans to make this subject an item of discussion at the next Technical Committee meeting.

LAA 15

4. New Business:
   a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
   b. Presentation of proposed items for consideration by Ex-Officio members.
   c. Presentation of proposed items for consideration by the Technical Revision Committee.
   d. Other new business.

November 11th:

1. Introduction of guests and members of the public attending.
2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.
3. Other new business.
4. Setting of future meeting dates for the Policy Advisory Committee.

It is the intention of the Policy Advisory Group to undertake a thorough review of Title 29. To make this possible, the Policy Group requests that any questions about Title 29 be forwarded to them. Comments on Title 29 may be sent to:

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

As the review of Title 29 must be completed before the next legislative session, it is important that any suggestions for revision be mailed as soon as possible. It is hoped that all areas of Title 29 needing revision can be identified before this meeting.

Thank you for your interest in the revision of Title 29. Again, any comments on areas of Title 29 that, in your opinion, need review will be helpful to the Policy Advisory Group.

# TITLE 29 REVISION COMMISSION
## Policy Advisory Group Meeting

## Minutes of November 10 & 11, 1980

The third meeting of the Policy Advisory Group - Title 29 Revision Commission was held November 10 and 11, 1980 in the East Gold Room of the Traveler's Inn, Fairbanks, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 10:45 a.m.

Present as members of the Policy Advisory Group were: Senator Arliss Sturgulewski, Senator Bob Mulcahy, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Donna Sherby, and Russell Walker. Present as Ex-Offico Members were Palmer McCarter, and Bonnie Hedley from RuralCAP substituting for Phil Smith. The Technical Committee was represented by Ted Berns and Russell Walker as members of both groups, and by Allan Tesche. Present from the staff of Legal Services were Billy G. Berrier, Director and Tamara Brandt Cook, Legislative Counsel.

Guests and members of the public attending were: Stephanie Scott, Haines Borough; Cris Fowler, AOGA; Bob Walker, Exxon; Mike Walleri, Tanana Chiefs; John Arney, Haines Borough; Bob Juettner, City of McGrath; Michael Tavoliero, City of Saxman; Marie Matsuno, Department of Community and Regional Affairs; Ivan Widom, City of Nome; Lisa Buskirk, Tanana Chiefs; John Halliwill, City of Haines; Tommy Nebel, Ketchikan Borough; Kathy Carssow, Ketchikan Borough; Marvin Yoder, Ketchikan Borough; Tom Blanton, Haines Borough; Jerry Clifton, Haines Borough Assembly; Dan Ogt, Kodiak Island Borough; Shirley Collins, Haines; Jack Carpenter, Sitnasuak Native Corporation; Edward A. Stahla, City of Wrangell; Richard Careaga, City of Unalaska; Robert Flint, Wohlforth & Flint; Jack P. Van Leuven, RainierBank.

There were no presentations by guests or members of the public.

Under Old Business, Palmer McCarter reported on ways of getting materials and information to the public. He said the Department of Community and Regional Affairs was planning newsletter inserts and coordinating with the University of Alaska for a special issue of their newsletter to include an insert concerning the revision of Title 29. Chairman Sturgulewski directed Bonnie Hedley to coordinate information activities with Mr. McCarter and Tamara Cook.

Bonnie Hedley gave a report from RuralCAP on special problems of rural communities. She stated that rural communities have little "hook-up" with state agencies and therefore have little access to programs and money. The legislature never meets as the assembly for the Unorganized Borough. It is felt that there are not enough people in small communities to perform all

the required municipal functions as well as the functions of existing forms of government, such as IRA councils. RuralCAP recommends the recognition of IRA councils. Chairman Sturgulewski directed staff to prepare a memo on these issues.

Mike Walleri presented a new draft of his report entitled "Tribal-State Relations, A New Paradigm for Local Government in Alaska". The chair directed staff to review it.

Chairman Sturgulewski reported attending a meeting of the AVCP in Bethel, and said they were getting funds to do a regional government study. She also reported on attending the AFN convention in Anchorage. The people she talked to questioned parallel governments and duplication of functions in the communities where there were municipal governments as well as traditional governments.

Ginny Chitwood of the Municipal League was stranded in Juneau due to weather and her report was postponed.

Billy Berrier reported what the Commission had done to date. Ted Berns said the Technical Committee planned to present final recommendations to the Policy Group by the 15th of December, 1980.

The Technical Committee presented their proposed drafts for consideration to the Policy Group. Representative Branson moved that the Policy Group accept all recommended changes except those requiring more discussion. The motion was seconded and carried. The following sections were accepted. (Note: There were wording changes in some in the following) Sec. 29.06.010, Sec. 29.06.050, Sec. 29.12.260, 29.15.020, 29.15.050, 29.15.110, 29.65.050, 29.30.010, 29.30.020, 29.30.030, 29.30.050, 29.30.095, 29.30.110, 29.30.120, 29.30.130, 29.30.140, 29.30.150, 29.30.160, 29.30.170, 29.30.180. Sections 29.09.180 and 29.30.040 were sent to subcommittees for study.

The meeting was recessed until 9:00 a.m. 11 November 1980.

At 9:00 a.m. 11 November 1980 the meeting was again called to order in the East Gold Room of the Traveler's Inn, Fairbanks, Alaska. All members of the Policy Advisory Group were in attendance. Members of the public and guests who attended the day before were present and the following people attended as well: Ginny Chitwood, Ex-Officio Member; Gerald Lee Sharp, Title 29 Technical Committee; Richard Garnett, III, Title 29 Technical Committee, David Dye, Department of Community and Regional Affairs; Leo Rasmussen, City of Nome; L.C. Farnen, City of Homer; Kathy Herold, City of Homer; Carol Maser, Anchorage Assembly; Jenny Files, Fort Yukon; and former Mayor Bill Wood, Fairbanks.

Mayor Wood gave the first presentation. He spoke on the need for municipalities to have developmental authority in order

to [illegible] within the cities and boroughs. He submitted a letter from the City of Fairbanks regarding tax incentive programs and referred to Fairbanks ordinance 3906. The Technical Committee was directed to review AS 29.53.025.

John Halliwill, Mayor of Haines spoke in favor of the elimination of Third Class Boroughs.

Bob Juettener, City Manager of McGrath spoke on the problems of communities with small populations supporting the large number of organizations making up municipal government. He recommended an evaluation of second class cities and abolishing those that are not functioning. He suggests that the group providing the best service delivery be chosen as the governing body of a community. He feels the different classifications of cities should be abolished and provisions made for local options concerning the assumption of powers and form of government. He sees a need in the bush for a means of dealing with the executive branch of government, perhaps a regional or sub-regional elected body in the Unorganized Borough.

Ivan Widom, City Manager of Nome said there was a need to regionalize concepts in order to see what is happening in specific areas. He recommends giving communities mechanisms for reaching the state in order to benefit from services offered. Mr. Widom also recommended giving communities the option of choosing their own form of government, such as home rule.

Michael Tavoleiro, City Manager of Saxman spoke next, saying there was no definition of local government, i.e., no expressed definition of eligibility characteristics. He feels that second class cities within an organized borough are disenfranchised from planning powers. He stated also that second class cities should have direct access to federal and state programs instead of being required to go through the borough. Mr. Tavoliero cited the Historical Districts program as an example. He feels that local communities should be allowed more self-sufficiency.

Larry Farnen, City Manager of Homer spoke in reference to 29.48.260. He recommended raising the dollar amount in that section from $25,000 to $250,000. He wants cities to have the authority to lease land to beneficial new industry. In reference to planning and zoning powers, Mr. Farnen recommended the statutory language be changed to allow boroughs to <u>assume</u> planning and zoning powers if the cities are not willing to exercise them.

Dan Ogt, Mayor of the Kodiak Island Borough cited AS 29.30.160 saying there was no provision for special elections, and recommended special elections be mandated in the statutues.

Richard Careaga, Planning Director for the City of Unalaska wants more definition/clarification of mandatory powers and duties.

Lee Rasmussen, Mayor of Nome told staff government feels that it has lost control of its own destiny. Planning is being taken over by REAAs and SRAAs. He said Nome feels threatened by the possible organization of the Unorganized Borough and he asked for more local autonomy.

Returning to Old Business, the Policy Group continued its review of the recommended drafting changes submitted by the Technical Committee. Sec. 29.30.210 was reviewed. James Kohler moved to not accept the drafted change but to retain the current language. Charles Parr amended the motion, and it carried. The chair directed staff to clarify the wording of the current statute and resubmit it at the next meeting of the Policy Group. Secs. 29.30.220, 29.30.225, 20.30.230, 29.30.240, 29.30.250, 29.30.260, 29.30.270,29.30.280, 29.30.290, 29.30.300, 29.30.310, 29.30.320, were accepted with no changes or some wording changes. 29.30.330 was sent back to the Technical Committee for redrafting.

Two subcommittees were formed and are to give reports at the next meeting on AS 29.09.180 Organization Grants (Chair-McCarter) and AS 29.30.040 Voter Qualifications (Chair-Dimmick).

Two sections of Title 29 considered obsolete were discussed. The Policy Group will recommend the repeal of the sections on Involvement of Young People in Local Government and the repeal of the sections on Development Cities.

The dates of the next meeting of the Policy Advisory Group were set for 15, 16, and 17 December, 1980 in Anchorage.

Staff is to review the definition of "petitioner".

The meeting was adjourned at 4:30 p.m.

Respectfully submitted,

Melissa Aber Fouse
Secretary, Title 29 Commission

# TITLE 29 REVISION COMMISSION
## Policy Advisory Group Meeting

## Minutes of September 29 & 30, 1980

The second meeting of the Policy Advisory Group of the Title 29 Revision Commission was held September 29, 1980 in Courtroom K of the Alaska Court System Building, 303 K Street, Anchorage, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Group were: Senator Arliss Sturgulewski, Representative Charles H. Parr, Ronald Larson, Russell W. Walker, Marilyn Dimmick, Donna Sherby, Jonathan Solomon, James Kohler, Ted Berns, and Dennis Sheldon representing Terry Cook. Ex-Officio members present were Ginny Chitwood and Phil Smith. Richard Garnett, III was there as a member of the Technical Committee. Ted Berns and Russell Walker are members of both the Policy Group and the Technical Group. Present from the staff of Legal Services were Jack Chenowith and Tamara Cook.

There to make presentations to the Policy Group were C. Demming Cowles, Deputy Commissioner of the Department of Environmental Conservation; David Dye, Planner for the Department of Community and Regional Affairs; Dr. Fred McGinnis, Deputy Commissioner of the Department of Health and Social Services; Stephanie Scott, representing the Haines Borough Assembly; and Mike Walleri representing Tanana Chiefs, Inc.

Guests and members of the public attending were: Stuart Bowdoin, Bristol Bay Borough; Gary Bradford, Bristol Bay Borough, Glen Svendsen, Administrative Assistant, Senate Community and Regional Affairs Committee; Cris Fowler, AOGA Regulatory Reform Committee; Ray Menninger from Haines; Jim Bennett, researcher for AVCP (Calista Corporation); Ellen Greenburg, and Emily Larson.

After the meeting was called to order and guests introduced themselves, Commissioner Cowles began the presentations. He spoke regarding the functions of the Department of Environmental Conservation which could be locally done and raised policy questions about whether state or local government should be in charge of the following functions:

1. Water system and sewage disposal inspections.
2. Subdivision review of on-site sanitation capabilities.
3. Basic sanitation inspections of restaurants, hotels, etc.

4. Clean up of small oil spills.

5. The issuing of oily waste burn permits and surface oiling permits.

6. Litter control.

7. Vehicular emmissions control.

Changes to Title 29 would have to be made to allow for delegation of these powers. Commissioner Cowles suggested that the statutes could make it optional for small communities to assume these powers and provide for state reimbursement, because money for communities to perform these services is a problem.

Stephanie Scott representing the Haines Borough Assembly spoke next. The borough of Haines would like a clarification of the powers of third class boroughs. She reported that the Borough Chairman had the following recommendations to make:

1. Rewrite 29.48.260(e) to relieve procedural requirements under Libby vs. Dillingham.

2. Include inventories as optional exemptions from personal property taxation.

Ms. Scott stated there would be teleconference facilities available in Haines December 1, and there was a great deal of local interest in participating in a teleconference with the Policy Group.

David Dye, Planner III for the Department of Community and Regional Affairs made these recommendations from his division:

1. The law should be amended to allow municipal land exchanges with individuals. Municipal expansion land in some cases is located too far from the community to be used for municipal expansion. The definition of "municipal purpose" should be clarifed.

2. Subsection (c) of 29.48.260 sets out two procedural requirements for land disposal. Mr. Dye reccommends that lottery be added as an equitable way of disposing of land which is not based on wealth.

3. The provision for voter ratification of disposal of land valued at more than $25,000.00 should be changed to reflect current land values. A more realistic figure would be 50,000.00 to 100,000.00 dollars.

4. Subsection (d) of 29.48.260 exempts lands derived from the state from procedural requirements. C&RA suggests that exemption turn on the purpose of disposal, not the source of the land.

5. Under ANCSA, people who have occupied land after December 18, 1971 do not receive title to that land. C&RA would like a preference right for occupiers of land after that date to allow them to purchase land without having to bid.

6. Mr. Dye would like a definition of "official map".

7. The wording of AS 29.23.090 should be changed to substitute "land use regulation" for "zoning".

8. C&RA suggests that rather than a platting waiver provision, the section include a "short plat" provision to allow for additional platting requirements if the land were subsequently re-subdivided.

9. AS 29.33.070(b)(2) allows boroughs to delegate planning and zoning to cities. The Department of Community and Regional Affairs believes in consistent area-wide planning and wants only the delegation of enforcement and administration of planning.

10. The sections regarding Development Cities should be deleted.

Mike Walleri of Tanana Chiefs, Inc. spoke regarding municipal lands disposal and the need for preference to occupiers of land regarding purchasing rights. This should, however, be subject to the municipality's sanction of the use of the land. Mr. Walleri recommends a waiver of the requirements for land payments to the municipality, or that the state assist buyers in paying for the land. Tanana Chiefs would support a lottery system if the preference rights and waiver of payments to municipalities were included. Mr. Walleri spoke in favor of integrating traditional native governments into the municipal system, possibly through recognition by the state of the status of native governments as local state governments.

Dr. Fred McGinnis of the Department of Health and Social services told us that his department recommends the delegation of health powers to municipalities. If municipalities were to take over the providing of services, the DHSS would still receive federal funding, would disburse the funds, would audit programs, supervise, and be responsible to the federal government for the administration of the programs. He emphasized that these powers should be optional rather than mandatory, and that in the absence of local government being able to take over the function of health services, a local contractor could provide them.

After the presentations, the committee considered Old Business. Phil Smith gave a report on the conclusions of the Information Dissemination Committee. Their recommendations are: take advantage of scheduled meetings and conventions being held by interested groups; put inserts in newsletters; buy space in newspapers; and use the teleconference network. Mr. Smith reported that the Alaska Federation of Natives Convention will be making a room available for us at the Sheraton. Chairman Sturgulewski said a member of each group should be available to attend the AFN Convention. She also directed the Department of Community and Regional Affairs to prepare an article on the Title 29 revision project for newsletters.

Ted Berns gave a report from the Technical Committee. He explained the draft index of Title 29, saying the reorganization had been done by subject matter. Mr. Berns told the Policy Group that the Technical Group was now ready to start drafting and the group had broken up into smaller groups to work on specific changes.

Chairman Sturgulewski said the Policy Group would like justification of all drafted changes in the form of memos pointing out the pluses and minuses of each change.

Ted Berns suggested that the Policy Group go through the index section by section and determine policy questions.

The Policy Group reviewed the index until recessing at 4:30.

The meeting was called to order 30 September 1980 at 9:00 a.m. by Chairman Sturgulewski. With the exception of Bob Lohr sitting in for Phil Smith, the same members were present. Guests were: Bob Walker of Exxon; Cris Fowler of the AOGA Regulatory Reform Committee; David Dye from the Department of Community and Regional Affairs; Stephanie Scott, Ray Menninger, and Vivian Menniger from the Haines Borough; Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee; and Mike Walleri, Tanana Chiefs, Inc.

The Policy Group continued their review of the Title 29 index and the Technical Group was directed to make recommendations regarding the following:

1. AS 29.13.100. Review and make recommendations as to the limitations of home rule powers.

2. Edit the whole of Title 29 so that definitions are consistent.

3. List those procedures which can be handled by ordinances.

4. Prepare drafts to change prohibitions on powers.

5. Draft changes to the statute regarding initiative and referendum.

6. Draft provisions for emergency situations arising from the lack of a quorum.

7. Redraft statute enabling budget actions to take place other than by ordinance. Enable an individual municipality to set it's own limits.

8. Make recommendations regarding whether first class boroughs should be eliminated and consider the impact of this step.

9. Find out whether second class boroughs would still be able to implement a similar program if the statute about the Involvement of Young People in Local Government were to be deleted.

Chairman Sturgulewski directed that the Local Boundary Commission and Alan Tesche be invited to make a presentation in defense of retaining the statutes regarding Development Cities.

Ron Larson moved the Policy Group retain the 3-year residency requirement for candidates for municipal office. The motion was seconded, Jim Kohler raised a point of order. The motion carried.

Marilyn Dimmick moved that the wording of the grounds for recall be deleted. The motion was seconded. Ron Larson moved to table the motion. Larson's motion failed. Ted Berns moved to postpone the motion until the next meeting. The motion for postponement passed.

Bob Lohr of RuralCAP was directed to come back with specific recommendations for the Technical Group regarding small communities and their problems.

The meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Melissa Aber Fouse
Secretary

TITLE 29 REVISION COMMITTEE
Policy Advisory Group Meeting

Minutes of August 27 & 28 1980

The first meeting of the Policy Advisory Group of the Title 29 Revision Committee was held August 27, 1980 in the Conference Room of the Legislative Information Office, 1024 6th Avenue, Anchorage, Alaska. The meeting was called to order by Billy G. Berrier, Director of the Division of Legal Services at 9:00 am.

Present were: Ted Berns, Terry Cook, Marilyn Dimmick, James Kohler, Gene Moore, Donna Sherby, Jonathan Solomon, Russell W. Walker, Ronald Larson, Senator Arliss Sturgulewski, Senator Bob Mulcahy, Representative Margaret Branson, Representative Charles H. Parr as members of the Policy Group. Also present were Phil Smith and Mr. Palmer McCarter, Ex Officio Members of the Policy Advisory Group. Allan E. Tesche attended representing the Technical Committee. Ted Berns and Russell Walker are also members of the Technical Committee. Mike Walleri of the Tanana Chiefs Conference, Inc., and Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee were present. Billy Berrier and Tamra Cook were present representing the Division of Legal Services, Legislative Affairs. Tam Cook explained that Ginny Chitwood from the Alaska Municipal League could not be present but would attend future meetings as an Ex Officio member.

The first order of business was the selection of a chairman for the committee. Nominations were opened and Senator Sturgulewski was nominated by Representative Parr. The nomination was seconded and Senator Sturgulewski was elected Chairman by acclamation.

Mr. Berrier spoke on the role of the Technical Revision Committee and asked for an appointment of a group. A motion to set up a Technical Revision Group was made by Representative Branson. The motion was seconded and carried. The Technical Revision Committee members will be Ted Berns, Richard Garnett, III; John Messenger, Jim Nordale, JoAnne Shanley, Gerald Lee Sharp, Allan Tesche, and Russell Walker.

The Ex Officio members were introduced and there was discussion as to their role. It was agreed that they should sit at the table and take part in the discussion. Palmer McCarter spoke about the role of Community and Regional Affairs. He said that there would be a representative of C&RA at every meeting, either he or Patrick Poland would attend. Mr. McCarter also presented a letter from the Local Boundary commission requesting the statutes regarding Development cities be left in Title 29 but improved. Phil Smith spoke on the concerns of RuralCAP regarding the impact of government on villages and rural areas.

Representative Parr suggested directions for the Policy Committee: 1). greater self determination and latitude for local governments; and 2.) that elected officials should be able to understand Title 29 without the help of attorneys. Senator Sturgulewski agreed that Title 29 needed clarification.

The members present of the Technical Committee met briefly and Ted Berns, as spokesman, gave a report regarding the ideas they discussed. The group recommended that Title 29 be broken down into three sections.

1. The first section to be general provisions applying to all local government.
2. The second section to be delineation of procedures and additional limits on specific forms of government.
3. The third section to be directory provisions to be used unless the local government adopts ordinances of their own.

It was decided that the Technical Committee should attempt to reorganize Title 29 along these lines and present a draft at the next meeting.

Mike Walleri, Village Government Specialist, Tanana Chiefs Conference, Inc., spoke, saying he would like a simplification of government.

A list of items pertaining to Title 29 included in the preliminary draft of the Alaska Municipal League 1981 policy statement was handed out.

Future meeting dates and places were discussed. None were decided upon.

The kinds of things applicable to all municipalities were discussed, such as incorporation, dissolution, boundary changes, classification of government, extraterritorial powers, merger/consoldiation, revenue, taxation, bonding, and intergovernmental relations.

Protection of people in service areas who are not represented by local government, such as persons living outside city limits, was discussed.

The meeting recessed at 4:00 pm.

The meeting was called to order the second day at 9:00 am., Chairman Sturgulewski presiding. In addition to the persons present at the first day's meeting, Chris Johnson of House Research and Nels Franklin from near Dillingham were present, and introduced by Chairman Sturgulewski.

Ted Berns gave a recap of the first days meeting.

Terry Cook was appointed repository of ridiculous laws.

Senator Mulcahy spoke on the problem of getting information, drafts, and policy issues to all municipalities within the time constraints. Phil Smith suggested a teleconference and said that he would be presenting material at the Alaska Federation of Natives Convention (23-25 October 1980, in Anchorage). It was decided that the problem of getting materials and information to the public would be an agenda item at the next meeting. Palmer McCarter, Phil Smith, and Ginny Chitwood of the Alaska Municipal League were appointed to a committee to research this problem and make recommendations.

Melissa Fouse was introduced as the new secretary to the Title 29 Revision Committee.

As part of the reorganization of Title 29, there was discussion as to which statutues belonged in which category.

Representative Parr wants a uniform provision on executive session. There was discussion on executive sessions.

The question of retaining present categories of government was raised and discussed. Ted Berns suggested only two classes of boroughs and home rule, pointing out that there are no first class boroughs.

The question of development cities was raised and discussed. Should we retain, restructure, or eliminate development cities?

There was discussion on the third category. If a municipality choses to follow procedures, should they be required to follow all of them?

Senator Mulcahy's legislation regarding the recognition of village governments was discussed. Copies of HB 192 are to be mailed to committee members.

There was discussion of persons representing committee members being allowed to vote. Mr. Berrier had reservations based on the appointment of the members of the commission according to resolution. It was decided that persons filling in for committee members be allowed to take part in the discussion, but would not be allowed to vote.

The meeting was adjourned at 12:00 pm.

Respectfully submitted,

Melissa Aber Fouse

MEMORANDUM November 17, 1980

SUBJECT: Title 29 Policy Group Meeting

TO: Accounting

FROM: Melissa Aber Fouse, Secretary
Title 29 Revision Commission

The Title 29 Revision Commission held a meeting 10 and 11 November, 1980. The meeting was held in Fairbanks. Attending were:

Ted Berns
Margaret Branson
Terry Cook
Marilyn Dimmick
James Kohler
Ronald Larson
Gene Moore
Bob Mulcahy
Charles Parr
Donna Sherby
Arliss Sturgulewski
Jonathan Solomon
Russell Walker
Billy G. Berrier
Tamara Brandt Cook
Melissa Aber Fouse
Allan Tesche
Gerald Lee Sharp
Richard Garnett, III

NOTICE OF MEETING
September 10, 1980

A Policy Advisory Group as been appointed to oversee the revision of the Municipal Code, Title 29 of the Alaska Statutes. The Policy Advisory Group is composed of thirteen members. Of these, nine public members represent a broad range of local officials interested in Title 29. The public and legislative members of the Title 29 Policy Advisory Group are:

Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
Ron Larson, Mayor, MatanuskaSusitna Borough
Jim Kohler, Manager, City of Yakutat
Gene Moore, Manager, City of Kotzebue
Donna Sherby, Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough
Representative Charles H. Parr, Fairbanks
Representative Margaret A. Branson, Kenai Peninsula
Senator Bob Mulcahy, Kodiak
Senator Arliss Sturgulewski, Anchorage

The second meeting of the Policy Advisory Group is scheduled for September 29th and 30th, 1980. The meeting will begin at 9:00 am at the Legislative Information Office, 1024 West Sixth Avenue, Anchorage, Alaska. The telephone number there is 278-3668.

The proposed agenda for this meeting is:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:
   a. Recommendations by Ex-Officio members for ways of getting materials and information to the public.
   b. Report on reorganization of Title 29 by the Technical Revision Committee.
   c. Other old business.

4. New Business:

a. Presentation of proposed items for consideration by members of the Policy Advisory Group.

b. Presentation of proposed items for consideration by Ex-Officio members.

c. Presentation of proposed items for consideration by the Technical Revision Committee.

d. Other new business.

5. Setting of future meeting dates for the Policy Advisory Committee.

It is the intention of the Policy Advisory Group to undertake a thorough review of Title 29. To make this possible, the Policy Group requests that any questions about Title 29 be forwarded to them. Comments on Title 29 may be sent to:

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

As the review of Title 29 must be completed before the next legislative session, it is important that any suggestions for revision be mailed as soon as possible. It is hoped that all areas of Title 29 needing revision can be identified before this meeting.

Thank you for your interest in the revision of Title 29. Again, any comments on areas of Title 29 that, in your opinion, need review will be helpful to the Policy Advisory Group.

M E M O R A N D U M

September 15,1980

SUBJECT: Budget Expenditures - Title 29 Commission

TO: Billy G. Berrier, Director
Legal Services Division

FROM: Melissa Aber Fouse, Secretary
Title 29 Commission

As of 1 August 1980 only $15.00 had been spent of a total budget allocation of $53,800.00 for the Title 29 Commission. The Policy Meeting held on 27 and 28 August cost $3910.25 in travel and per diem for the policy group members.

The estimated cost of the 08 September 80 Technical Committee meeting (not all claims have been submitted) is $1400.00.

To date, personal services have cost $1425.00.

This leaves a balance of $47,049.75.

Attached are my estimates of the costs of the scheduled meetings of both the Policy and Technical committees plus the cost of my personal services to 15 January 1981.

maf

Attachment

Title 29 Commission Projected Expenditures

| | |
|---|---|
| Balance as of 15 September 1980 | $47,049.75 |
| Personal Services to 15 Jan 81 | 11,400.00 |
| Estimated cost of Technical Committee meeting 19 Sep 80 | 2,000.00 |
| Estimated cost of Policy Committee meeting 29 & 30 Sep 80 (Anchorage) | 5,000.00 |
| Estimated cost of Policy Committee meeting 11 & 12 Nov 80 (Fairbanks). | 6,000.00 |
| Remaining Balance | $22,649.75 |

November 7, 1980

Timothy E. Troll
City Manager
City of St. Mary's
P.O. Box 163
St. Mary's, Alaska 99658

Dear Mr. Troll:

I have submitted copies of your letter to members of the Title 29 Policy Advisory Group so that they will be aware of your concern over AS 29.48.260. Your other comments which were originally sent to the Department of Community and Regional Affairs have been made available to the Title 29 Policy Advisory Group as well. Please send any additional comments which you have to me and I will see that members of the Policy Group receive copies.

I talked by phone with Mr. James N. Reeves on November 5, 1980. He indicated that he would like to address the Policy Group at the next meeting they hold in Anchorage. I will inform him of the meeting time and place as soon as it is set. Time is made available during meetings of the Policy Group to any person who wishes to address the group, so perhaps you would like to attend a meeting as well. I expect that the Policy Group will decide to meet again early in December and I will inform the group of your desire that the meeting be held in Anchorage.

Sincerely,

Tamara Brandt Cook

Tamara Brandt Cook
Legislative Counsel

TBC:maf

cc: Title 29 Policy Advisory Group
James N. Reeves

November 5, 1980

Carol A. Tellevick
City Clerk
City of Port Alexander
Box 725
Port Alexander, Alaska 99836

Dear Ms. Tellevick:

Here is a copy of Title 29 and the supplement. The supplement does not include legislation passed during the 1980 session, so you should contact the Michie Company to order the new supplement when it is printed. If I can help in any other way please let me know.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:maf

Encl.

October 22, 1980

Stephanie K. Scott
Administrative Secretary
Haines Borough
P.O. Box H
Haines, Alaska 99827

Dear Ms. Scott:

Thank you for your letter. I have provided copies of the material you sent to all members of the Title 29 Advisory Policy Group.

For your information the Superior Court opinion City of Kodiak v. Kodiak Island Borough was never appealed. Unfortunately, I am not aware of any additional case law construing the statutory provision which limits the authority to form service areas. I will forward any additional information I receive on the subject to you. You have suggested that AS 29.63.090(d) be rewritten to provide more flexibility to municipal governments in creating service areas. Since that section is essentially a restatement of language contained in the state constitution, I doubt that rewritting the statute would accomplish your purpose.

Please send me any other suggestions which you may have regarding proposed changes to the Municipal Code and I will gladly forward them on to the Policy Group. Our next meeting is scheduled to be held in Fairbanks on November 10th and 11th. I hope to see you there.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Title 29 Policy Advisory Group

MEMORANDUM

October 22, 1980

SUBJECT: Title 29 Technical Committee Meeting

TO: Accounting

FROM: Melissa Fouse, Secretary
Title 29 Revision Commission

The Technical Committee of the Title 29 Revision Commission held a meeting on 20 October 1980. The meeting was held in Anchorage. Attending were:

Ted Berns
Russell W. Walker
Tamara Brandt Cook
Melissa Aber Fouse
John Messenger
James Nordale
JoAnne Shanley
Allan E. Tesche
Gerald Lee Sharp
Richard Garnett, III
Billy G. Berrier

maf

M E M O R A N D U M

24 September 1980

TO: Sharon Sturrock, Accounting
Legislative Affairs

FROM: Melissa Aber Fouse, Secretary
Title 29 Commission

We will need a check for $38.00 to give to the Alaska Court System to pay for security charges incurred when our Title 29 Commission Policy Group meeting goes past 4:30 p.m. on both the 29th and 30th of September 1980.

September 10, 1980

Ms. Marilyn Dimmick
Box 151
Ninilchik, AK 99639

Dear Ms. Dimmick:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. James Kohler
P.O. Box 6
Yakutat, AK 99689

Dear Mr. Kohler:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Gene Moore
P.O. Box 186
Kotzebue, AK 99752

Dear Mr. Moore:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Ms. Donna Sherby
P.O. Box 1210
Cordova, AK 99574

Dear Ms. Sherby:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cock
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Russell W. Walker
Box 7300
Ketchikan, AK 99901

Dear Mr. Walker:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Representative Margaret Branson
P.O. Box 740
Cooper Landing, AK 99572

Dear Representative Branson:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Representative Charles H. Parr
S.R. Box 50599
Fairbanks, AK 99708

Dear Representative Parr:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Barrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Senator Bob Mulcahy
P.O. Box 246
Kodiak, AK 99615

Dear Senator Mulcahy:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, AK 99501

Dear Senator Sturgulewski:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Ronald Larson
Box B
Palmer, AK 99645

Dear Mr. Larson:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Jonathan Solomon
P.O. Box 269
Fort Yukon, AK 99740

Dear Mr. Solomon:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Terry Cook
Box 33
Alakanuk, AK 99554

Dear Mr. Cook:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Ted Berns
Pouch 6-650
Anchorage, AK 99502

Dear Mr. Berns:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Ms. Ginny Chitwood
204 North Franklin
Juneau, AK 99801

Dear Ms. Chitwood:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook

September 10, 1980

Mr. Palmer McCarter
Pouch B, Mail Stop 2100
Juneau, AK 99801

Dear Mr. McCarter:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook

September 10, 1980

Mr. Phil Smith,
327 Eagle Street
Anchorage, AK 99501

Dear Mr. Smith:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook

**M E M O R A N D U M** September 26, 1980

**SUBJECT:** Proposed drafting change

**TO:** Advisory Policy Committee -
Title 29 Revision

**FROM:** Tamara Brandt Cook
Legislative Counsel

This is a proposed technical revision which makes no substantive legal changes. I have used the chapter and article numbers which these sections are organized under according to the reorganization proposed by the Technical Committee. The section number, AS 29.23.310, is the section in which this material appears in the existing Title 29.

In an effort to make this section clearer to the unsophisticated user, I am proposing a new opening section containing a cross-reference to the appropriate statute dealing with school districts. I have subdivided the existing section 29.23.310 in order to segregate material applicable to specific types of municipalities. I have also somewhat expanded this section to include a reference to the fact that the assembly serves as school board for third class boroughs. I added subsection (c) to provide notice within Title 29 of the existence of a provision outside of the title providing for an alternative to the school board membership requirements set out in Title 29.

In general, I have expanded the section dealing with school boards in order to provide more complete coverage of that topic in one place in the statutes for ease of use.

TBC:ljb

Enclosure

**MEMORANDUM** September 25, 1980

**SUBJECT:** Proposed drafting change

**TO:** Advisory Policy Committee -
Title 29 Revision

**FROM:** Tamara Brandt Cook
Legislative Counsel

This is a technical revision which includes no substantive changes in the law. The section numbers used match existing section numbers, however, the sections have been arranged in the order proposed by the Technical Committee as part of their reorganization of Title 29. This draft contains the complete Article 1 (General Powers) under the proposed reorganization scheme.

TBC:ljb

Enclosure

**MEMORANDUM** October 2, 1980

**SJUBJECT:** Proposed drafting change

**TO:** Policy Group
Title 29 Revision Commission

**FROM:** Tamara Brandt Cook
Legislative Counsel

This is a proposed technical revision of AS 29.53.020 dealing with exemptions from property taxation but containing no important substantive legal changes. However, I wish to alert you to a change which may have some substantative impact.

AS 29.53.020(e) currently contains the language

> Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall between or among themselves which shall receive the benefit of the exemption.

This sentence has been in subsection (e) since 1972, but its meaning is unclear. I checked with Mr. Lee Sharp, Municipal Attorney for Juneau, and Mr. Terry Early, State Assessor regarding the meaning of this provision. Both of them agreed with me that the section is unclear and Mr. Early advised me to check with an assessor to see how it has been applied in the field. I contacted Mr. Bob Howe, Juneau assessor, and he imformed me that the sentence in question has been ignored as a practical matter. I also checked with the Department of Revenue and was informed that they rely upon information supplied by the boroughs in determining the amount of the state rebate, and therefore have not been interpreting this sentence themselves. Consequently, I have deleted this sentence from this draft.

M E M O R A N D U M

September 26, 1980

**SUBJECT:** Proposed drafting changes

**TO:** Advisory Policy Committee -
Title 29 Revision

**FROM:** Tamara Brandt Cook
Legislative Counsel

As noted in several of the comments submitted to the Advisory Policy Committee, the status of an ordinance between the time of adoption and the time of veto is unclear in the current statutes. This draft contains several substantive legal changes which would clarify this situation.

1. An ordinance takes effect 30 days after adoption or at a later date specified in the ordinance. Currently the statutes are unclear as to when an ordinance is effective. The 30 day period, could, of course, be shortened or lengthened.

2. Copies of the ordinance are to be made available within five days. Currently, there is no time period designated and the statutes merely indicate that copies of an ordinance are to be made available. The five day period, could, of course, be lengthened or shortened.

3. In order to go along with the first two proposed substantive changes, I have added a requirement that ordinances be vetoed within 30 days. The existing law gives no time frame within which a veto must be exercised.

4. In the case of a veto, the mayor must immediatly submit a statement advising of the veto and giving reasons. Under existing law, the mayor is required advise of a veto during the next regular meeting of the assembly or council. Since an assembly or council may not meet very often on a regular basis, I feel that the assembly or council ought to be

informed of a veto so that it can call a special session to attempt to override it.

5. An emergency ordinance is immediately effective after adoption, which appears to be the case under existing law. If vetoed, it ceases to be effective immediately and a veto may not be overriden. Since it takes a larger majority to pass an emergency ordinance than to override a veto, absent this provision, it appears that a veto could always be overriden. The assembly or council would still have the alternative of passing an ordinary ordinance, should an emergency ordinance be vetoed.

6. Copies of emergency ordinances are to be made available within 24 hours after adoption. The current law provides that copies be made available without specifying a time period for compliance.

In addition to the substantive changes mentioned above, this draft constitutes a complete technical revision of the sections. Section numbers match the numbers as they currently exist in Title 29.

Please let me know whether this approach appears satisfactory. I would be glad to make any desired changes to this draft.

TBC:ljb

Enclosure

MEMORANDUM 28 October 1980

TO: Technical Committee
Title 29 Revision Commission

FROM: Tamara Brandt Cook
Legal Services

SUBJECT: Changes Recommended to Title 29 by the Technical Committee

Attached is the second batch of the drafting changes we discussed at our 10 October meeting. If you get an opportunity to check these over, I would appreciate it. Take an especially close look at the explanations, since these will form the basis of a memo I prepared to justify these changes to the Policy Group.

Please send me any recommendations for improvements to either the drafts themselves or to the explanations, or I can be reached by phone at 465-4996 November 5th, 6th, and 7th.

maf

Attachments

**MEMORANDUM** 24 October 1980

TO: Technical Committee
Title 29 Revision Commission

FROM: Tamara Brandt Cook
Legal Services

SUBJECT: Changes Recommended to Title 29 by the Technical Committee

Attached you will find the first batch of the drafting changes which are, hopefully, accurate reflections of the drafts agreed to by the Technical Committee. If you get the opportunity to check these over, I would appreciate it. Take an especially close look at the explanations, since these will form the basis of a memo I prepared to justify these changes to the Policy Group.

Please send me any recommendations for improvements to either the drafts themselves or to the explanations, or I can be reached by phone at 465-4996 November 5th, 6th, and 7th. I will send you the other drafts as rapidly as they are completed.

maf

Attachments

To: Melissa River Rouse, Secretary
Title 29 Revision Committee
Legislative Affairs Agency
Pouch Y - State Capitol
Juneau, alaska 99811

From: [redacted]
[redacted]
Box 1210, Cordova, Alaska 99574
Phone 907-424-3227 or 424-[redacted]

SUBJECT

DATE 11-17-80

**MESSAGE**

Dear Melissa: Sorry - I forgot to get this to you at the last minute. Didn't know for sure just what I should claim on the per diem. Would have had to overnight in Anchorage going both ways if I had just come up for Title 29 - but did stay over for the League so will let you figure it out!!

Thanks

SIGNED Donna Sherby, Cordova

**REPLY**

SIGNED

DATE / /

Rediforms 45 471

SEND PARTS 1 AND 3 WITH CARBON INTACT - PART 3 WILL BE RETURNED WITH REPLY.

POLY PAK (50 SETS) 45 471

## ISSUES TO BE IDENTIFIED IN A POLICY ADVISORY GROUP REPORT

1. How to provide representation for people living outside municipal boundaries, but within a municipal service area (as when a city extends utility service beyond its boundaries).

2. Should a uniform provision on executive sessions be included in Title 29 delineating specific occasions when it is appropriate to call for an executive session of a municipal governing body?

3. Should there be only two classes of borough -- home rule and general law?

4. Should there be only two classes of city -- home rule and general law?

5. Should villages which are currently unincorporated be recognized as municipal corporations under state law? Should IRA councils be recognized as municipal governing bodies?

6. Should the state or local government be primarily responsible for providing the following services: water system and sewage disposal inspections; subdivision review of on-site sanitation capabilities; sanitation inspections of restaurants, hotels, etc; clean-up of small oil spills; the issuing of oily waste burn permits and surface oiling permits; litter control; vehicular emmisions control? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to meet applicable standards to qualify for federal funding and to avoid state liability if the programs are not properly carried out by the local governments?

7. Should the state or local government be primarily responsible for the provision of health services? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to qualify for federal funding?

8. How to insure that local issues are dealt with in the unorganized borough, since the legislature rarely meets as the assembly for the unorganized borough.

9. How to avoid establishing multiple governmental and administrative bodies with duplicate functions in small communities which suffer from a lack of people to fill the positions.

10. Should there be a regionally elected body in the unorganized borough to manage local service programs and to deal with the state?

**ISSUES TO BE IDENTIFIED IN A POLICY ADVISORY GROUP REPORT**

1. How to provide representation for people living outside municipal boundaries, but within a municipal service area (as when a city extends utility service beyond its boundaries).

2. Should a uniform provision on executive sessions be included in Title 29 delineating specific occasions when it is appropriate to call for an executive session of a municipal governing body?

3. Should there be only two classes of borough -- home rule and general law?

4. Should there be only two classes of city -- home rule and general law?

5. Should villages which are currently unincorporated be recognized as municipal corporations under state law? Should IRA councils be recognized as municipal governing bodies?

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| NAME | SENT TO: | DATE: |
|---|---|---|
| News Release | Pat Poland | 25 Nov ? |
| DRAFTING CHGS (Seemen) | Senator-elect Don Gilman | |
| Received: Memo fm State Assn (City) Clerks | Received at Tech Mtg | 03 Dec |
| DRAFTING CHGS | see Memos | 09 Dec. |
| Received at Policy Group Meeting 15, 16, 17 Dec 80: | | |
| Alaska Municipal League Policy stmt | | |
| Ltr fm Haines Borough w resolution & Ltr fm Kenai Penin boro, AML attached | | |
| Ltr fm Haines Boro re: elim of 3rd cl. boros. | | |
| Telegram fm City of Haines re: elim of 3rd cl boros. | | |
| Letter fm Lee Sharp re: recall | | |
| " " City of Wrangell re " | | |
| Letter fm Lee Sharp re: Initiative & recall | | |
| Proposed bill #3 fm | CERA re: organizational grants | |
| Minutes of Mtg (15, 16 & 17 Dec Policy) | ALL | 23 Dec |
| | NOTE: packets sent to KOHLER, Sherby & Mulcahy with materials rec'd at Policy mtg | |
| Proposed bill #3 Ltr City of Wrangell Tele- " " Haines | ALL Policy Group Members | 23 Dec. |
| + OTHER MAT RECD at mtg + minutes | Tech Comm & Ex-Officio | 23 Dec |
| Letter fm City of Barrow | to Policy Group | 02 Jan |

Reading File
Title 29

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM

19 January 1981

TO: Sharon Sturrock
Accounting

FROM: Melissa Aber Fouse
Title 29 Revision Commission

SUBJECT: Policy Group Meeting

This is to notify you that there was a Title 29 Revision Commisson meeting in Juneau on 17 and 18 January 1981. Attending were:

Ted Berns
Margaret Branson
Timothy Troll, substituting for Terry Cook
Marilyn Dimmick
James Kohler
Ronald Larson
Gene Moore
Bob Mulcahy
Charles Parr
Arliss Sturgulewski
Johnathan Solomon
Russell Walker
Jim Nordale
Lee Sharp

# AGENDA

## TITLE 29 REVISION COMMISSION
## Policy Group Meeting

January 17th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

a. Presentation by Larry Kimball, Director, Division of Community Planning, Department of Community and Regional Affairs: "Planning for Small Communities."

3. Old Business:

a. Approval of Minutes.
b. Report by subcommittee chairman on AS 29.09.180. (Organizational Grants).
c. Report by subcommittee chairman on AS 29.30.040 (Voter Qualifications).
d. Presentation of proposed drafts by the Technical Committee.
e. Other Old Business.

4. New Business:

a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
b. Presentaion of proposed items for consideration by Ex-Officio Members.
c. Presentation of proposed items for consideration by the Technical Revision Committee.
d. Other new business.

January 18th:

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4. New Business.

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1. Introduction of guests and members of the public attending.

2. Presentations by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business.

4. New Business.

Received 7/14 cc Policy Group

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**
*DIVISION OF LOCAL GOVERNMENT ASSISTANCE*

*POUCH B*
*JUNEAU, ALASKA 99811*
*PHONE: (907) 465-4707*

July 15, 1980

Haines Borough Assembly
Box H
Haines, Alaska 99827

Dear Assembly Members:

Title 29, which contains the Alaska Statutes on municipal government, specifies that the mayor of a third class borough must be elected at-large for that position. An assemblyman cannot assume the position of mayor since the assemblyman was elected as a voting member of the borough's governing body and the mayor cannot vote. Each assembly member elected to that position has an obligation to vote.

As the mayor of a third class borough cannot vote or exercise the veto power, the assembly need not be concerned about affecting the present borough apportionment by the election of a mayor in addition to the assembly members. There would be no change to the present apportionment.

These comments are offered for your consideration as the Haines Borough prepares for its regular election this fall.

Sincerely,

Palmer McCarter
Director

PMc:MF:jh

cc: Stephanie Scott, Haines Borough
Thomas Blanton, Borough Attorney

Received 7/17/80 SKS

21-P3LH

MEMORANDUM

FROM: FOLTA & ASPER, Borough Attorneys

TO: HAINES BOROUGH ASSEMBLY

RE: Voting By Borough Mayor

DATE: September 18, 1973

A question has come up under the new municipal code regarding the vote of the Borough Mayor in a Third-class Borough. Third-class Borough questions are difficult to resolve because Chapter 41 of Title 29, which refers to them, only briefly indicates what they can and cannot do. For questions not answered in Chapter 41 we assume that provisions governing First and Second class boroughs apply. The fact that Haines is the only Third class Borough in the state means that no guidance can be had on these questions from the experience of other municipalities in Alaska.

At the present time the assembly has chosen a mayor from among its members and the mayor is following section 29.23.160 which says that the mayor shall participate in assembly decisions but may not vote. Since Mr. Olerud, the present mayor, is a representative of the city of Haines he carries a weighted vote which is lost to city voters by his seeming inability to use it. Although to date the Mayors' non-voting has not affected the outcome of borough consideration on any matter, it is quite possible that this could happen in the future.

After reading the statutes it seems apparant that the problem lies in the fact that the mayor is also a member of the assembly. We have concluded, and our conclusion is agreed on by attorneys in the Local Affairs Agency, that the new municipal code

requires that there be a borough mayor, even in Third-class Boroughs, but that the mayor be a separately elected official, who is not a member of the assembly (Section 29.23.130). This official would be elected at large in the Borough and would be the chief administrator for the Borough, but would not vote. In a first or second class Borough the Mayor has a veto power to overrule the assembly, but this power is specifically denied the mayor in a third class Borough. (Section 29.41.020) The Assembly would continue in its present form but would choose a presiding officer to manage assembly meetings. (Section 29.23. 060 (b) )

Our recommendation at this time is that a Borough Mayor be elected in the Haines Borough whenever possible and in the meantime that Mr. Olerud resume voting with the understanding that his office is really that of Presiding Officer of the Assembly rather than the Borough Mayor as contemplated by the municipal code.

We would point out that the Borough Mayor scheme was primarily written into the municipal code for the use of the larger First and Second class Boroughs and may be too much government for this Third Class Borough, which is operating in good order now without a separately elected mayor. If the Borough must elect a mayor, as the statute seems to require then perhaps this presents a good opportunity to once again consider alternate forms of government for this area. The third class Borough has some very good points but this question and others indicate that it is a sort of Legislative afterthought which will continue to present problems which were never considered by the lawmakers when they enacted the municipal code.

cc Policy Group

# WINGREN ENTERPRISES

(907) 225-4365
P.O. BOX 5197
KETCHIKAN, ALASKA 99901

10 January, 1981

Senator Arliss Sturgulewski
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Sturgulewski

I quote Alaska Statute 29.53.025. It reads, in part as follows:
(b) Municipalities may by ordinance
(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certified net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

The City of Ketchikan and the Ketchikan Gateway Borough has chosen to listen to the hue and cry from boat owners that if their taxes are increased, they will take their boats and their business elsewhere. I, along with numerous other taxpayers, feel that boats should be taxed on assessed valuation, the same as other real property, including airplanes. It is very unlikely that our local government will change to assessed valuation, as long as they have another option. It is also very unlikely that our local state legislators will ever push to amend the state law to make taxation on assessed valuation mandatory. I therefore appeal to you, whom I understand has given this matter some study, to introduce such legislation.

Very truly yours

Paul J. Wingren

# HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711


December 31, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

RE: Correction to December Title 29 Commission Minutes

Dear Senator Sturgulewski:

On page 3 of the minutes of the December 15, 16 and 17th Title 29 Revision Commission meeting it is stated that the technical committee was directed to bring back wording to allow the transition from any class of city to home rule. I am under the impression that the technical committee was directed to bring back language that would allow the transition from any class of borough or city or unincorporated area to home rule. Discussing the motion to eliminate third class boroughs and to grandfather the Haines Borough, Terry Cook emphasized his desire to see legislation developed which would allow transition from any class of borough or city to home rule. The direction to the technical committee followed this discussion and I do think it included transition of any class of boroughs as well as cities to home rule. Perhaps a double check of the tape would clarify this issue.

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

xc: Tamara Cook
Legislative Affairs

Millisa Fawset

Sent to [illegible] Committee

# CITY OF BARROW

"farthest north incorporated city"
BOX 629
BARROW, ALASKA 99723
PHONE (907) 852-5211

December 10, 1980

Senator Arliss Sturgulewski
Assembly Bldg.
Room 100
Juneau, Alaska 99811

Re: Title 29 Revisions

Dear Arliss:

I would like to submit the following comments for your consideration, regarding Title 29 of Alaska Statutes and its revisions.

It appears to me, that we here on the North Slope have our own unique situation, in that we are within a home rule Borough and are a first class City operating within that Borough. The Borough seat is headquartered in our City. The City has minimal powers left and does not have a property tax.

Many times, in attempting to provide new, or upgrade existing services and/or facilities, we have been hindered or stopped by lack of co-operation by the Borough. When we turn to Title 29 and cite the appropriate authorizations to undertake a particular venture we are stopped time and time again by the Borough explanation that Title 29 doesn't relate to them except as noted in Section 29.13.100. To help aleviate this problem, I would like to seem Home Rule Boroughs bound by the Sections in Title 29, unless otherwise so noted in a particular section. Home Rule Boroughs would be allowed to carry on their municipal functions beyond that in Title 29, but they would be bound by all sections of Title 29. This approach is directly opposite than the one currently ruling the conduct of Home Rule Boroughs. Cities would still be limited as to what they could do ---specifically, that which was authorized in Title 29.

In reviewing Title 29, I would like to bring to your attention some of the sections that we have dealt with that have caused us some difficulties or confusion.

Section 29.23.270 Veto (a) The mayor of a first class city may veto any ordinance, resolution, motion, or other action of the council and by veto, strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for schcol budget items. He shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons. A veto is overridden by the vote of two-thirds of the authorized membership of the council.

The part about "he shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons." leaves it unclear when a veto is made, is it a verbal veto at a meeting where the action takes place

or is it the written veto at the next meeting that puts a veto in effect. If so, does the council action stand until the written veto is presented at the next meeting. Again, if that is the case, what happens when the mayor wants to veto an action but the course of action sought by the council will have all ready taken place before the veto can be placed before the council at their next meeting.

29.22.570 Vacancies. An elected municipal office is vacated under the following conditions and upon the declaration of vacancy by the assembly or council. The assembly or council shall declare an elective office vacant when the person elected

(6) misses three consecutive regular meetings unless excused;

I think that some guidelines should be mentioned as to what is excused or unexcused, i.e. failure to notify the city office that they will be unable to attend, off on a campaign tour for another elected office.

Initiatives and referendums: There should be a submittal deadline for invitations and referendums that wish to be considered on an upcoming general election 15 days, 30 days, 45 days, 60 days prior to the eldction. If all the procedures, protests and appeal time lines were allowed for it might look something like this:

| | | | |
|---|---|---|---|
| Absolute deadline if an initiative or referendum is to be placed on the Ballot (to allow for printing) | | | 15 days |
| Section 29.28.073 | (a) | City Clerk has 10 days to certify petition | 10 days |
| | (b) | Petitioners have 10 days to correct insufficient petition | 10 days |
| | (c) | Clerk has 10 days to certify corrected petition | 10 days |
| Section 29.28.075 | | Petitions have 7 days to file protest with Council | 7 days |
| | | Council to decide appeal at next meeting (14 days for Council 30 days for Assembly; for sake of uniformity use 30 day Assembly timeframe) | 30 days |
| | | Total days required for process | 82 days |

In the current Title 29, the initiative/referendum section doesn't apply to Home Rule Municipalities and the North Slope Borough has no provisions for initiatives or referendums in their Code of Ordinances. The North Slope Borough charter outlines the basic initiative/referendum requirements. However, the charter goes on to say the initiative/referendum procedures must be established by Ordinance, of which there is none.

It would make life much simpler if the requirements, format, and timelines for all petitions were standardized.

Section 29.33.030 Assessment and Collection. Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to Chapter 53 of this Title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

This Section doesn't apply to Home Rule Boroughs so technically speaking, a Home Rule Borough could tell any of the cities in its jurisdiction that it will no longer collect the cities taxes. In our area this would place an undue and perhaps backbreaking burden on some of our communities.

Section 29.33.110 Board of Adjustment. (a) The assembly is the board of adjustment for areas outside cities. The City Council is the board of adjustment for the area within the City boundaries but may delegate by resolution or ordinance part or all of its functions to the borough, subject to & 70 (b) (1) of this chapter, in addition to making delegations as provided for an assembly under & 245 of this chapter. Meetings of the borough board are held at the call of the presiding officer and of the city board by the Mayor. The presiding officer or Mayor may administer oaths and compel attendance of witnesses. Meetings and hearings of the board shall be open to the public and the board shall keep minutes of its proceedings as a public record.

The rational behind this escapes me, but again it doesn't apply to Home Rule Boroughs. It would be very interesting if our City Council could act as the Board of Adjustment within our City, instead of the Borough Assembly.

Section 29.48.030 Municipal Facilities & Services. (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

We have had several problems with this and Section 29.48.035 Regulatory Powers.

> The question has arisen about whether or not when you transfer a power under 29.48.030 you also transfer any regulatory powers that might be associated with the power transfered, especially if the regulatory power is mentioned in 29.48.035.

Where we have run into our biggest problem is when we transfer a power under 29.48.030, such as police powers, where we transfer a power complete with enforcement ordinances,and the Borough refuses to exercise the enforcement ordinances. Furthermore, the Borough sees no need in enacting ordinances of their own. To us, this seems like we receive a lower level of service than we had before. We have presented this problem to the State and their opinion is that City ordinances transfer with the power until amended, repealed, or a new Borough

Ordinance supercedes the transfered City ordinance. The Borough says they don't quite see it that way. However, they will enforce the City's ordinances, as their priorities allow, and we will have to prosecute in Court. This is the same procedure they use with the State. They will enforce State Statutes and the State is responsible for prosecuting in Court. Since the Borough doesn't have any ordinances to enforce, they don't have to worry about prosecuting costs for the Borough. A cost that is prohibitive to the City. From our standpoint, we would like to see it made manditory, that when a power is transfered, so is the responsibility for accepting and enforcing any associated ordinances until such time as the Borough amends or implements new ordinances.

I'm sure that it would have to be explored in greater detail, but, perhaps a mechanism should be developed through which a City could have a power returned to it by a Borough.

Section 29.48.150 Ordinance Procedure. (a) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the assembly or council or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance and its amendments is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The assembly or council shall hear all interested persons wishing to be heard. After the hearing, the assembly or council shall consider the ordinance and may adopt it with or without amendment. The assembly or council shall print and make available copies of adopted ordinances.

We would like to see a better definition of published, as called for in this section. Perhaps in rural areas, publishing could be accomplished by posting around town, often times it is unrealistic for a remote rural area to publish a notice in a Fairbanks or Anchorage paper. Especially since the newspaper might not reach the village until after the meeting has been held.

The publishing requirement should remain the same for Boroughs, as their level of sophistication and operations are on a much higher plane.

Section 29.48.260 Municipal Properties. (c) The assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, or posted within that time in at least three public places in the municipality; (3) public auction or opening of sealed bids, if any; and (4) other terms and conditions fixed by the assembly or council. However, no ordinance for the sale, lease, or disposition of real property or interest in real property valued at $25,000. or more is valid unless ratified by a majority of the qualified voters

voting at a regular or special election at which the question of the ratification of the ordinance is submitted. Thirty days notice shall be given of the election and during that period the assembly or council shall have published at least once a week in a newspaper of general circulation distributed within the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, and stating the title and date of passage of the ordinance. Notice shall be given by posting a copy of it in at least three public places in the municipality at least 30 days before the election. If no newspaper of general circulation is distributed within the municipality, the ntoice given by posting is sufficient for the purposes of this section.

The rational behind this is somewhat understandable, but the reason for the $25,000. figure is hard to visualize. Again, in our area $25,000. is a lot of money, but at the same time it isn't. If we had to go to a special election every time we wanted to lease some property in excess of $25,000. we would begin to incur additional expenses and waste a lot of time. Especially when you consider we probably wouldn't get a voter turn out of over 150 people.

Section 29.53.360 Deed to Borough or City. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

We have approached the Borough on this and their response is, that since the City has no property tax, we have no interests in any such property and therefore, this Section doesn't apply to us. Furthermore, the North Slope Borough isn't bound by this section anyway.

Section 29.68.240 Unification of Local Governments. An organized Borough and all cities within the Borough may untie to form a single unit of Home Rule local government by complying with this chapter. This section doesn't apply to Home Rule Boroughs. Therefore, a Home Rule Borough couldn't legally unify with it's cities. Or could it, as there is nothing in Title 29 saying that it can't. However, the cities would have to follow the provisions in 29.68.240. So any provisions a Home Rule Borough would want to incorporate into their unification procedures would have to include the provisions in 29.68.240 so it would be just as easy to make Home Rule Boroughs subject to 29.68.240 and avoid a lot of confusion.

At the AFN Convention I picked up a copy of some of the proposed changes for Title 29. Unfortunately, I have misplaced these and it wouldn't surprise me too much if some of my comments have already been addressed. The revision of Title 29 is long overdue and I appreciate the opportunity to be able to provide some input into the program. If I can be of further service, please don't hesitate to contact my office.

Sincerely yours,

Bryan MacLean
City Manager

Rick Gaussett

## CLASSES AND POWERS OF MUNICIPALITIES

.010 Classes of Municipalities. A municipality shall be a home-rule or general law municipality.

.020 Power of General Law Municipalities (a). Powers of general law of municipalities are 1) regulatory powers enumerated in section ____ or 2) powers to provide services and facilities enumerated in section _____.

(b) General law municipalities may exercise powers assumed upon incorporation or acquired in accordance with section .030.

.030 Procedure for Acquiring Powers. A city within its jurisdiction and a borough on an area-wide or non-areawide basis may acquire additional regulatory powers or powers to provide public facilities or services by ordinance approved by a vote of two-thirds (2/3) of the membership of the assembly or council. A decision to acquire powers under this section is subject to referendum.

.040 Exercise within Cities. Except as provided in section .070, a borough may not exercise within a city in the borough a power which the city is then exercising if the city council by ordinance approved two-thirds vote of its membership states its opposition.

.050 Service Area. A borough may exercise a power to provide services and facilities on a service area basis only upon approval of a majority of those voting on the question in the area affected at a general or special election in accordance with section ____.

.060 Transfer of Powers. By vote of a majority of the membership of the council or by initiative, a city within a borough may transfer to the borough any power exercised by the city.

.070 Mandatory Areawide Borough Powers. Boroughs shall exercise on an area-wide basis the powers of 1) planning and zoning; 2) taxation and 3) education.

.080 Mandatory City Powers. A city in the area outside boroughs shall exercise the powers of 1) planning and zoning; 2) taxation.

.090 Education in City's Outside Borough's. A city in the area outside boroughs may assume the education power upon incorporation, by ordinance approved by two-thirds of the membership of its council, or by initiative.

Policy Recommendations - Title 29 Revision Commission Technical Committee

1. The Technical Committee does not recommend the adoption of the suggestion made by the Alaska Association of Municipal Clerks.

2. The Technical Committee does not recommend the adoption of the suggestion made by Jo Ann Shanley regarding Sec. 29.42.010 which granted planning, platting, and land use regulation powers to a first class or home rule city located more than 25 miles from the boundary of the Borough Seat. It was felt that this was Seward's problem, and would contradict the principle of "comprehensive" borough planning.

3. The technical group recommends the inclusion of harbors and marinas in the statute regarding Extraterritorial Jurisdiction.

4. The technical group does not recommend the inclusion of the proposals presented by Mike Walleri of Tanana Chiefs. The feeling is that the concept of recognition of IRA councils and "Indian Country" is outside the scope of the reorganization of Title 29.

5. The Technical Group is recommending the elimination of Third Class Boroughs with the following options:

a. Eliminate Third Class Boroughs altogether phasing them out over a two-year period.

b. Eliminate Third Class Boroughs giving "grandfather rights" to the Haines Borough.

c. Keep Third Class Boroughs, expanding its powers to general law powers.



- quarter-deck 19 -
10th floor, Tower 1

Send copy to Driss

November 18, 1980

TO: TITLE 29 TECHNICAL AND POLICY COMMITTEES

FROM: ALASKA ASSOCIATION OF MUNICIPAL CLERKS

SUBJECT: TITLE 29 REVISIONS

We respectfully submit the following comments:

1) Sec. 29.30.040. We support the drafted changes as recommended by the Technical Committee, dated October 10, 1980, with the following amendment to (b):

> "(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of and registered in the precinct, district, or service area in which he votes."
>
> Explanation: Those voting on the issue are residents of the specific area and thus will have to live with the outcome of the election; requiring registration in the precinct, district or service area will hopefully eliminate some of the problems and the time demanded in trying to prove residency; such a procedure will give the Canvass Board clearer direction.

2) Regarding new AS 29.30.110 and .230, the AAMC feels it is within the scope of responsibilities of the clerks to provide an acceptable petition format; however, we object to being burdened with any of the responsibility of composing any type of initiative, referendum or recall statement. We feel that the newly-proposed sections are unclear in this regard and request that clarification of our position be considered.

3) AAMC strong supports the language as proposed in AS 29.30.050 regarding elections which gives the municipalities the option to provide for runoff elections by ordinance.

# ALASKA MUNICIPAL LEAGUE

# POLICY STATEMENT

# 1981

RECEIVED
DEC 05 1980
CAO – OPERATIONS

Adopted at the Business Meeting
of the 30th Annual Conference of the
ALASKA MUNICIPAL LEAGUE

Fairbanks, Alaska - November 15, 1980

# PART I
# TAXATION AND FINANCE

## A. Local Tax Relief

1. The League supports state-funded relief for local taxpayers where such relief does not reduce the tax base or the tax-levying authority of the municipality and does not adversely affect the marketability of municipal bonds.

2. In order to provide local tax relief to Alaskans in 1981, the League urges the Governor and the Legislature to pass the necessary funding legislation for municipal assistance, state revenue sharing, and local school funding in sufficient time for municipalities to incorporate the additional revenues in the annual mill levies, but in no case later than May 15, 1981.

## B. State Assistance In Financing Local Government

1. State Revenue Sharing. The League supports annual increases in the state shared revenue program. The annual appropriation by the Legislature to the municipal revenue sharing program shall be an annual increase of the 1980 Legislative appropriation based on such criteria as state population, inflation, and cost of local government services and other timely considerations.

2. Road Maintenance. The League continues to support an increase of available state funding for road maintenance to realistically reflect today's cost of road maintenance, with this increase fully funded.

3. Capital Improvement Projects. The League supports a separate revenue sharing program that will assist in the funding of capital improvements projects.

4. Municipal Assistance. The League supports the efforts of the state administration to fully fund the municipal assistance program at not less than 10 percent of the revenue raised by the State Corporate Income Tax.

5. Permanent Endowment for Local Government. The League urges that the state investigate the concept of a permanent endownment for local governments. The income from this endowment would be made available for use by local governments for operating expenses and/or capital programs. The League should provide assistance to the state in its investigation through a state-wide task force. Criteria for developing any permanent endowment and allocation of income approach should include equity, predictability and maximum local control.

6. State-collected Locally Shared Taxes. Municipalities in Alaska presently derive significant revenues from state-collected, locally shared taxes to help meet their basic operating expenses. The League, therefore, opposes reduction of such revenues through elimination of such taxes unless other equal sources of revenue are made available to local governments, or appropriations to compensate for lost revenues are made by the State.

7. Supplemental Appropriation. The League urges the Legislature to fully fund, through supplemental appropriations, 100% of fiscal 1981 state revenue sharing entitlements and the municipal assistance entitlement of at least 10 percent of the revenue generated by the State Corporate Income Tax.

8. Certification of Revenues. The League supports an amendment to the state shared revenue statutes which would 1) permit the Department of Community and Regional Affairs to accept a certification of revenues and expenditures in lieu of the annual financial report in order to make final payment of state revenue sharing entitlements, and 2) allow the Department of Community and Regional Affairs to amend the entitlement in the ensuing year based on the annual report, if applicable.

9. Abandoned Motor Vehicle Fund. The League continues to urge adequate funding of the Abandoned Motor Vehicle Fund with special emphasis paid to the cost incurred in handling abandoned vehicles which have no value.

10. Basic Allocations. The League supports an increase in state revenue sharing basic allocation to $50,000 for each city.

## C. Local Taxes

1. The League opposes the imposition of state-mandated exemption of certain classes of property, individuals, organizations or commodities from the application of taxes unless adequate compensation is made by the state to reimburse local government for revenues lost due to these exemptions.

2. The League endorses the position whereby the state would pay to the local governments a payment in lieu of ad valorem taxes for the state-owned property as well as payments for its share of the cost of improvements and services which benefit such property.

3. The League opposes any further effort on the part of the state to levy a property tax which would infringe upon the rights of local governments to levy the same rate of tax as levied on other property within the taxing jurisdiction.

4. The League supports legislation which would provide for the optional exemption of business inventory from property tax.

## D. Funding The Study And Formation Of New Municipalities

1. The League requests the enactment of legislation to provide adequate funds to assist in the formation of newly organized municipalities.

2. The League requests the enactment of legislation to provide adequate funds to assist in the study of the feasibility of forming new municipalities.

## E. Public Employees Retirement

1. The League urges that in any legislation passed which increases benefits under the Public Employees Retirement System, the increased cost be borne by contributions from the employees. The League urges the Legislature to recognize the effect on participating municipal employers if any amendments are made to PERS.

2. Many locally elected officials are being excluded from participation in the Public Employees Retirement System because they are also active members of the Teachers Retirement System; therefore, the League supports legislation that would eliminate that portion of Alaska Statutes (AS 29.35.680(21)(c)(iv)) that excludes active members of the Teachers Retirement System from being active members of the Public Employees Retirement System and to allow retroactive participation provided that the employee applies for it and makes the full retroactive contribution as he/she would have if he/she had been an active member during the retroactive period.

F. Local Hospital Use

1. The League urges the state and federal agencies reponsible for health care to utilize the local health facilities and to transport patients to regional centers only when the necessary services are not available.

2. The League strongly supports increased state funding of hospital and health facility construction and operating costs but feels that this should be funded outside the state revenue snaring program.

G. Role Of The Permanent Fund

1. The League supports legislation which would favor the investment of a percentage of the permanent fund into the development of energy resources and potable water supplies.

2. The League, which recognizes that the concept of the Permanent Fund is to take revenues from a non-renewable resource and turn these revenues into a renewable resource, urges the Legislature to increase the percentage of income going into the fund to help guarantee the economic stability of the state.

H. Anti-Cyclical Policy

1. The League requests the executive and legislative branches of state government to develop a clear anti-cyclical policy to provide as much as possible for the scheduling of state capital projects projected for municipalities during periods of lower economic activity in the municipality and to direct other state activities with consideration of municipalities whose economies are depressed from normal levels.

I. Loans For Hydroelectric Projects

1. The League supports uninterrupted continuance of loan funds from the state for feasible hydroelectric projects within the state, and further supports long-term, low-interest loans at three percent for these projects with funding appropriated from non-renewable resource revenues such as those presently being generated by oil and gas receipts.

## J. Fiscal Notes

1. The League supports enactment of legislation requiring preparation of notes assessing the fiscal impact on local government of any proposed bill or regulation.

## K. Cultural, Civic And Convention Centers And Museums

1. While by law the state is able to assist local communities in the construction, maintenance and operation of cultural, civic, convention and community recreation centers, only minimal funding has been available for this purpose. The League, therefore, urges the Legislature to authorize funding under existing law in an amount sufficient to meet the construction requirements in Alaska communities.

# PART II
# EDUCATION

## A. Permanent Endowment For Funding Education

1. The League urges that the state investigate the concept of a permanent endowment for funding public education. The income from this endowment would be made available for use for public education operating expenses and/or capital programs.

## B. School Support

1. The Constitution of Alaska is very specific in its requirement that education is the responsibility of the state. Therefore, the League urges the Legislature to fund annually 100% of the costs of Public School Foundation, Special Education, student transportation (including kindergarten, inclement weather and hazardous bus routes) and Community Schools. Appropriations for these programs must reflect annually the increased costs incurred by school districts and full funding should not be used as a catalyst for the state to infringe upon the rights of local people to administer local schools.

2. The League urges the Legislature to support school capital projects at 100% construction level (as defined by the rules and regulations established by the Department of Education) and calls upon the Legislature and the Governor to fund this amount annually. The League also supports legislation under which the state will provide funding for all approved school capital projects to the local district at the time of approval. The League also urges the Legislature to assume the total school capital indebtedness incurred by local school districts.

3. The League recommends that the state legislature fund fully all special programs required by Public Law.

4. The League recommends that the state reduce and simplify the paper work requirement for receiving state and federal funds.

5. The League recommends that the Legislature adopt legislation to endorse and fund education programs in the area of substance abuse and person abuse with staff training, such programs being optional by each school district.

6. The League urges the Legislature to continue the policy establishing the amount of the public school foundation support unit value one year in advance.

7. The League urges the Legislature to provide increased funding for school board and advisory school board orientation, continuing education and awareness.

8. The League recommends that the state Legislature provide funding for bi-lingual and multi-cultural programs.

## C. Assembly/Council-School Board Relationships

1. The League supports legislation to clarify assembly/council-school board relationships and opposes legislation which would diminish assembly/council authority in education matters.

## D. Public Communications

1. The League encourages state and federal governments to seek immediate and expeditious activation of satellite communication facilities for education in the state.

2. The Second Session of the Ninth State Legislature implemented initial funding for limited televising of legislative sessions. The League now urges full funding of the program to assure that the general public has the greatest access possible, not only to floor sessions, but also to committee hearings and teleconferencing.

3. The League supports legislation that would support and provide funding for communities served by television cable systems that are applying for issuance of FCC construction permits for mini TV translators.

## E. Other

1. Serious problems exist between the University of Alaska and the Community College systems, and these problems have a strong negative impact on all classes of students within these institutions. The League urges the Legislature to mandate, if necessary, resolution of differences regarding program articulation, budget and planning, student support service and local program options. The League considers autonomy for the Community College system to be only a last resort if other measures fail.

2. The League urges the Legislature to adequately impower and finance the "Oversight Committee" to annually discharge their duty of budget review and then enforce their recommendations.

## PART III
## PUBLIC SAFETY

1. The demand for trained competent local police and fire departments is accelerating throughout Alaska. It is urged that the Legislature, at an early date, assure that police, fire and emergency medical personnel training programs throughout the state have adequate facilities and program resources for training of local safety people, and provide financial support to assist the communities who participate.

2. Because the Alaska Police Standards Council has lost all federal support, the League recommends the establishment of state assistance proportional to the cost of ongoing assistance to those members of municipal police agencies attending courses in order to meet the requirements of the Alaska Police Standards Act.

3. Recognizing that corrections is a state function, the League urges the state to fund the construction, if necessary, and the operation of short term detention facilities within local communities.

4. The League supports legislation which would permit municipalities to tax, assess or impose a surcharge on the distribution and/or sales of alcohol within its boundaries.

5. The League urges the state to establish a comprehensive fire education program and a comprehensive statewide arson investigative program, through the state fire marshal's office, that will utilize professionally trained fire educators.

6. The League urges the state to standardize the Alaska Juvenile Justice System so that the people's confidence in the rule of the law will be restored and our traditional form of government will continue to provide security for the law abiding citizen.

7. The League supports the state's efforts to standardize penalties imposed by the Alaska Judicial System so that the people's confidence in the rule of the law will be restored and our traditional form of government will continue to provide security for the law abiding citizen.

8. The League supports legislation which would amend the State Acoholism Act to include public intoxication as an offense so as to provide the Court with alcoholism treatment as an alternative to incarceration in order to provide a measure of control in the initial phase of rehabilitation.

9. The League recognizes that Civil Defense and Emergency Preparedness activities on the state and local level are worthy of support. The League supports full state and federal funding of these activities, particularly in regards to emergency communications, medical and food supplies.

10. The League supports legislation which would provide utilization of the Alaska Judicial Information System to preclude registration of any motor vehicle at the State Division of Motor Vehicles if there are outstanding state or municipal traffic violations against the registering owner.

11. The League recongizes the serious individual and public safety problems that exist in all communities in Alaska as a result of alcohol abuse and domestic violence. It supports the enforcement of AS 09.55.600 through AS 09.55.640 (139 SLA 1980) in all parts of the state as a public safety priority. It further supports financial support for shelters within municipalities to provide for emergency needs of victims. The League further supports the establishment and utilization of mandatory rehabilitation programs for offenders in domestic violence cases as an alternative to incarceration.

12. Recognizing the state-wide and interstate nature of narcotics and dangerous drug traffic, the League recommends full state support of state-wide and metropolitan drug enforcement units.

13. The League supports an expansion of the Village Public Safety Officer Program to include all village communities in Alaska.

14. The League supports the funding of a judicial system that would insure the presence of a judicial officer in each community in the state when the need arises.

15. The League supports full funding for basic fire fighting equipment for small Alaska cities and fire service districts.

## PART IV
## LAND USE

### A. Local Options

1. The League feels strongly that laws pertaining to the powers of local planning and zoning must allow for the greatest flexibility at the local level.

### B. Land Selection

1. The League urges 1) immediate conveyance of native and state lands presently identified and jointly agreed upon for selection, and 2) the state move expeditiously to convey lands to municipalities with the least amount of encumbrances and restrictions. 3) The League encourages an increase in the cooperative intergovernmental land use planning process that considers municipal, state and federal lands affected by the land selection process.

2. The League urges the state to discontinue the practice of indiscriminate blanketing of all waterways within municipal selections with reservations for public easements, and encumbering patents with undefined easements and that the value of proposed easements on municipal lands for public use be weighed against both the value of these areas for other types of development that might conflict with access easements and geographic constraints that will render such easements of little public access value.

### C. d(2) Lands In Alaska

1. The League supports land use recommendations which follow the multiple use concepts, and would be based on professionally thorough and unbiased analysis of land use potential and compatibility of uses, giving appropriate weight to economic, social and environmental factors.

2. The League urges that potential hydroelectric projects and alternative energy project sites be eliminated from federal d(2) selections by providing headwater rights, sites for dam sites, corridors for water and electric transmission lines, power houses, associated substations and all attendant facilities. The League further supports the preservation of rights-of-way across all land selected and classified for the purpose of providing for future construction of public accesses of various types.

3. The League urges that potential fish hatchery sites be eliminated from federal d(2) selections. The sites would be those identified by the FRED Division of ADF&G and aquaculture organizations, formally organized within the State of Alaska.

## D. Historic Sites

1. In order to help municipalites to retain as much as possible of Alaska's colorful and historic past, the League supports establishment of a state matching grant program and funding for acquisition, maintenance and rehabilitation of monuments, historic sites and rights-of-way thereto.

## E. Coastal Management

1. The League supports continued and maximum local control in the development, management and implementation of coastal planning and policies.

2. The League supports the concept of "extra-territorial" planning by municipalities in the unorganized borough with statutory provisions to permit the Alaska Coastal Policy Council to adopt said "extra-territorial" planning as part of the Alaska Coastal Management Program until such time as a resource district plan is adopted.

3. It should be required that all state agency comments and recommendations for the purpose of state and federal consistency be made by these agencies prior to local government conceptual approval.

## F. Subdivisions

1. Subdivision of land is a major factor in community development creating patterns which have long lasting effects. Although present legislation clearly recognizes the need for regulation of subdivisions, means of enforcement are inadequate. The League supports legislation which would require proof of approval by local authorities prior to the filing of an instrument, including those filed by the state, affecting the boundaries of land and prior to any judicial partition of real property.

2. The League supports legislation which would require access capable of being constructed to local design standards to all state land disposals; and that, except for state subdivisions in remote areas or for dispersed entry, local subdivision improvement requirements be honored by the state either installing such improvements or by acquiescing in the formation of service areas and local improvement districts containing such property and honoring the obligation to pay LID assessments on such property while it is in state ownership.

3. The League supports the concept of an Enterprise Fund as a means for the state to provide required improvements in state land disposals.

4. The League urges that a minimum requirement for state subdivisions conveyed without required local improvements be that the subdivision design incorporate final road and sewage engineering to save state land recipients unnecessary road and sewer construction and maintenance costs due to poor lot and right-of way layout.

## G. State Land Disposal

1. The League supports legislation which mandates land use capability and resource inventory findings for each tract of land included in the disposal bank.

2. Recognizing the pressure on both the state and municipal governments to dispose of land, the League supports a cooperative effort by the state and municipalities to dispose of land in a continuous and orderly manner. The League also supports state funding to provide planning grants, funds for necessary access roads, survey costs for land scheduled for disposal, and state, borough and city subdivision roads, sewers and utilities to meet local subdivision improvement ordinances.

3. The League opposes any state mandated program regarding disposal of municipal selected land relative to timing, size or use.

## H. Grazing Districts

1. The League supports legislation which delegates to local governments the establishment of controlled grazing districts within organized municipalities.

## I. Minerals

1. The League supports legislation that the state provide funds for necessary quantitative definition studies and market analysis of minerals other than oil and gas.

# PART V
# TRANSPORTATION, DOCKS AND PORTS

## A. Surface And Marine Highways

1. With the ongoing development of natural resources in Alaska, the League supports legislation which will expand the Alaska Marine Highway to Western Alaska and improve transportation to tie the Central Alaska ports in with the Aleutian Alaskan ports and further supports the expeditious procurement of an ocean going vessel to accomplish the expansion of the Alaska Marine Highway System.

2. Since Alaska's economy depends heavily upon ocean and inland water shipping, fishing, and other marine travel, the League finds the existing port and harbor grant programs to be inadequately funded and urges expansion of these programs. Major port and harbor facility plans should be prepared and developed consonant with the municipalities' plans.

3. The League supports efforts to provide efficiencies in the operation of the Alaska Marine Highway System providing these efficiencies are based on publicly available economic and technical data. However, the League strongly objects to any reduction in existing marine highway systems absent technical, economic or other criteria; strongly urges community input be required prior to establishing marine highway rates, schedules and operational changes; and requests public input for studies affecting the operation of the Alaska Marine Highway System be solicited on a state-wide basis.

4. With the difficulty in acquiring public rights-of-way throughout the state primarily due to different land classification and ownerships, the League supports the identification of adequate corridors for construction for public access through such lands and early acquisition of adequate rights-of-way.

5. The League supports efforts toward an expanded railroad system to better serve all areas of Alaska and to link the State of Alaska with Canadian rail facilities.

6. Since the Alaska economy depends on the existence of transportation routes, the League supports the continued use and state maintenance of the state highways and trails systems.

7. The League requests that the State of Alaska support mandatory shipping corridors within Alaskan waters whenever local communities request such mandatory shipping corridors.

8. The League requests the state to intervene in the matter of interpretation and enforcement of federal regulations pertaining to the transportation of hazardous cargo on passenger vessels and aircraft in order to reduce the financial hardship imposed upon certain communities.

9. The League supports the expeditious development of a transportation program based on technical data with the maximum public participation possible which identifies the needs and establishes an improvement program for all forms of transportation in Alaska to include commercial and private air, marine and land transportation systems and adequate consideration for emergency airstrips.

10. The League requests that the state join in asking the President of the United States to intervene in the interpretation of the Jones Act by the Customs Service, as it limits the time permitted and number of port calls in Alaska by foreign bottom cruise ships.

11. Port Authorities. Insufficient mechanisms exist under Alaska law to create port authorities, free ports of entry and trade zones. Therefore, the League supports legislation to allow municipalities to create, finance and operate port facilities and ancillary authorities to enhance commerce within the State of Alaska.

12. The League urges the state to make planning funds available to enable municipalities to do the transportation planning within their boundaries that is required of coastal municipalities by the Alaska Coastal Management Program.

13. The League continues to support state consideration of a transportation system comprised of marine and land highway components. This system would embody shorter ferry runs between adjacent communities with extensions to the land highway system and by the utilization of high speed ferries and end-loading vessels with more frequent ferry service with minimal on-board facilities for passengers.

14. The League supports major and minor in-state ferry maintenance.

15. The League requests the Division of Marine Highways improve the ferry reservation system.

16. The League urges the state to make an increased level of road construction funding available to all municipalities subject to state land disposals within their jurisdictions.

## B. Air Transportation

1. The League supports an equitable approach to state construction assistance for all airports and supports the concept of continued expansions and upgrading of airports, airport facilities and air navigational aids in Alaska. The League urges the state to provide increased levels of funding to provide for these facilities.

2. The League supports municipal acquisition of federal and state lands to provide for needed expansion of port and airport facilities and operations.

# PART VI
# MUNICIPAL UTILITIES

## A. State Regulation

1. The League supports expeditious funding which would make available to the various municipal utilities and cooperatives in the State of Alaska direct grants and/or low interest loans in order that they may immediately be brought into adequate service for the people and that the Alaska Power Authority be adequately funded to meet the needs of the municipalities for water and power source development and distribution.

2. Despite the demonstrated ability of municipal and cooperative utilities to operate their respective utilities in the best interest of consumer public, efforts are constantly being made to subject these utilities to regulation by the Alaska Public Utilities Commission. Regulation by the APUC is an unnecessary infringement on local government authority as well as that of federally regulated cooperatives. The League opposes any legislation which would continually inflict this undue regulation by the state.

3. The League supports legislation which would make it clear that municipal and cooperative utilities may include construction work in progress in the utilities base rate.

4. The League supports the concept of direct grants and low interest loans from state funds for the construction of conventional and alternative energy sources in funding fossil, hydroelectric, geothermal, wind power and other means in order that rates paid by the Alaska consumer for these necessary services may be set at a reasonable level which is within the ability of the citizen to pay.

5. The League supports legislative action that has been taken to subsidize electric power and explore alternate energy sources for Alaska.

6. The League supports loans for the financing of construction of power projects in amounts approved by law, at an interest rate not to exceed three percent (3%) and a term consistent with the useful life of a project but not to exceed 100 years and with principal and interest payments commencing on the project power-on-line date.

## B. Acquisition

1. One of the alleged benefits to accrue from the enactment of the Alaska Public Utility Commission Act was the amicable solution to the service area conflicts between competing utilities. To further this commendable objective, the League supports legislation which would allow municipalities operating utilities to acquire the facilities of a competing utility under specific terms which would fairly compensate the competing utility.

## C. Water, Sewer And Solid Waste

1. Amendments were passed by the U.S. Congress to allow exemption to the Clean Water Act with respect to sewage disposal in tide water with sufficient fluctuation. The League opposes any federal regulation for implementing Section 301 (H) of the Clean Water Act which would unduly burden the Alaska communities in receiving these exemptions.

2. The League endorses the concept of the State of Alaska paying up to 75% for sewage, solid waste facilities and water systems constructed by municipalities under the State of Alaska Construction Grant Program.

3. The League endorses an amendment to federal law which would allow the cost of sewage treatment facilities to receive general fund support from the State of Alaska and its municipalities.

4. The League endorses the concept of the State of Alaska paying up to 75% of the costs to increase the capacity of existing sewage, solid waste facilities and water systems of municipalities under the State of Alaska Construction Grant Program.

5. The League endorses legislative funding of $40 million to fund water, sewer and solid waste grants in lieu of federal grant assistance.

## D. Fresh Water

1. The League endorses a comprehensive effort by state and federal officials to develop alternative energy sources in Alaska, as well as innovative and appropriate technologies, including cogeneration. Specific emphasis should be placed on the uses of these in the provision of sewage treatment and water supplies and solid waste facilities in the state.

## E. Energy Conservation In Municipal Utilities

1. The League recognizes the need for applied research and pilot projects designed to conserve energy in municipal utilities facilities and operation. It supports funding for innovative projects in waste heat utilization, recycling of solid waste, and conversion of waste to energy and other products.

# PART VII
# MUNICIPAL ELECTIONS

## A. Majority Elections

1. The League strongly supports legislation which would permit a municipality to opt out of the 40% plurality requirement for election to office, and which would clarify the 40% rule for municipalities that continue to use it.

## B. Poll Hours

1. Experience has proven that extension of polling hours has not increased voter turnout and has been costly. The League, therefore, opposes legislation which would extend the hours beyond the present 8:00 am to 8:00 pm.

## C. Registration

1. The League opposes legislation which would eliminate or erode the State of Alaska registration system.

## D. Administration

1. The League strongly supports legislation which consolidates all functions pertaining to elections, conflict of interest and campaign disclosure into one agency.

## E. Disclosure Restrictions

1. The League opposes campaign and financial disclosure restrictions imposed upon local governments. The League urges the Legislature to review the laws making the reporting requirements less onerous than presently in effect. The League specifically supports legislation which would exempt from campaign disclosure and/or financial disclosure for elected or appointed advisory boards as defined in AS 29.63.090.

## F. Voter Qualification

1. The League supports legislation that would allow a municipality, by ordinance, to require persons to be state registered voters in, and residents of, the precinct, district or service area in which they seek to vote.

## G. Qualifications For Elective Office

1. The League supports legislation that would include provisions in Title 29 for municipalities to set qualification for all elected municipal officials and to delete that section in Title 14 relating to municipal school board member qualifications.

2. The League supports legislation that would amend Title 29 to include reference to the requirements of AS 15.13 and AS 39.50 pertaining to qualifications of candidates.

## H. Title 29 Revisions

1. The League supports legislation which would clarify AS 29.28.070(b) to specify that signature requirements for petitions be based upon the last regular municipal election held just preceding the date of first circulation of the petition.

2. The League supports legislation amending AS 29.28.070 to provide that the number of signatures required to initiate a petition for recall be 35% of the number of voters voting in the last regular municipal election regardless of population of the municipality.

3. The League supports revision of the reapportionment provisions of Title 29 for clarification, simplification, flexibility and autonomy at the local level.

4. The League supports legislation which would reduce the abuses of recall and would make recall procedures clearer and fairer to the elected official, including provisions to make the grounds more specific.

# PART VIII
# LOCAL GOVERNMENT POWERS

## A. Local Autonomy

1. Because certain restrictions currently exist in the Alaska Statutes which impede effective independent local government, the League supports legislation which would promote more effective and independent local government in all organized boroughs and cities, and opposes any legislation which restricts local government powers.

2. The League supports the continued exemption of municipal officials and employees from the lobbying reporting requirements under AS 24.25.

3. The League supports legislation at both state and federal levels placing municipalities in an equal posture with state governments with respect to federal anti-trust laws.

4. The League opposes state restrictions on enforcement of municipal ordinances and supports legislation clearly establishing local autonomy in the creation of mandatory sentences and other remedies for violation of local ordinances.

5. The League supports the community council concept and also supports legislation which would require that the local governing body be the management unit for local community councils. The local governing body should be both the requester and receiver of state funds that will be used to fund community councils.

6. The League urges that the state establish the prevailing wage for a community quickly and accurately when requested, taking into account all economic and employment data from that community.

7. The League supports legislation ensuring that local governments are free to adopt, through ordinance or resolution, their own policies and procedures concerning local public records.

## B. Public Employee Labor Relations

1. The League strongly opposes any legislation which would force municipalities to be subject to the provisions of the Alaska Public Employees Labor Relations Act. The League opposes just as strongly any legislation efforts to dictate the provisions of local public employees labor relations ordinances. The League supports legislation to allow each municipality at any time to reject or withdraw from the terms of the Alaska Public Employees Relations Act.

2. The League opposes legislation imposing binding arbitration on local governments. Such legislation would hinder local governments' ability to determine their personnel costs and prevent local government from having complete control of determining the local tax rate.

## C. Third Class Borough

1. The League supports elimination of language from Alaska Statutes which would allow for the future creation of third class boroughs. Any existing third class borough would be allowed to continue in existence until such time as it reclassifies. The League believes that a third class borough, as currently defined in statute, does not meet standards for a general purpose local government.

## D. Local Government Study

1. The League endorses, and strongly supports continued legislative action investigating current and future state/local government relations and finance in Alaska, and the current and future status of local government structures, specifically including the unorganized borough. Maximum involvement of state administrative officials dealing with local governments, local government officials, and residents from large and small cities and boroughs, specifically including the unorganized borough and legislators, is encouraged.

## PART IX
## RESOURCES

### A. Non-Renewable

1. The League supports a clear policy requiring the processing of state royalty oil and gas and other natural resources within Alaska.

2. The League encourages the State of Alaska to require the processing, distribution and sale of oil and gas products within the state sufficient to satisfy current state consumption requirements at a cost not to exceed costs of production, distribution and sale plus a reasonable return on investment.

3. In response to the energy shortage and its economic impact on the people of the state, the League urges the federal government, the State of Alaska and League members to design, construct and use their buildings with an emphasis on energy efficiency.

4. In consideration of anticipated shortages of petroleum products for energy production, the League urges the state to pursue the development of Alaska's coal resources.

5. The League supports legislation which establishes a clear mineral policy to encourage resource development, in-state ore concentration and/or reduction, and protection of mineral land from imposed incompatible land uses.

6. The League supports optimum use of gas liquids as feed stocks for in-state petrochemical development, with coal or other energy sources to be used for the processing.

7. The League supports state funding for municipal acquisition of federal, state and private lands to provide for needed expansion of port facilities and operations.

### B. Renewable

1. The League requests that the executive and legislative branches of state government establish a policy requiring the development and processing of renewable resources in Alaska, and through appropriate inventory and management practices make all renewable resources available for development and processing on a sustained yield basis.

2. The League requests the executive and legislative branches of our state government to accelerate market studies and market development of Alaska's renewable resources.

3. The League supports legislation for the development of an aggressive bottomfish program including substantially accelerated marketing studies and market development for Alaska bottomfish products.

4. The League requests the Legislature and administration to adopt, by statute and/or regulation, the policy that hydroelectric energy is one of the most advantageous and acceptable methods of generating renewable energy for use by the many citizens of Alaska.

5. The League requests legislation establishing a state energy policy, a statute enacting the policy that addresses both rural and urban situations and provides incentives to the development of alternative energy sources, such as, but not limited to, geothermal, tidal, wind power and solar, specific to community needs, giving preference to renewable energy sources and/or new technologies.

6. The League recognizes fish and wildlife as an important renewable resource which has economic as well as recreational and cultural value, and should be protected and developed.

7. The League supports resource development and funding policies which place the highest priorities on the utilization of resources that provide the greatest benefit to local residents and their communities. Resource development projects receiving state assistance that substantially impact communities should be approved by the municipalities.

C. Human Resources

1. The League supports and encourages, within the confines of the constitution and human resources limitations, any efforts on the part of the Governor and the Legislature to implement an Alaska hire policy.

2. The League encourages the Legislature and Administration to use both human resources and technical resources of the institutions of higher learning within the state whenever possible when not in direct competition with private enterprise.

3. The League supports the development of incentives that would encourage contractors and other employers to train and apprentice local workers and encourage their employment.

## PART X
## ECONOMIC DEVELOPMENT

1. The exploration, development and industrial utilization of renewable and non-renewable resources, both inside and outside municipal boundaries, creates a substantial and immediate impact on the need for municipal facilities and services which exceed the financial ability of most municipalities to meet in the short period of time available to have such facilities and services operational. The League urges adoption of legislation which would provide financial assistance to municipalities which are proposed for such impacts.

2. The League supports and urges the Legislature to establish and provide immediate funding of programs that will create, assist or aid both public and private enterprises to plan, finance and develop job related industries, businesses and facilities that are compatible with the desires of local government.

3. The League supports legislation that will aid in the exploration, development, and in-state processing of Alaska's raw materials and vast mineral wealth, and urges the state to provide incentives to those industries engaging in in-state primary and secondary processing of Alaska's resources.

4. The League supports state grants for local economic development programs.

5. The League supports a reduction of state regulation and restrictions against the requirement of redundant information reports for small businesses and local governments.

6. The League supports the continued funding from non-renewable resources for small business loans under the Division of Business Loans of the Department of Commerce and Economic Development. The League also supports the AIDA concept where appropriate, but recognizes as well a need for smaller businesses and projects to obtain funding that includes working capital, that provides for lower interest rates, and that is more flexible in its application process and provisions.

7. The League supports the establishment of agricultural quarantine stations off the coast of Alaska, and off the border of Alaska, to encourage the importation and exportation of agricultural animals and plants.

A RESOLUTION URGING IMPLEMENTATION OF TECHNICAL CHANGES
IN TITLE 29 AS IT RELATES TO MAJORITY ELECTIONS AND VOTER QUALIFICATION

WHEREAS the deliberations of the Title 29 Advisory and Technical committees point clearly to the fact that there is no dispute in allowing a municipality optional use of a 40% plurality requirement; and

WHEREAS voters can be disenfranchised during the absentee voter process of run-off elections due to insufficient time to process the written absentee voter application; and

WHEREAS voter qualifications in Title 29 do not secure for the municipalities requirement that a voter be registered in the municipality in which he/she resides and intends to vote thirty days previous to a municipal election; and

WHEREAS the Election Policy Committee and the Alaska Association of Municipal Clerks are on record as supporting immediate changes to Title 29 as the Alaska Municipal League proposes in its 1981 policy statement; and

WHEREAS the voter qualification change and run-off provisions are needed prior to the October 1981 municipal elections; and

WHEREAS the Title 29 revision has been stated as realistically a two year process;

NOW THEREFORE BE IT RESOLVED that the Alaska Municipal League draft and support legislation to immediately implement these changes as described in paragraphs A and F, Part VII Municipal Elections, of the Alaska Municipal League policy statement for 1981.

**A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE URGING THE STATE TO PROVIDE GRANTS, LOW INTEREST LOANS AND RENTAL ASSISTANCE TO ALLEVIATE THE PROBLEMS CAUSED BY THE LACK OF LOW AND MODERATE INCOME HOUSING IN ALASKAN COMMUNITIES**

WHEREAS there is an inadequate stock of decent, safe and sanitary housing for low and moderate income families and persons; and

WHEREAS federal programs dealing with the problem are underfunded, inadequate or non-existent; and

WHEREAS decent, safe and sanitary housing is an essential and basic human need and should be a right of every Alaskan; and

WHEREAS conventional interest rates make it impossible to construct housing for low and moderate income persons; and

WHEREAS the State of Alaska has established numerous low-interest loan and other financial assistance programs to assist business enterprises; and

WHEREAS the State of Alaska should be giving priority to programs which meet the basic needs of its citizens;

NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League that the State of Alaska immediately implement a low and moderate income housing assistance program consisting of, but not limited to:

1. Low interest loans and grants to assist in the construction and conversion of cooperative ownership apartments for low and moderate income persons.

2. Grants and low interest loans, or partial interest payments on conventional loans, for the construction of multifamily housing for low and moderate income persons.

3. Rental payment assistance for low income persons.

4. A program to provide technical, planning, financial and other assistance to stimulate an increase in the stock of low and moderate income housing.

BE IT FURTHER RESOLVED that the assistance program should focus on those communities with the most critical need for low and moderate income housing.

ADOPTED at the General Business Meeting of the Alaska Municipal League held on November 15, 1980.

# HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827

December 12, 1980

MEMORANDUM

TO: Title 29 Policy Group

FROM: R.E. Henderson, Mayor

RE: Changes to AS. 29.41.020

1. New Section # 29.36.240 Old Section # 29.41.020 Assembly to serve as School Boar.

The Assembly proposes that this section be re-written to read:

(a) The borough assembly is the borough school board for third class boroughs unless an ordinance ratified by the majority of the voters at a general or special election provides for a separately elected assembly and school board.

(b) When the assembly serves as the school board, the borough executive is president of the school board.

(c) The borough executive has all powers of a borough executive except for the veto power.

Two of the changes suggested for this section are of a "house-cleaning" nature and are non-controversial. The Assembly recommends the elimination of the sentence "Where applicable, weighted voting shall apply to board decisions." Neither the assembly or the school board can provide for weighted voting. (See AS. 29.23.021(c) "An Assembly may not provide for weighted voting.")

The second "house cleaning" recommendation modifies the sentence"The borough executive is the presiding officer of the borough assembly and president of the school board." The Assembly finds that this sentence is confusing and misleading. The executive of the third class borough does not differ from the executive of any other class of borough except that the third class borough executive does not have the veto power and if the assembly and the school board are combined, the executive is the president of the school board. Hence, it is only these unique differences that need to be stated. In fact, it is erroneous to state that the borough executive is the presiding officer since AS.29.23.060(b) states that the presiding officer is a member of the assembly and AS. 29.23.160 states that the borough executive cannot vote.

The major change proposed in this section is to provide for a local option in the selection of a combined assembly and school board or a separately elected assembly and school board. The Assembly feels that the inclusion of this option is in keeping with the philosophy of providing the maximum amount of local option without jeopardizing the essential distinctions in the forms of government. Although the major business of the third class borough is the business of the school district, there is still a distinct legislative arm - that of the Assembly. The Assembly has legal responsibilities that tie it into the state system of local government; the Assembly makes laws and the school board makes educational policies. The Assembly feels that there is validility in the observation that people interested in the work of the Assembly may not be interested in the work of the school board and visa versa. The Assembly feels that qualifying the option with the provision that an ordinance establishing separate bodies must be approved by the voters guards against a hasty or unconsidered change. The Assembly does not feel that the inclusion of the local option is a radical departure from the third class borough concept.

# HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

RESOLUTION 180

A RESOLUTION OF THE HAINES BOROUGH ASSEMBLY OBJECTING TO THE MUNICIPAL LEAGUE'S STATEMENT THAT A THIRD CLASS BOROUGH DOES NOT MEET THE STANDARDS FOR A GENERAL PURPOSE LOCAL GOVERNMENT

WHEREAS the Haines Borough is a third class borough government legally constituted and incorporated under the laws of the State of Alaska; and

WHEREAS the Alaska Municipal League does not define "the standards for a general purpose local government" which are the standards the League claims the third class borough does not meet; and

WHEREAS the Haines Borough is a member in good standing with the Alaska Municipal League;

BE IT THEREFORE RESOLVED that the Haines Borough Assembly objects to the inclusion of the following statement in the current Alaska Municipal League Policy Statement:

> The League supports elimination of language from Alaska Statutes which would allow for further creation of third class boroughs. Any existing third class borough would be allowed to continue in existence until such time as it reclassified. The League believes that a third class borough, as currently defined in statute, does not meet standards for a general purpose local government.

BE IT FURTHER RESOLVED that the Haines Borough will submit this Resolution No. 180 to the Alaska Municipal League as a challenge to the League to justify its policy statement by providing a definition of the standards for a general purpose government and by showing how the third class borough does not meet those standards; and

BE IT RESOLVED that the Haines Borough will send copies of Resolution No. 180 to members of the Alaska Municipal League and request the membership to reject the policy statement herein cited on the basis of its insupportability.

DATED: November 18, 1980

APPROVED AND ACCEPTED: R.E. Henderson

R.E. Henderson
Mayor, The Haines Borough

ATTEST: Martin a Cordes

Martin Cordes, Clerk

KENAI PENINSULA BOROUGH
BOX 850 · SOLDOTNA ALASKA 99669
PHONE 262-4441

STAN THOMPSON
MAYOR

December 2, 1980

Ms. Ginny Chitwood, Director
Alaska Municipal League
204 N. Franklin
Juneau, Alaska 99801

Dear Ms. Chitwood:

Reference the letter of November 25th from the Haines Borough Mayor regarding your Resolution No. 180, which letter is objecting to the elimination of the third class borough from the "standards of a general purpose government".

I agree wholeheartedly with the position of the Haines Borough Mayor and do feel that the Municipal League Policy Statement, that a third class borough does not meet standards for general purpose local government, is completely out of line.

Certainly the Haines Borough, as a third class borough, which is a member in good standing of the Alaska Municipal League and is a borough under the State Statutes for boroughs, is meeting the standards for general purpose local government. I do not understand the Municipal League's reason, or reasons, in asking the legislature to "stop" the creation of third class boroughs. It should be strictly up to the people in the area concerned as to which type of borough meets their needs the best. Obviously, Haines feels that the third class borough is what they need and want. It should not be changed by statute and certainly is not the moral right of the Municipal League to request such a change.

I would join with the Haines Borough in challenging the League to justify its Policy Statement providing a definition of the standards for general purpose government and by showing how the third class borough does not meet these standards and, furthermore, I believe that the Alaska Municipal League should cancel all reference to the deletion of a third class borough from its Policy Statement.

Sincerely,

Stan Thompson

Stan Thompson, Mayor
Kenai Peninsula Borough

ST:mw

cc: The Honorable R. E. Henderson

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

1028 Aurora Drive
Fairbanks, Alaska 99701
4 December 1980

The Honorable R.E. Henderson
Mayor, Haines Borough
PO Box H
Haines, Alaska 99827

Dear Mayor Henderson:

Thank you for your letter of November 25 and a copy of the Resolution No. 180 adopted November 18 by the Haines Borough Assembly. I appreciate your sharing your feelings with me.

If the Haines Borough Assembly wants to work for a change in the AML Policy Statement, there are several avenues that may prove fruitful.

Between now and the 1981 conference in Anchorage in early November 1981 the AML Legislative Committee will be meeting. At our recent meeting in Fairbanks I appointed Marilyn Dimmick, an Assembly Member from the Kenai Peninsula Borough, as the chiar of that committee. Jon Halliwell of Haines, who has served on that committee in the past, and is now a member of our vital "Legislative Implementation Task Force" can brie. you on the procedures of the Legislative Committee.

Much of the nuts and bolts debate on the policy statement takes place at the Legislative Committee level. There is more time to explore the kind of concerns you raise, to improve definitions and to further define fuzzy areas that need further definition.

If you are not successful at the Legislative Committee level you should come to the next conference prepared to propose the changes you would like to see at the Policy Committee Section Meeting on the section of the policy statement where you have concerns. If the Policy Committee agrees with you, then it will bring your proposed changes to the floor.

If you can not get either the Legislative Committee or Policy Committee to agree, then you can bring the matter to the floor at the annual business meeting yourself.

Good luck with your efforts. If I can help you further please let me know.

Cordially,

Theodore Lehne
President

# HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827


December 12, 1980

Senator Arliss Sturgulewski, Chairwoman
Title 29 Policy Advisory Group
Anchorage, Alaska

Dear Senator Arliss Stugulewski and Members of the Title 29 Policy Advisory Group:

At the recent session of the technical sub-committee of the Policy Group, the third class borough, as a form of government, was called into question. It is reported to us that the technical committee unanimously voted to eliminate the third class borough, allowing the existing third class borough 2 years to up-grade. If this recommendation is not successful, we are told that the technical committee will suggest that the third class borough be eliminated, but that Haines be "grandfathered." And finally, if all else fails, there should at least be an addition to the General Powers Section 29.48.010 making it applicable carte blanche to the third class borough, thus enabling the third class borough to come as close as statutorially possible to the ranks of a second class borough.

We agree that clarification needs to be added to 29.48.010 so that there is no mistake that this applies to third class boroughs insofar as the general powers relate to the exercise of the two specified powers of a third class borough. As the borough adopts additional powers on a service area basis, the general powers will apply to the power exercised for the service area.

We also suggest that you clean up 29.41.020 Assembly to Serve as School Board so that it does not contain statements of procedure that are no longer possible because of other changes in law. The provision for weighted voting and the borough executive to be the presiding officer of the borough assembly are outdated statements. In addition we would like you to consider allowing the third class borough the option of a separate assembly and school board. We feel that this is no more or less than a matter of public interest in the two different functions of an assembly and a school board. Some people are interested in educational and school policy but they are not interested in the legislative responsibility of the assembly. It has been expressed to us many times that so and so would run for the school board but doesn't want to bother with the assembly and visa versa. We would like to be able to put the question of two different bodies on the ballot at a future election. A draft of our proposed language for AS. 29.41.020 is appended to these comments.

We do not understand the reasons for the technical committee's recommendation to eliminate the third class borough. We hope to glean the reasons for this recommendation from the 12/15 meeting. We also hope to persuade the Policy Committee to reject the technical committee's recommendation to eliminate the third class form of government.

The 1980-81 Alaska Municipal League policy statement claims that the third class borough does not meet the standards of a general purpose form of government. We have circulated a Resoluiton opposing the League's statement. We believe the statement is unsupportable without some companion piece listing the standards of a general purpose government. At least one other elected official outside

our area agrees with us. A copy of our resolution and the responses we have received are available to you.

The third class borough cannot provide, area-wide, community roads, sewer or water systems, animal or fire arm control, police or fire protection; and we cannot plan and zone area-wide. Are these the standards we fail to meet? Is our inability to function in this respect area-wide the reason the third class borough form of government needs to be eliminated? As you know, the third class borough may provide any general law municipal power which a second class borough is authorized to assume, except that it may only do so on a service area basis. And service areas are established by the vote of the residents within them. This arrangement maintains the maximum amount of voter control over the services a government may decide it needs to provide. Do you think there is something wrong with a system that gives so much control to the voters? It is possible for the voters to rejct a service or regulatory function which the elected officials, or residents outside the service area, might think is necessary for the well-being of the area. Are you suggesting that this is a bad idea? It seems that the third class borough system gives the powers to the voters and not to the elected officials.

Now, there are certain facilities, services and regulations which a second class borough can assume without going to the polls. These are a transportation system, a garbage and solid waste system; the licensing, impounding and disposition of animals; water pollution control; air pollution control; and the licensing of day care facilities. And a second class borough may have extraterritorial jurisdiction for certain things and it may create historic districts. Perhaps these are the standards of a general purpose government - these are the things that the third class borough lacks the authority to mandate without going to the polls for the permission of its voters. Can you in fact state that it is preferable for a legislative body to be able to mandate the foregoing list of services and regulations - that the ability to mandate is so much preferable to the requirement that the voters approve the exercise of the powers, that it is necessary to eliminate the one form of government that gives the voters the authority to accept of reject these "essential" services?

We must address the question of the third class borough's lack of authority to plan, except upon the consent of the voters, and then only in service areas. The objections to this arrangement must be that a) planning is too important to allow it to be an optional function; and that b) planning on a service area basis is unworkable. The relative importance of planning is an argument of values. It would be hard to argue that the residents of the Haines Borough or the land they use has suffered due to a lack of local planning authority. Residents of the borough are not dondemning the development that is taking place. It may be that the sparsely populated area of the Haines Borough does not require a self-conscious planning effort. The most densely populated area of the Borough is the 2¼ square miles of the City of Haines - planning takes place in this area. The clusters of people outside the City make obvious service areas. Since planning on a service area basis has never been tried, it is only negative speculation which proclaims it "unworkable."

Looking at the goegraphy and population of the Haines Borough you will note that according to the 1980 preliminary census figures it has a population

1623, with 944 of those people clustered in the 2½ square miles of the City of Haines, a first class city with all the attendant powers. That leaves 679 in the area outside the City. By our own count, approximately 363 of those 679 live in a circle around the perimeter of the City, extending 18 miles west, 2 miles south and 4 miles north. This leaves approximately 316 people for the rest of the Borough. The Haines Borough is approximately 2200 square miles. Most of it is roadless and is either in State or Federal ownership. The circle of people around the City forms the one service area the borough has - a service area for fire protection. A more extensive service area for police, medical and fire protection was voted down because of an inadequate communication system between the location of the service and the areas proposed to be served. Evidently, the formation of substations was viewed to be too expensive by the people. Maybe the people are mistaken; maybe they do need and can use the services proposed, but why is it wrong for them to carve their own destiny? If the population grows, needs may change; and there is the vehicle - i.e. service areas - through which those needs can be satisfied by the existing form of government, in concert with the wishes of the residents. When people begin to feel encroached upon, they will begin to look to the planning power for control. It is there for their use when they choose to use it. Is this so contrary to good government?

You have stated that you would like to re-write the statutes to provide for maximum local option. You may find that the third class borough of government is the form of government that does provide the maximum amount of local option - but it is at the discretion of the voting populace, not of the legislative body. If you do choose to eliminate the third class borough form of government, please be specific with your reasons why so that we may know exactly what the issues are.

Sincerely yours,

R E Henderson

R.E. Henderson
Mayor

TELEGRAM

ALASCOM, INC.
PHONE: 586-0442
JUNEAU, AK 99802

02048 NL TDA HAINES ALASKA 94 12-17 124P AST

PMS TAMARA COOK EXEC. SECRETARY 465-4996

DIVISION OF LEGAL SERVICES LEGISLATIVE AFFAIRS AGENCY

MAIL STOP 3101 POUCH Y JUNEAU AK 99801

0927

YOU MAY HAVE RECEIVED A LETTER OR R ESOLUTION FROM HAINES BOROUGH SEEKING SUPPORT IN OPPOSITION TO THE 1980-81 ALASKA MUNICIPAL LEAGUE POLICY STATEMENTS ON THE STATUS OF THIRD CLASS BOROUGHS. THE COMMUNICATION YOU HAVE RECEIVED DOES NOT EXPRESS THE VIEW OF THE CITY OF HAINES. WE WILL STUDY THE HAINES BOROUGH PAPER AND SHARE OUR POSITION WITH YOU BY MAIL IN THE NEXT FEW DAYS. WE RESPECTFULLY REQUEST THAT YOU WITHHOLD EXPRESSION OF DISAPPROVAL FOR THE MUNICIPAL LEAGUE POLICY STATEMENT UNTIL YOU HAVE REVIEWED OUR POSITION ON THE MATTER.

VERY SINCERELY YOURS,

JON HALLIWILL, MAYOR

CITY OF HAINES

**THE CITY AND BOROUGH OF JUNEAU**
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski, Senator
Chairman, Title 29 Revision Policy Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

File: Title 29 Revisions

Subject: Recall

Dear Senator Sturgulewski:

At the meeting held by your committee in Fairbanks just before the Alaska Municipal League meeting, a great deal of debate focused on the question of whether the grounds for the recall of a local official should be narrowly or broadly drawn. Mayor Larson requested from me a defense of narrowly drawn grounds and other procedures designed to provide the elected official with some measure of protection. Please consider this letter as that defense.

Many features of our democratic system of government are accepted as basic and necessary to the system. These ascertions are seldom examined critically as it is unpopular and distasteful for any one to seriously undertake criticism of what is popularly perceived to be the underpinnings of our democratic form of government. Recall is one such uncritically examined element of our democratic system of government.

First, we should note that our system of government is not a pure democracy but it is rather a democratic republic. Article IV, Section 4 of the U.S. Constitution guarantees to each state a republican form of government, not a democracy. That Constitution provides for neither an initiative or recall. Throughout the history of the United States, the states themselves have not universally provided for recall.

The upsurge of recall provisions came about during the government reform movement. While recall may be viewed as a procedure which strengthens democratic principles, it clearly accentuates one of the greatest weaknesses of the democratic system - its vulnerability to popular but ill-conceived whims of the public and its manipulation by a minority.

The Greek philosopher who first categorized the various forms which government could take, and who gave democracy its name, rated

democracy rather low as a form of government which would best serve the needs of its subjects. Being subject to the whims of a relatively uninformed populace made a democracy ill suited to consistently serve the needs of the public. The Federalist Papers and the U. S. Constitution clearly show that the thoughtful leaders of our country who drafted our Constitution had severe reservations about the democratic form of government and sought to overcome those perceived deficiencies. They provided us with an electoral college which, they hoped, would have the collective wisdom necessary to select a statesman worthy and capable of discharging the duties of President of the United States. They did not provide for his direct election by the populace as would have been the more "democratic" method. They provided us with two houses of Congress, one of which would be based upon population and which might reflect popular sentiment and a second house which would provide equal representation to all the states. This second house, it was hoped, would provide the mechanism for preventing the enactment of popular but ill-conceived measures. A further check upon both of these houses was given to the President who could veto measures he believed were inappropriate. The drafters of our Constitution believed that these and other checks, along with the probability that various interest groups would form different coalitions on different measures, would combine to overcome one of the more serious defects of the democratic form of government. They apparently did not feel that recall was either necessary or desirable. In fact, I suggest that the "open season" type of recall which has been proposed for Title 29 is contrary to the very principles which are reflected in our Constitution and the philosophy of those who drafted it.

Under our republican form of government, an elected official does not serve as a mere extension or agent of those who elected him. The elected official is expected to exercise his informed and considered judgment in providing for the public good. If it were reasonable to believe that the public could become adequately informed on all the public issues which face a legislative body, then it might also be reasonable to assume that the general public could also function in the manner of a town meeting and decide all public issues. Because few of us are able to devote the time necessary to become so informed, we delegate to our elected officials the responsibility to become adequately informed and to make decisions as to the public needs. If the public is dissatisfied with a policy decision made by public officials, the initiative and referendum may be used to correct what are perceived to be errors of decision making. When recall is used in such cases, it is not corrective in nature, it is vindictive and punitive.

As already noted, recall was a concept which became popular during the reform era. It was aimed not at governmental bodies which had

made decisions which were unpopular with various segments of populace but was aimed at corrupt individuals. The public good demands that persons be removed from office who are corrupt or dishonest in office, who fail to perform prescribed duties of the office or who are physically unable to perform the duties of the office. If there is no administrative or judicial procedure for removing such persons from office, it would be appropriate to provide a method for the electorate to effect such a removal. However, any such system should be strictly limited to removals for corruption, dishonesty affecting the public good, and inability or refusal to perform the duties of the office. It would be an abuse of the recall mechanism to permit recall of an elected official merely because the official had participated in making a decision which was unpopular with a large segment of the public. Any controversial matter is likely to be unpopular with a large segment of the public and public officials should not have the threat of recall hanging over their heads whenever their honestly held convictions compel them to vote in a certain manner. Unfortunately, a review of recall efforts will reveal that most, if not all recall efforts, are actually based upon an action taken by the entire body and have little or nothing to do with any of the legitimate grounds for recall. To make matters worse, the proponents of the recall often resort to slander or grossly exaggerated accusations in their recall petition.

It cannot be denied that there is currently a movement in the direction of single issue politics. When there are groups about which openly flaunt their "hit list," it behooves us to examine the elements of our political system in light of this new phenomenon. A recall provision which requires merely that someone be dissatisfied with an elected official's performance amounts to a declaration of open season on all elected officials. If the recall mechanism can be called into play for essentially no reason at all, the quality of persons who will run for public office will suffer as will the basic decision making process itself. At the municipal level, once a recall petition has been placed in circulation, and even more so after it has been filed, the proponents of the recall often become very forceful and vocal in airing their belief that the governing body should cease making important decisions until after the recall matter has been settled. As local elected officials are not insensitive to public demands, such demands do have an impact on the elected body. Unnecessary delay in decision making coupled with an overemphasis on the recall petitioners' position on matters before the body may combine to produce results which are not in the best interest of the public. The tension and turmoil which a recall petition creates within the elected body and the community is an undesirable but, nevertheless unavoidable, effect of a recall attempt. Therefore, every effort should be made to minimize the unnecessary exposure of a municipality to these effects. The "open season" type of recall will serve to maximize the number of occasions upon

which the local government will experience these effects. These negative effects can be minimized without destroying the right of recall if the grounds for recall are narrowly drawn to limit them to matters such as corruption in office and inability or refusal to perform the functions of the office. Not only does this narrow the grounds to those which are truely relavent to the purpose of recall but it also would reduce the ease with which a recall effort could be mounted against several members of a governing body based upon the way the body had voted.

Not only must the grounds be drawn narrowly to insure that the recall mechanism is not abused but the recall system should clearly provide for judicial review of the grounds stated. Failure to provide a clear right of judicial review renders the requirement for clear and narrow grounds a nullity.

Before any group should be permitted to force the public to undergo the expense of an election, there should be a very substantial showing that the public is indeed interested in voting on the proposed issue. Therefore, there should be a substantial signature requirement. Under state law, those seeking a recall petition for a state official must first submit an application containing the signatures of at least 10% of those who voted in the last election in the relevant district. If the Lieutenant Governor determines that the application is sufficient, a petition is issued and the petitioners must then obtain signatures equal to at least 25% of those who voted in the last general election in the relevant district. Thus, at the state level the legislature has provided for a recall system which places a significant burden upon the petitioners and thus may well filter out most of those recall efforts which would be unsuccessful. In addition, the grounds for recall (lack of fitness, incompetence, neglect of duties, and corruption) are all narrow enough that the political philosophy or the way a person voted would not be a sufficient basis for a recall. Further, the legislature has clearly provided for a mechanism for judicial review of a determination by the Lieutenant Governor.

Recall is not a matter to be taken lightly and is not one which should be easily initiated or carried out. A political system which provides for the relatively easy recall of an elected official for reason of the way that official voted on a particular matter is a system which has lost one of the essential characteristics of our republican form of government. We should not cater to the fickleness of the electorate if to do so would tend to reduce the effectiveness of local government without some significant, compensating good. Our system of government will function most smoothly, most effectively and for the benefit of the general good if we provide for a recall system with narrowly drawn grounds and with other mechanisms which are designed to prevent the abuse of the recall system. The "open season" system brings with it disruptions

which serve no legitimate or public purpose. The "open season" approach should be abandoned.

Very truly yours,

/s/ Lee Sharp

Gerald L. Sharp
City-Borough Attorney

GLS:jr

cc: Mayor Ron Larson
Mat-Su Borough

Tam Cook, Esq.
Legislative Affairs

# CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381

ADOPTED AUGUST 1972


December 10, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

Re: Title 29 Revision - Recall

Dear Madam:

The Wrangell City Council is aware that the Title 29 Revision Committee has proposed that the recall provisions of Sec. 20.30.220 be amended to broaden the grounds for recall. We wish to strongly oppose this amendment which could subject an official to recall for any action on any matter.

We disagree that to broaden the grounds will enable an elected official to be recalled without being labeled incompetent, guilty of misconduct or as failing to perform his duties. We do agree that most reasons for recall are other than the allowed grounds.

Within Alaska, local governments are being subjected to the expense of recall elections more and more. Often the action stated is not within those grounds allowed, however, seldom does an elected official challenge the action in court as did officials in Kodiak. If every action taken by an elected body is subject to challenge by recall, our local governments could, conceivably, continuously be conducting recall elections. Also, action by the State Legislature could cause recall of local officials. For clarification, we offer the following instance:

> When Title 29 was adopted, there was a provision in 29.23.250(a) that a voter of home rule or general law city is eligible to hold the office of mayor. Wrangell's charter required the mayor to be 21 years of age, which was in conflict with the new Title 29. The City Council placed an amendment to the charter on the ballot to conform with State law. The amendment overwhelmingly failed, thus the majority of the voters were not satisfied with the official duty the Council performed by placing an amendment on the ballot.

As you can see, if the grounds for recall were as you propose, an elected official could be recalled for actions that may be required of their office.

We urge the committee to amend Title 29 to reduce the abuses of recall by including provisions to make the grounds more specific, to require that all officials who voted on the issue on which the recall is based are on the recall ballot, and to provide that unless all of the officials on the ballot are recalled, none shall be recalled.

In closing, we would suggest that whatever grounds for recall are imposed on local elected officials may eventually be imposed on State elected officials.

Very truly yours,

Donald J. House
Mayor

DJH:JR:jb

cc: Tamara Brandt Cook ✔
William Overtstreet, President
Alaska Conference of Mayors

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski
Senator, State of Alaska
Chairman, Title 29 Revision Policy
Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

FILE: Title 29 Revisions

SUBJECT: Initiative and Recall

Dear Senator Sturgulewski:

In reviewing the changes which the Policy Committee made to the proposed initiative and referendum proceedings, I note that a municipality will now be required to hold special elections for initiatives. Present law requires that initiatives be filed within 90 days of the next regular muncipal election. This requirement eliminates the need lor the muncipality to ever have to hold a special election on an initiative. However, there seems to be little reason not to allow petitioners to file an initiative at any time they please so long as the municipality is not required to undergo the expense of special elections. It was this approach which the Technical Committee suggested.

The Legislature has seen fit to provide an initiative procedure at the state level which does not permit the filing of an initiative petition to generate the requirement for a special election. Further, an initiative petition could be filed with the State and not be placed on the ballot for almost two years. Municipalities have elections each year. If they are required to place initiatives on the next occuring regular or special election, initiatives at the local level will be voted on, in all cases, much more quickly than at the State level. If the State cannot be put to the expense of a special election for an initiative, it seems inappropriate to force municipalities to undergo the expense of special elections for initiatives.

I also believe that if a referendum is filed, no special election should be held unless the referendum has been filed in such a

manner that the effect of the measure to be referred is suspended.

For the foregoing reasons, I strongly suggest that the Committee consider changing the election requirements for initiative and referendum to provide that initiatives are placed on the first regular or special municipal election held not sooner than 75 or 90 (or some other reasonable time) days after the initiative is submitted to the Legislative body. I would suggest that a referendum be treated in the same manner unless the filing of the referendum operates to effect a suspension of the matter to be referred. In such cases, a special election should be held if required.

Sincerely,

/s/ Lee Sharp

Gerald L. Sharp
City-Borough Attorney

GLS:phl

cc: Tam Cook, Esq.
Legislative Affairs

PROPOSED BILL #3

A BILL

For an Act entitled: "An Act providing organizational grants to newly incorporated cities and boroughs, providing transitional assistance to newly incorporated boroughs; and providing for an effective date."

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

*Section 1. AS 29.18.180 is amended to read:

Sec. 29.18.180. Organization grants to cities. (a) For the purpose of defraying the cost of transition to [BOROUGH OR] city government and in order to provide for development and interim government operations, each [BOROUGH AND] city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, [OTHER THAN A UNIFIED MUNICIPALITY INCORPORATED UNDER THE PROVISIONS OF AS 29.85, OR A MUNICIPALITY INCORPORATED BY CONSOLIDATION], is entitled to a first year organization grant equal to $50,000. [$10 FOR EVERY VOTER WHO VOTED IN THE BOROUGH OR CITY INCORPORATION ELECTION. HOWEVER, EACH INCORPORATED BOROUGH AND EACH FIRST CLASS CITY INCORPORATED OR ESTABLISHED BY RECLASSIFICATION OUTSIDE AN ORGANIZED BOROUGH IS ENTITLED TO AT LEAST $25,000.]

(b) Within 30 days after certification of the incorporation election favoring incorporation or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the city the total amount of first year organization money to which the city is entitled.

(c) A city eligible for and receiving a first year organization grant under subsections (a) and (b) of this section is entitled to a second year organization grant of $25,000. Within 30 days after the beginning of the city's second fiscal year, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the city the total amount of second year organizational grant money to which the city is entitled.

*Sec. 2. AS 29.18 is amended by adding a new section to read:

Sec. 29.18.185. Organization grants to boroughs. (a) For the purpose of defraying the cost of transition to borough government and in order to provide for development and interim governmental operations, each borough incorporated after January 1, 1981, other than a unified municipality incorporated under the provisions of AS 29.68.030 - 440, or a municipality otherwise incorporated by consolidation, is entitled to organization grants for the first three full years of incorporation according to the following schedule: First year of incorporation the borough is entitled to $300,000; second year of incorporation, the borough is entitled to $200,000; third year of incorporation, the borough is entitled to $100,000. In addition to state support provided in this section, the borough is also entitled to regular State Aid to Local Governments payment under AS 29.88.010 - 29.95.030.

(b) Within 30 days after the date of incorporation of a borough after January 1, 1981, the Department of Community and Regional Affairs shall determine the population of the borough.

(c) Within 30 days after completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough the total amount of money under this section to which the borough is entitled for the first year of incorporation. The second and third entitlements will be transmitted within 30 days after the beginning of the subsequent borough fiscal years, or as soon thereafter as money is appropriated to it for the purpose.

*Sec. 3. AS 29.18 is amended by adding a new section to read:

Sec. 29.18.186. Transitional Assistance to boroughs. Each borough incorporated after January 1, 1981, other than a unified municipality incorporated under the provisions of AS 29.68.030 - 440, or a municipality otherwise incorporated by consolidation, is entitled to transitional assistance provided in (a) and (b) of this section. (a) The Department of Community and Regional Affairs shall provide assistance with establishment of the initial assessment and collection department for a borough that has adopted a sales tax.

(b) The department shall establish the initial assessment roll for a borough that has adopted a property tax. The initial assessment roll shall contain all the information required by AS 29.53.100(a). In the preparation of the initial assessment roll, the department may contract for the services of appraisers and others whose services are required to complete and report the initial assessment. When completed, the initial assessment roll shall be certified by the commissioner, and the completed roll, together will all supporting information and materials prepared

~~roll, the department may contract for the services of appraisers and others whose services are required to complete and report the initial assessment. When completed, the initial assessment roll shall be certified by the commissioner, and the completed roll, together with all supporting information and materials prepared~~ by the department, shall be transmitted to the borough assembly. The department, to the extent appropriations are available for the purpose, shall continue to fund the assessment function and related staff for a period of three years after the completion of the initial roll.

(c) There is established in the Department of Community and Regional Affairs the transitional assistance to boroughs fund. The fund shall be administered by the Commissioner and shall be used to pay for transitional assistance under (a) and (b) of this section.

(d) An appropriation made for transitional assistance to a borough is valid for the three years of required assistance and the unexpended balance shall be carried forward to subsequent fiscal years for those years. Between July 1 and August 31 of each fiscal year, a statement supporting the amount of the unexpended balance required to complete transitional assistance projects for which the initial appropriations was made and the amount that may be lapsed shall be recorded with the Department of Administration.

*Sec. 4. AS 29.18 is amended by adding a new section in article 3 to read:

Sec. 29.18.187. Definitions.

(1) "assessment functions" include discovering and describing taxable property; appraising that property; and preparing an Assessment roll.

*Sec. 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

09 December 1980

TO: Title 29 Policy Group

FROM: Tamara Brandt Cook
Legislative Counsel TBC

SUBJECT: Changes to Drafts Suggested by the Policy Group

Here are revisions to the drafts proposed by the Technical Committee incorporating changes suggested by the Policy Group during your meeting held on November 10th and 11th. In addition to these revisions, two sections are being held by the Policy Group for further review: AS 29.09.180 (Organization Grants), and AS 29.30.040 (Voter Qualifications).

I would appreciate any comments which you may have regarding these revisions.

Also enclosed is a memo from the Alaska Association of Municipal Clerks.

TBC:maf

Encl.

LEGISLATIVE AFFAIRS AGENCY

# MEMORANDUM

TO; Laura Davis
Attorney General's Office

FROM: Melissa Aber Fouse
Title 29 Revision Commission

SUBJECT: Title 29 Revision

Attached are drafts presented to the Policy Group by the Technical Group at their meeting 10 and 11 November 1980. These changes were approved with minor wording revisions.

Also attached are membership lists of those persons serving on the committees.

LAA 15

# CITY OF SEWARD

P. O. BOX 337
SEWARD, ALASKA 99664

CITY MANAGER 224-5214
COMPTROLLER 224-5216
INFORMATION 224-5215
CITY POLICE 224-5201

December 1, 1980

TAMARA BRANDT COOK
LEGISLATIVE COUNSEL
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
JUNEAU, AK 99811

MEMO FROM STATE CLERKS TO TITLE 29 COMMITTEES

Enclosed is a memo regarding various sections of Title 29 and its proposed revisions which the Alaska Association of Municipal Clerks unanimously approved at its annual meeting held in Fairbanks the week of November 10. The Association requested that I forward this memo to the Technical and Policy Committees.

I have been trying to recover from the flu for the past week and still am unsure if I will be in attendance at the December 4-5 Technical meeting. Therefore, I am sending this memo on to you for distribution.

By copy of this letter and the enclosure, I am also forwarding this information to John Messenger's office just in case this does not reach you in Juneau in time.

Thank you.

JOANNE E. SHANLEY
CITY CLERK

Enclosure

cc: John Messenger w/ enclosure

November 18, 1980

TO: TITLE 29 TECHNICAL AND POLICY COMMITTEES

FROM: ALASKA ASSOCIATION OF MUNICIPAL CLERKS

SUBJECT: TITLE 29 REVISIONS

We respectfully submit the following comments:

1) Sec. 29.30.040. We support the drafted changes as recommended by the Technical Committee, dated October 10, 1980, with the following amendment to (b):

> "(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of and registered in the precinct, district, or service area in which he votes."
>
> Explanation: Those voting on the issue are residents of the specific area and thus will have to live with the outcome of the election; requiring registration in the precinct, district or service area will hopefully eliminate some of the problems and the time demanded in trying to prove residency; such a procedure will give the Canvass Board clearer direction.

2) Regarding new AS 29.30.110 and .230, the AAMC feels it is within the scope of responsibilities of the clerks to provide an acceptable petition format; however, we object to being burdened with any of the responsibility of composing any type of initiative, referendum or recall statement. We feel that the newly-proposed sections are unclear in this regard and request that clarification of our position be considered.

3) AAMC strong supports the language as proposed in AS 29.30.050 regarding elections which gives the municipalities the option to provide for runoff elections by ordinance.

**LEGISLATIVE AFFAIRS AGENCY** **MEMORANDUM**

TO: Senator-elect Don Gilman

FROM: Melissa Aber Fouse
Title 29 Revision Commission

SUBJECT: Revisions to Title 29

Here are copies of the drafting changes that have been submitted to and approved by the Title 29 Revision Commission Policy Group to date. Also included are a news release prepared by our office, a progress report (as of 7 October) and the minutes of the last Policy Group meeting.

These should give you a good idea of what has been accomplished to date.

Please let us know if there is any further information we can provide you with.

LAA 15

November 18, 1980

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FROM: ALASKA ASSOCIATION OF MUNICIPAL CLERKS

SUBJECT: TITLE 29 REVISIONS

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2) Regarding new AS 29.30.110 and .230, the AAMC feels it is within the scope of responsibilities of the clerks to provide an acceptable petition format; however, we object to being burdened with any of the responsibility of composing any type of initiative, referendum or recall statement. We feel that the newly-proposed sections are unclear in this regard and request that clarification of our position be considered.

3) AAMC strong supports the language as proposed in AS 29.30.050 regarding elections which gives the municipalities the option to provide for runoff elections by ordinance.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough, or;

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

EXPLANATION: Subsection (a) has been altered so that second class cities are included within the area outside cities for purposes of selecting representatives on the charter commission. This was done so that first class and home rule cities, with their greater concentrations of population, have less chance of overwhelming the rest of the borough. Subsection (b) has been added to avoid the expense and inconvenience of an election in the question of unification if not enough nominations of commission members are received. It is felt that failure to nominate a sufficient number of commission candidates indicates a general lack of interest in the question of unification.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. The following language was deleted as a duplication of AS 29.30.040: "The municipality may not alter voter qualification requirements of this title." Subsection (b), making this applicable to home rule municipalities, was deleted.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This requirement has been altered to apply to certain offices only and liberalized to allow a municipality to provide otherwise by ordinance. The provisions specifying when a runoff must be held and notice requirements are no longer mandatory. In addition, the procedure set out in (c), for the benefit of a municipality which desires specific procedural guidance, has been changed to provide three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoff elections.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

**Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter**

**(1) is not restricted by AS 29.30.090;**

**(2) includes only a single subject;**

**(3) relates to a legislative rather than to an administrative matter; and**

**(4) would be enforceable as a matter of law.**

**(b) A decision by the clerk on an application for petition shall be subject to judicial review.**

EXPLANATION: This is a new section. The first part is modeled after section two of the initiative article in the state constitution. Sponsors of a petition would be required to register with the clerk. The clerk would review an initiative for substantive legality, with his decision subject to immediate appeal. This allows for a judicial determination of the legality of an initiative prior to incurring the expense of an election on it.

Sec. 29.30.110. PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition. The statement provided under AS 29.30.110(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: The 60 day signature gathering period is carried forward. While the possibility of an initiative or referendum on a matter which affects only a service area is not eliminated, such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body. Additional changes require rejection of a signature not accompanied by a legible residence address and allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public recond.

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures the sponsors have only 10 days to gather the signatures. They may not use signatures which were gathered prior to the first filing but not submitted, and they may not use signatures gathered during the period in which the clerk is checking the petition.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If the assembly or council adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

EXPLANATION: The changes allow for the submission of an initiative measure to the voters within 75 days after certification of a petition rather than requiring that the vote be delayed until the next regular election. The 45 day requirement was added to insure that a petition certified after the legal notices of a regular election were published does not complicate the election. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer may reject a petition. An areawide vote is required whether the matter initiated is areawide or nonareawide because a service area should not be allowed to become autonomous.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

EXPLANATION: The ability to suspend an ordinance or resolution which has taken effect when a petition is filed within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as that is covered under AS 29.13.080. All questions are submitted to an areawide vote.

Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition process.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

EXPLANATION: The possibility of recalling an official who has been appointed to an elective position has been added. The date to be used in determining when the six month period has run has been clarified.

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signature and residence addresses of at least 10 municipal voters who will sponsor the petition;

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

EXPLANATION: This is a new section which describes the requirements for an application for recall petition.

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) the name of the official sought to be recalled;

(2) the statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section sets out requirements similar to those relating to the content of initiative and referendum petitions. Requiring the clerk to prepare the petition and supply copies insures that each copy is complete and legible. A petition must be filed within 60 days after the petition is issued rather than 60 days after the date of the earliest signature on the petition.

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by 35 percent of the voters residing within the municipality based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by 35 percent of the voters residing within the district based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: Which election to be used as a standard for determining the number of signatures required is clarified. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that this number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

**Sec. 29.30.250.** SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public recond.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

Sec. 29.30.260. NEW RECALL PETITION. The rejection of a recall petition for any reason does not preclude the filing of a new petition. However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficient signatures alone triggers the waiting period.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election occurs within 75 days the assembly or council shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The assembly or council may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

EXPLANATION: The 45 day requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

EXPLANATION: This section makes reference to the fact that each statement is limited to 200 words or less and provides that the statement of the official if published before the election will appear on the ballot.

**DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980**

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the assembly or council, the assembly or council, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the assembly or council are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the assembly or council, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Subsections (f) and (g) were changed to take into account time periods required for election notice and nominations.

TITLE 29 REVISION COMMISSION
NEWS RELEASE

Alaska Legislative Resolve number 39 directed the Alaska Legislative Council to revise Title 29 of the Alaska Statutes (Municipal Government) with the assistance of a Policy Advisory Group. A group was appointed consisting of both public and legislative members. Members are:

Senator Arliss Sturgulewski-Chairman, Anchorage
Senator Bob Mulcahy, Kodiak
Representative Margaret Branson, District 5
Representative Charles Parr, Fairbanks
Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
James Kohler, Manager, City of Yakutat
Ronald Larson, Mayor, Matanuska-Susitna Borough
Gene Moore, Manager, City of Kotzebue
Donna Sherby, City Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough

Ex-Officio Members are:
Ginny Chitwood, Alaska Municipal League,
Palmer McCarter, Department of Community & Regional Affairs
Phil Smith, RuralCAP

The first meeting of the Policy Group was in Anchorage on the 27th and 28th of August, 1980. At that meeting the Policy Group discussed the direction their policy decisions would take. It was agreed that Title 29 needed to be clarified so that elected officials could understand Title 29 without the help of attorneys, and that there needed to be greater self determination and latitude for local governments. A Technical Revision Committee was appointed to perform actual drafting. It is composed primarily of attorneys with expertise in municipal law.

The second meeting of the Policy Advisory Group was held in Anchorage on September 29th and 30th, 1980. Presentations were made by representatives of the Department of Environmental Conservation, the Department of Community and Regional Affairs, the Department of Health and Social Services, the Haines Borough Assembly, and Tanana Chiefs Conference, Inc. The Policy Group reviewed the work that had been done by the Technical Committee.

Chairman Sturgulewski attended the Alaska Federation of Natives convention and a meeting of the Alaska Village Council Presidents to answer questions and receive comments.

The latest Policy Advisory Group meeting was held in conjunction with the Alaska Municipal League's convention in Fairbanks, 10 and 11 November, 1980. Members of the public were heard including representatives from the City of Fairbanks, the City of McGrath, the City of Nome, the City of Saxman, the City of Homer, the Kodiak Island Borough, and the City of Unalaska. The Policy Group reviewed the work that the Technical Committee had accomplished.

To date changes in Title 29 granted preliminary approval by the Policy Advisory Group include a reorganization of the order of the sections, clarification and technical clean-up of the wording in many of the sections, and substantive changes in the area of initiative and referendum, recall, limitations on home rule powers, and procedures dealing with adoption of home rule or unification charters. However, all decisions made by the Policy Advisory Group are subject to further consideration and possible revision.

SCOMM

#23:9

| NAME | SENT TO: | DATE: |
|---|---|---|
| Letter fm Chefornak | ALL | 23 Oct 80 |
| Drafting Chgs. #1 | to Tech Comm. | 24 Oct 80 |
| Letter fm Bob Jettner City Mgr - McGrath | to ALL & Mike Walleri | 27 Oct 80 |
| Drafting chgs #2 | Tech Comm. (Also 12 Nov Mtg) | 28 Oct 80 |
| Ltr fm Cities of Kodiak & Palmer | ALL | 29 Oct 80 |
| Drafting CHGS #1 | To Policy Grp @ Mtg FBX | 10 Nov 80 |
| Pgs 32-34 & 133 | " " " " | " |
| St Mary's Ltr & reply | " " " " | " |
| Ket Mun. Atty (04 Nov) | " Harbors & "Marinas" | " |
| Ket Mun Atty · CHAP 53 | To Tech Comm. 12 Nov Mtg | 12 Nov |
| CHAPTER 45 REVISION | " " " " | " |
| Received: | Policy Group Mtg. FBX | 12 Nov |
| fm Mike Walleri | "Tribal State Relations etc | " |
| " City of FBX | Ltr re: 29.33.220 w/ Ord #3406 Attached | " |
| " " Alakanuk Terry Cook | Recommended CHGS | " |
| " " " Tyonek | (to RURALCAP) sub. by Bonnie Hedley | " |
| Resolutions fm City of Saxman | | " |
| Resolutions fm Northwest AK Mayor's Conf. | | " |
| Nana Ltr (dtd 11 Nov) | to ALL (Policy, Tech, Ex-O) | 18 Nov |
| City of Kenai Ltr (dtd 10 Nov) | " " | " |
| City of Kodiak by Mahoney (dtd 10 Nov) | " " | " |
| copy progrpt dtd 7 Oct | " " | " |
| Memo Earley/McAnerny | " " | 25 Nov 80 |
| Notice of Mtg | to ALL: Members Printed Labels & others | 25 Nov 80 |

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

# MEMORANDUM State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Palmer McCarter
Director

DATE: November 6, 1980

FILE NO:

TELEPHONE NO:

FROM: Terry Earley
State Assessor

SUBJECT: School Bond Guarantee Fund

Attached is our annual memo that must go to the Governor's Office no later than December 1. As in the past this memo states that no sum is required to implement the school bond guarantee fund.

It is my understanding that this fund has never been used and, in fact, for the last four years our memo has been identical.

That lack of use coupled with the requirement in the statute that would allow a home rule city to exceed its authorized bonded indebtedness as defined in its home rule charter, seems to make this a less than desireable statute. I personally feel that deletion of this section is something the Title 29 review committee should consider.

Attachment

Lee - Please sign attached memo and forward to the Governor's office. Per Terry's suggestion, I am sending a copy of this memo to Tom Cook, legal counsel who can transmit our concern to the technical and policy groups of the T29 revision committee.

T. Thompson

02-001A(Rev.10/79)

# MEMORANDUM State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: The Honorable Jay S. Hammond
Governor

DATE: November 17, 1980

FILE NO:

TELEPHONE NO:

FROM: Lee McAnerney, Commissioner
Department of Community &
Regional Affairs

SUBJECT: Chapter 137, SLA 1974
An Act Relating to Home
Rule City Bonded Indebtedness
Incurred for School Constructi

29.51.420

Chapter 137, SLA 1974, permanently codified as AS 29.58.345-350, establishes within the Department of Community & Regional Affairs a school bond guarantee fund, the purpose of which is "to further guarantee and provide an additional pledge of payment of . . . bonds issued" to pay costs of school construction. The bond guarantee is applicable only as to home rule cities levying and collecting property taxes for schools and is operative only as to those home rule cities incurring bonded indebtedness for school contruction where the anticipated bond issue requires the city to exceed limits on authorized bonded indebtedness which have been defined in the municipality's home rule charter.

By Section 350(f) of the Act, annually, not later than December 1, the Commissioner of the Department of Community & Regional Affairs must certify to the Governor that sum which is necessary to bring the fund created current to the requisite "debt service reserve".

Since, to our knowledge, no home rule cities have issued bonds necessitating additional requirement on the school bond guarantee fund, I wish to certify that no sum is required to implement the school bond guarantee fund.

# MEMORANDUM State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO Palmer McCarten
Director

DATE November 6, 1980

FILE NO

TELEPHONE NO

FROM Terry Earley
State Assessor

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Lee - Please sign attached memo and forward to the Governor's office. Per Terry's suggestion, I am sending a copy of this memo to Tom Cook, legal counsel who can transmit our concern to the technical and policy groups of the T29 revision committee.

Thanks
PDM

02-001A(Rev.10/79)

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

M E M O R A N D U M 19 November 1980

TO: Title 29 Technical Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

SUBJECT: Changes to Drafts Suggested by the Policy Group

Here are revisions to the drafts proposed by the Technical Committee incorporating changes suggested by the Policy Group during their meeting held on November 10th and 11th. In addition to these revisions, two sections are being held by the Policy Group for further review: AS 29.09.080 (Organization Grants), and AS 29.30.040 (Voter Qualifications).

I would appreciate any comments which you may have regarding these revisions. I am planning on sending copies of the revisions to the Policy Group early in December.

TBC:maf

Enclosures

NOTICE OF MEETING
November 24, 1980

A Policy Advisory Group has been appointed to oversee the revision of the Municipal Code, Title 29 of the Alaska Statutes. The Policy Advisory Group is composed of thirteen members. Of these, nine public members represent a broad range of local officials interested in Title 29. The public and legislative members of the Title 29 Policy Advisory Group are:

Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
James Kohler, Manager, City of Yakutat
Ronald Larson, Mayor, Matanuska-Susitna Borough
Gene Moore, Manager, City of Kotzebue
Donna Sherby, City Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough
Senator Arliss Sturgulewski, Anchorage
Senator Bob Mulcahy, Kodiak
Representative Margaret Branson, District 5
Representative Charles Parr, Fairbanks

The fourth meeting of the Policy Advisory Group is scheduled for 15, 16, and 17 December 1980. The meeting will begin at 9:00 a.m. in the Adventure Room of the Captain Cook Hotel, Anchorage, Alaska.

The proposed agenda for this meeting is :

December 15th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:
   a. Report by Pat Poland on material prepared for newsletters.
   b. Report by subcommittee chairman on AS 29.09.180 (Organization Grants).
   c. Report by subcommittee chairman on AS 29.30.040 (Voter Qualifications).
   d. Presentation of proposed drafts by the Technical Committee.
   e. Other old business.

TO: Technical Group

FROM: Melissa Aber Fouse
Secretary, Title 29 Commission MAF

SUBJECT: SB 582

We are sending you SB 582 on the request of Lee Sharp who plans to make this subject an item of discussion at the next Technical Committee meeting.

LAA 15

Original sponsor: Rules Committee by request

Offered: 5/12/80
Referred: Finance

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 582

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the assessment, levy and collection of property taxes on transient aircraft; and providing for an effective date."

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

* Section 1. AS 44.25.020 is amended by adding a new paragraph to read:

(5) assess the value of transient aircraft in accordance with AS 29.53.038.

* Sec. 2. AS 29.53 is amended by adding a new section to read:

Sec. 29.53.038. TRANSIENT AIRCRAFT. (a) The Department of Revenue shall assess the value of transient aircraft that is not exempt from property taxes under AS 29.53.162(c). The Department of Revenue shall determine the value of aircraft assessed under this section at its full and true value and shall determine the value of the aircraft as of January 1 annually.

(b) The Department of Revenue may require by notice each person having ownership or control of an interest in aircraft assessed under this section to submit a return in the form prescribed by the Department of Revenue, based on values existing on January 1 of each year. The Department of Revenue by written notice may require a person to provide additional information within 30 days of the notice.

(c) The Department of Revenue may investigate aircraft on which a return has been filed or on which no return has been filed. In either case, the department may make its own valuation of the aircraft, which is prima facie evidence of full and true value. An employee or agent of

the Department of Revenue may enter an aircraft as necessary for the investigation during reasonable hours and may examine appropriate records. When requested by an employee or agent of the Department of Revenue, the owner of the aircraft shall furnish to the employee or agent reasonable assistance required for the investigation. If refused entry, the Department of Revenue may seek a court order to compel entry. For the purpose of the investigation, the owner of the aircraft or his representative may be required to present himself for examination under oath by the Department of Revenue.

(d) The Department of Revenue shall prepare annually the assessment roll for taxation of transient aircraft by municipalities. The assessment roll shall contain

(1) a description of all aircraft assessed under this section;

(2) the assessed value of the aircraft;

(3) the names and addresses of persons owning aircraft assessed under this section.

(e) On or before March 1 of each year, the Department of Revenue shall send to each owner of aircraft named in the assessment roll a notice of assessment, showing the assessed value of the aircraft. Notice of assessment is effective on the date of mailing.

(f) The Department of Revenue shall send to each municipality levying a property tax a copy of the notice of assessment on aircraft which is assessed under this section.

(g) A municipality or an owner of aircraft receiving an assessment notice may object to the assessment by advising the Department of Revenue in writing of the objections to the assessment within 20 days of the effective date of the notice.

(h) The Department of Revenue shall provide by regulation for notices of appeals to interested persons and municipalities.

(i) Following an objection, the Department of Revenue may adjust the assessment and the assessment roll. An adjustment based on an objection from a municipality or an owner of aircraft shall be made within 30 days of the effective date of the notice of assessment.

(j) After a ruling by the Department of Revenue on an appeal made under (g) of this section, the municipality or the owner of aircraft may appeal to the State Assessment Review Board. The appeal must be filed in writing within 50 days of the effective date of the notice of assessment. The State Assessment Review Board shall provide by regulation for notices of appeals to interested persons and municipalities.

(k) The State Assessment Review Board shall hear appeals filed under (i) of this section. A majority of the State Assessment Review Board constitutes a quorum required to transact business under this section. The State Assessment Review Board shall provide by regulation for notices of hearings to interested persons and municipalities. If an appellant fails to appear at the hearing, the State Assessment Review Board may proceed with the hearing in his absence. The appellant bears the burden of proof at a hearing under this subsection.

(l) The only grounds for adjustment of assessed value is proof of unequal, excessive or improper valuation or valuation not determined in accordance with the standards set out in this section, based on facts stated in a written appeal timely filed or proved at the hearing.

(m) The State Assessment Review Board shall certify its determination of an appeal to the Department of Revenue within seven days of the hearing.

(n) A municipality or an owner of aircraft may appeal to the superior court for, and is entitled to, trial de novo of the action of the State Assessment Review Board.

(o) No later than June 1 of each year, the Department of Revenue

shall certify the final assessment roll.

(p) The Department of Revenue shall include aircraft omitted from the assessment roll on a supplementary assessment roll, using the procedures set out in this section for the original assessment roll.

(q) In this section, "transient aircraft" means

(1) aircraft with a gross operating weight of more than 12,500 pounds used in commerce by an air carrier to furnish transportation to the public for compensation, hire or lease;

(2) equipment included in aircraft described in (1) of this subsection; and

(3) ground cargo handling and containerization equipment which can be transported in aircraft described in (1) of this subsection and which is so transported.

* Sec. 3. AS 29.53 is amended by adding a new section to read:

Sec. 29.53.162. LEVY AND COLLECTION OF PROPERTY TAX ON TRANSIENT AIRCRAFT. (a) A municipality may levy and collect property tax on transient aircraft only under this section.

(b) A municipality may levy a property tax on transient aircraft by applying the rate of levy, determined under AS 29.53.170(b), to a value for all transient aircraft under the same ownership determined by

(1) adding the value of all transient aircraft owned by the same taxpayer; and

(2) multiplying the value determined under (1) of this subsection by the ratio of the number of landings of transient aircraft owned by the taxpayer in the municipality levying the tax during the year preceding the assessment year to the total number of landings of all transient aircraft owned by the taxpayer.

(c) A municipality may, by ordinance, classify transient aircraft and exempt certain classes of transient aircraft from levy and collection

of a property tax under this section.

(d) In this section, "transient aircraft" means

(1) aircraft with a gross operating weight of more than 12,500 pounds used in commerce by an air carrier to furnish transportation to the public for compensation, hire or lease;

(2) equipment included in aircraft described in (1) of this subsection; and

(3) ground cargo handling and containerization equipment which can be transported in aircraft described in (1) of this subsection and which is so transported.

* Sec. 4. Notwithstanding any other provisions of AS 29.53, an assessment return on transient aircraft filed with a municipality under AS 29.53.070 for the 1980 assessment year is valid for determining the tax due for that assessment year. If two or more municipalities levy a property tax on transient aircraft under AS 29.53 for the 1980 assessment year, the owner of the aircraft may ask the commissioner of revenue to determine the tax due to each municipality. Upon receipt of the request of the taxpayer, the commissioner of revenue shall apportion the tax due by applying to the assessment of transient aircraft reported to a municipality under AS 29.53.070 the amount determined under AS 29.53.162, added by sec. 3 of this Act.

* Sec. 5. Notwithstanding any other provision of AS 29.53, an assessment return on transient aircraft filed with a municipality under AS 29.53.070 for an assessment year before 1980, is valid for determining the property tax due to that municipality for that prior assessment year.

* Sec. 6. Sections 1 - 3 of this Act take effect January 1, 1981.

* Sec. 7. Sections 4 - 7 of this Act take effect immediately in accordance with AS 01.10.070(c).

# Tlátk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

RESOLUTION NO:

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE'S TITLE 29 REVISION COMMITTEE DECLARING A POLICY AND POSITION ON NATIVE VILLAGE AND TRADITIONAL TRIBAL GOVERNMENTS ENTERING INTO MUTUAL AND CO-OPERATIVE AGREEMENTS OVER GOVERNMENTAL AND JURISDICTIONAL MATTERS WITH THE STATE OF ALASKA

WHEREAS, THE LEGISLATURE HAS DETERMINED that there exists in the State several communities which have Navillage and/or traditional tribal governments; and,

WHEREAS, THE LAW AND CUSTOMS OF THESE GOVERNMENTS include defined notions of democracy, liberty and the exercise of personal rights consistent with the State and Federal consitutions; and,

WHEREAS, THE PRESENT ECONOMIC BASE OF THE STATE is based on a non-renewable resource which holds the promise of short life, absent renewable economic diversification; and,

WHEREAS, STOCKS PRESENTLY OWNED BY SHAREHOLDERS OF ANCSA REGIONAL AND VILLAGE CORPORATIONS will be recalled and sold to the general public in the year 1991; and,

WHEREAS, BASED ON THE PAST HISTORY OF ALASKA'S ECONOMIC GROWTH PATTERN, it would not be unreasonable to project similiar economic impact occuring through the unwarranted exportation of job/employment opportunities and local dollars resulting from an outside invasion of private non-State interests in 1991; and,

WHEREAS, THE ANCSA REGIONAL AND VILLAGE CORPORATIONS by 1991 will be a substantial and sizable component of the State's economic base which will be seriously threatened by private non-State interests and entrepeneurships without the ability or accessibility for recognition and mutual and co-operative interaction by the State with Native village and traditional tribal government over jurisdictional and governmental matters.

NOW, THEREFORE, BE IT RESOLVED by:

THE POLICY AND POSITION ON NATIVE VILLAGE AND TRADITIONAL TRIBAL GOVERNMENTS ENTERING INTO

# T'atk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
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MUTUAL AND COOPERATIVE AGREEMENTS OVER JURISDICTIONAL AND GOVERNMENTAL MATTERS WITH THE STATE OF ALASKA WILL PROMOTE THE EFFICIENT AND APPROPRIATE DEVELOPMENT OF THE STATE RESOURCES AFTER A SHORT DURATION OF NON-RENEWABLE RESOURCE ECONOMIC ACTIVITY.

# L'Tátk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

RESOLUTION NO:

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE'S TITLE 29 REVISION COMMITTEE DECLARING A POLICY AND POSITION ON THE 1979 LOCAL GOVERNMENT STUDY AND THE FINDING OF THE LOCAL GOVERNMENT SYMPOSIUM, HELD AUGUST 4-5, 1979, AS A CONSISTENT POLICY STATEMENT WHICH IDENTIFIES AND ESTABLISHES MAXIMUM LOCAL SELF-GOVERNMENT THROUGH FEDERAL AND STATE PROGRAM DECENTRALIZATION OF FUNDING AND UNIFICATION OF LOCAL EFFORTS FOR EFFECTIVE AND EFFICIENT UTILIZATION OF OPTIMIZED AND FUNCTIONALIZED COMMUNITY RESOURCE DEVELOPMENT AND THE ELIMINATION OF DISINCENTIVES AND BARRIERS WHICH DEPRIVE LOCAL NATIVE VILLAGES OF OPTIMAL AND FUNCTIONAL ASSURANCE OF THE BASIC COMMUNITY AND TRIBAL RIGHTS FOR LIMITED SOVEREIGNTY, SELF-GOVERNMENT, SELF-DETERMINATION AND SELF-SUFFICIENCY AND THE COOPERATIVE EFFORTS OF AND THE COORDINATION WITH OTHER ENTITIES OUTSIDE OF THE TRADITIONAL NATIVE VILLAGE AND COMMUNITY

WHEREAS, TITLE 29 OF THE ALASKA STATE STATUTES is urban designed and needs to adapt governmental structures and processes to rural needs and conditions; and,

WHEREAS, THE ALASKA STATE CONSTITUTION provides for maximum local self-government and local participation, however, legislative provisions and actions appear to abridge the privileges and immunities of these constitutional provisions; and,

WHEREAS, DECENTRALIZATION OF SERVICE DELIVERY through intergovernmental cooperation is mandated through appropriate federal legislative and administrative provisions and actions with the intent of providing a more economical and efficient method of providing services, promoting participation on the community, not area, level, and establishing unification of local efforts for the optimal and functional assurance of maximum local self-government; and,

WHEREAS, THE URBAN ORIENTED MUNICIPAL GOVERNMENT STRUCTURES of Title 29 lack appropriate optimal and functional assurances of demographic characteristics integral within the systematic isolationism it promotes of Native Villages and Communities with respect to not only identifying geo-

'Tl'átk Saxman

City of Saxman
P.O. Box 8676
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graphic characteristics, but, also, political, economic, cultural and social isolationism; and,

WHEREAS, DECENTRALIZATION AND COORDINATION OF FEDERAL AND STATE PROGRAMS will not be optimized nor functionalized unless the State recognizes the need to provide recepticles for service delivery on the community, again not area, level through legislative provisions and actions for planning and zoning on the community, not area, wide basis through the maximized maintenance of local self-government, slef-determination and self-sufficiency on the local community level; and,

NOW, THEREFORE, BE IT RESOLVED by:

THE POLICY AND POSITION OF THE 1979 LOCAL GOVERNMENT STUDY AND THE FINDINGS OF THE LOCAL GOVERNMENT SYMPOSIUM, HELD AUGUST 4-5, 1979, DECLARES AND RECOGNIZES A CONSISTENT POLICY AND NEEDS STATEMENT WHICH IDENTIFIES AND ESTABLISHES MAXIMUM LOCAL SELF-GOVERNMENT THROUGH FEDERAL AND STATE PROGRAM DECENTRALIZATION OF FUNDING AND UNIFICATION OF LOCAL EFFORTS FOR THE EFFECTIVE AND EFFICIENT UTILIZATION OF OPTIMIZED AND FUNCTIONALIZED COMMUNITY RESOURCE DEVELOPMENT AND THE ELIMINATION OF DISINCENTIVES AND BARRIERS WHICH DEPRIVE THE LOCAL NATIVE VILLAGES OF OPTIMAL AND FUNCTIONAL ASSURANCE OF THE BASIC COMMUNITY AND TRIBAL RIGHTS FOR LIMITED SOVEREIGNTY, SELF-GOVERNMENT, SELF-DETERMINATION AND SELF-SUFFICIENCY AND THE COOPERATIVE EFFORTS OF AND THE COORDINATION WITH OTHER ENTITIES OUTSIDE OF THE NATIVE VILLAGE AND COMMUNITY.

# Ti'átk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

RESOLUTION NO:

A RESOLUTION OF THE TITLE 29 COMMITTEE FOR THE ALASKA MUNICIPAL LEAGUE 30th ANNUAL LOCAL GOVERNMENT CONFERENCE DECLARING A POLICY AND POSITION ON THE PROPOSED ALASKA STATE STATUTES, TITLE 29, MUNICIPAL GOVERNMENT, REVISIONS MUST REFLECT THE ABILITY, AND NOT INABILITY, OF LOCAL COMMUNITIES TO REACH AND MAINTAIN THE BASIC SOCIAL AND FOUNDATIONAL GOAL OF THE STATE OF ALASKA: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT, THROUGH DELIBERATE AND EQUITABLE STRENGTHENING OF THE ADMINISTRATIVE AND LEGISLATIVE POLICIES AND PROCEDURES AS CONTAINED AND EFFECTED BY THE ALASKA STATE STATUTES AND AS IMPLEMENTED BY AND PROVIDED THROUGH THE STATE OF ALASKA IN FEDERAL AND STATE PROGRAMS AND SERVICES PROVIDING TO RECIPIENT COMMUNITY AND AREA APPLICANTS IN A CURRENT AND DECENTRALIZED MANNER THEREBY ENHANCING AND ENCOURAGING THE REALIZATION OF SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT

WHEREAS: SUBSTANTIAL ECONOMIC AND SOCIAL HARDSHIP is predominant within the rural and suburban communities of the State; and,

WHEREAS: EFFECTIVE AND EFFICIENT PROVISIONS designed with deliberate and equitable strength will enhance and encourage the ability of rural and suburban communities to exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of municipal government subject to the Alaska State Constitution, yet not found in the present provisions of Alaska State Statutes, Title 29, Municipal Government, for the self-actualization of maximum local self-government; and,

WHEREAS: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT as an optimal and functional goal of the State of Alaska can only be reached and maintained through a current and decentralized administration of Federal and State programs and services concentrated at the local community level in order to provide the impetus through community participation and public/private financial lever-

Ttatk Saxman
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aging to appropriately and efficiently combat substantial economic and social hardship and alienation; and,

WHEREAS: DOMINANT URBAN CENTERS WITHIN THE STATE by demonstrating their ability for reaching and maintaining maximum local self-government must support and continue to exemplify this goal by further enhancing and encouraging the proposed Alaska State Statutes, Title 29, Municipal Government, revisions to reflect this needed intent for the continued and consistent viability and longevity of the State of Alaska; and,

WHEREAS: THE EFFECTIVE MANAGEMENT IN AN INTERGOVERNMENTAL CONTEXT is one which excercises and enjoys the legal and political competence and institutional capacities of maximum local self- government and meshes these capacities with those being cooperatively managed or shared from the Federal side; and,

WHEREAS: MAXIMUM LOCAL SELF-GOVERNMENT STRATEGIES require an unprecedented level of intergovernmental interaction, which the various elements of government having specific responsibilities to discharge relative to local government and its constituencies cannot adroitly address the mutual problems inherent in the United States and the State of Alaska self-government approaches without optimal and functional assurance of broad based community participation.

NOW, THEREFORE, BE IT RESOLVED by the Title 29 Committee for the Alaska Municipal League 30th Annual Local Government Conference:

THE POLICY AND POSITION ON THE PROPOSED ALASKA STATE STATUTES, TITLE 29, MUNICIPAL GOVERNMENT, REVISIONS MUST REFLECT THE ABILITY, AND NOT INABILITY, OF LOCAL COMMUNITIES TO REACH AND MAINTAIN THE BASIC SOCIAL AND FOUNDATIONAL GOAL OF THE STATE OF ALASKA: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT, THROUGH DELIBERATE AND EQUITABLE STRENGTHENING OF THE ADMINISTRATIVE AND LEGISLATIVE POLICIES AND PROCEDURES AS CONTAINED AND EFFECTED BY THE ALASKA STATE STATUTES AND AS IMPLEMENTED BY AND PROVIDED THROUGH THE STATE OF ALASKA IN FEDERAL AND STATE PROGRAMS AND

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SERVICES PROVIDING TO RECIPIENT COMMUNITY AND AREA APPLICANTS IN A CURRENT AND DECENTRALIZED MANNER THEREBY ENHANCING AND ENCOURAGING THE REALIZATION OF SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF- GOVERNMENT.

# TRIBAL–STATE RELATIONS

## A New Paradigm for Local Government in Alaska



# TRIBAL-STATE RELATIONS:
# A NEW PARADIGM FOR LOCAL GOVERNMENT IN ALASKA

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# INTRODUCTION

Local government in rural Alaska is plagued by the existence of parallel government systems. On one hand, there exists a system of Native governments. On the other hand, the state has encouraged the formation of municipal governments. Often the dual system exists side-by-side in communities of less than 200 persons. In these situations, confusion, and the duplication of administrative costs and services has had a crippling effect on local government. Communities which attempt to avoid the duplication find themselves either ineligible for the respective benefits of the missing government, or forced to create exotic or ad hoc organizations which are marginally eligible for the desired benefits.

This study is an effort to sort out and compare these two systems of government. Additionally, the study makes suggestions on how to correct this situation within existing constitutional restraints.

# PART I

## EARLY AND CURRENT ALASKAN LOCAL GOVERNMENTS

### A. EARLY ALASKAN LOCAL GOVERNMENTS

The earliest "local governments" in Alaska were Native. As Dave Case points out, primal governments varied between the Native cultures.[1] Generally, however, these early governments were loose associations of individuals based upon family relationships and customs. Group decisions were made by consensus.

Similarly, early non-Native local government in Alaska was very informal. After the purchase of Alaska by the U.S. in 1867, the primary mechanism of local government was the extra-legal mining districts.[2] Like the Native governments, these early miner's governments were loose associations based on custom. Generally, decisions were made by majority vote. In 1884, Congress recognized the authority of these mining districts, but the status of Native governments remained in limbo.

In 1900, Congress enacted a civil code for Alaska which included authorization to form towns of over 300 residents.[3] This first form of municipal government was patterned after the mayor-council type of city government common to the "lower 48." Towns were severely limited as to their ability to tax and contract debt and were highly dependent on intergovernmental transfers for financial support. Their primary function seems to have been providing school services. In 1904, some of these limitations were relaxed, but the next major change had to wait until the formation of a territorial government.

In 1905, Congress authorized the formation of independent (city) school districts, and school districts for unincorporated areas.[4] In both cases, the districts exercised fiscal autonomy over current operating expenditures. They directly received a portion of intergovernmental

revenue transfers due the city. They remained dependent on the city or territorial government for tax revenues for capital expenditures.

In 1912, Congress passed the Organic Act creating the Territorial legislature.[5] In the following years, the legislature created a second class of territorial towns, subject to the limitations of the earlier Act of Congress. It was fully intentioned that local government be kept weak so as to prevent a taxing or regulatory threat to commercial and mining interests in the territory.[6] In fact, the Organic Act prohibited organization of "counties" or other regional local governments.[7] In 1915, the legislature upgraded territorial towns so that they would be subject to the same limitations as the towns authorized under the federal legislation. At the same time, the legislature for the first time attempted to assimilate Native village government through the Indian Village Act of 1915. This Act authorized Indian villages to organize as units of local government.[8]

In 1917, the legislature authorized incorporation of school districts in unincorporated areas. Under this new legislation, the incorporated school districts achieved greater fiscal autonomy through authorization to tax, as well as an increase in shared intergovernmental transfer revenues.

The legislature undertook a revision of the territorial municipal code in 1923. The new code replaced federally authorized towns with first class cities which directly elected a mayor, expanded council powers, provided for mayoral vetoes, and established minimum procedures for city government.[9] Later, in 1929, the legislature repealed the Indian Village Act of 1915, and revised the laws relating to second class cities making them substantially equal to first class cities.

By 1934, the federal policy toward Indians had again shifted away from assimilation. This was reflected by the passage of the Indian Reorganization Act, and the subsequent extension of the Act to Alaska in 1936.[10] The Act was intended to vest "tribal organizations with

real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations."[11]

At this same time, the legislature instituted reforms designed to authorize special purpose regional governments. In 1935, the legislature authorized incorporation of "independent school districts" which included both the area inside city limits and the surrounding adjacent areas. The new school districts were independent of city governments and were fiscally autonomous.[12] Also in 1935, the legislature authorized public utility districts which were fiscally autonomous special purpose governments capable of providing garbage, parks, street, fire, telephones, electrical, and other services.[13]

In 1951, the legislature authorized third class cities, which were essentially the same as second class cities, differing only in geographical and population size.[14]

In 1957, the territorial legislature again attempted to incorporate villages under territorial law.[15] An Incorporated Village had limited powers which included power to provide water, electricity, sewers, and fire protection; regulate dogs, curfews, and land use; and provide public works. The State amended the Act in 1959 to invest the incorporated village with general police powers and provided for village magistrates to levy limited fines. At the same time, the legislature defined the incorporated villages as a city of the fourth class.

At the time of statehood, there existed in the state:

- 24 first class cities
- 8 second class cities
- 2 third class cities
- 10 fourth class cities
- 69 I.R.A.'s
- 5 P.U.D.'s
- 8 independent school districts

- 1 incorporated school district
- unknown number of traditional Native councils

Statehood did not drastically alter the local government pattern since Article XV, Section 1 of the Alaska Constitution provided that, the laws of the territory remained in effect until they were repealed, amended or expired.

Finally in 1972, the state undertook a wholesale revision of the municipal code to create the current system. The main impact of the 1972 revision on the smaller rural communities was to strip those communities which organized under the Village Incorporation Act of their "village" status.

## B. CURRENT STATE CHARTERED LOCAL GOVERNMENT

The system of local government authorized under the Alaska Constitution is relatively simple. It is possible to categorize Alaskan local governments into two basic types, i.e., general and special purpose governments. For the sake of analysis, a general purpose government is a government which exercises independent discretion over a broad range of topical concerns. In contrast, a special purpose government is a government which exercises discretion over a specified topical concerns.

### General Purpose Governments.

The general purpose government is the constitutionally preferred unit of local government in Alaska. This policy is specifically stated in Article X, Section 1 of the Alaska Constitution which states that, "The purpose of this article is to provide for maximum local self-government with a minimum of local government units, ..." This policy is implemented in Article X, Section 2 which provides that "All local government powers shall be vested in boroughs and cities," and is further stated in Article X, Section 15 which states "Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law."

This concern for consolidating local powers into single general purpose governments is expressed throughout the Constitutional Convention record. The adoption of "one basic local government system" was intended to prevent "creation of numerous types of local units which can become not only complicated but unworkable."[16] Of immediate concern to the Delegates was the governance of the school boards, public utility districts (P.U.D.s) and health districts. As stated by delegate Victor Fischer:

> "That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[17]

To this end the constitution provides for the creation of boroughs and cities.[18]

The most unique aspect of the Alaskan municipality is the framer's intent to create strong local government units. Systems of government then operating in the majority of the states were felt to be too weak.[19] In his initial address to the convention introducing the Local Government Committee's proposed article, Delegate Vic Fischer expressed the "New Federalist" philosophy favoring general decentralized government. Citing the Congressional Commission on Intergovernmental Relations, delegate Fischer stated:

> "The Commission concerned itself with the need for strengthening of state government and a decentralization of federal power. In this study they found that local government is an important factor in this process and I would like to briefly quote a few paragraphs. In discussing the strengthening of local government, the Committee says, 'The objective of decentralization cannot be obtained by a readjustment of national-state relations alone. It will be fully achieved only when carried through to the lowest levels of government where every citizen has the opportunity to participate actively and directly. The strengthening of local government requires the activities that can be handled by these units be allocated to them together with the financial resources necessary for their support.' Then the report goes on and draws a picture of the tremendous number of overlapping tax jurisdictions and separate local entities we now have in the state and goes on to say, 'More or less hidden in this picture is a paradox that

> consistently plagues the state and bars any easy solution of the problem of achieving the decentralization of government -- too many local governments and not enough local government.' That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."[20]

To implement this plan, the committee adopted the so-called "Texas Plan." This approach was explained to the convention by delegate Victor Rivers as follows:

> The old approach to county government was that they existed and had their authorities only in those specifically delegated to them and specifically spelled out to them by the legislature or by the constitution. The other approach which has been adopted and which has operated in a few states, approximately seven as I recall, particularly in Texas, has been called the Texas Plan, and there, under that plan, they allocate such powers to the intermediate tier of government and the cities are not specifically reserved or eventually withdrawn by the state itself. They have a broad exercise of local authority much as our cities have today. That has been the matter of the choice -- whether we wanted to follow the old pattern in which the constitution and the legislature would delegate certain specific powers to the intermediate form of government, which often is called the county and which we have designated as the borough, or whether we would follow the plan of reserving powers to the state and letting the local government exercise broad general authority within the limits of those reservations.[21]

It is quite clear that the "pure" Texas plan called for application of home rule principals to all local governments. The various classes of cities and boroughs would be defined in law by the quantity and quality of powers reserved by the state.

The record indicates that some delegates to the constitutional convention supported the "pure" Texas Plan.[22] In fact, the concept of a "general law" municipality was not introduced in the floor debate, but seems to have been an assumed constant which carried over from the territorial local government concepts. This is reflected in Article X, Section 9 and 11 which respectively provide that first-class municipalities could assume home-rule status, and that the legislature could extend home rule to other classes of government. The concept of

"general law" municipalities was enacted by statute.[23] It is interesting to note that although the "general law" concept was not discussed in convention floor debates, it has become a fundamental concept upon which the majority of local governments in Alaska are based.

It is also important to note that the framers specifically desired to provide independent authorization for city and borough powers, rather than provide that such powers be delegated to the cities and boroughs by the legislature. The legislature's authority over cities and borough is specifically enumerated. It may only regulate cities and boroughs through its authority to classify and define the respective powers and manner of incorporation.[24] Oddly enough the Constitution provides for legislative definition of borough assemblies' appointment and composition.[25] In contrast, it does not have a similar provision governing city councils. Rather, the Constitution merely provides that the council, however composed, shall be the governing body of the city.[26]

On the other hand, the powers of service areas are delegated. In the case of an incorporated area, the service area's powers are derived from the organized borough.[27] The exercise of this borough power is subject to legislative regulation by the legislature. In contrast, service areas in unorganized areas of the state possess authority delegated and regulated by the legislature.[28]

i) Boroughs: A borough is the intermediate level of government in the State of Alaska. Although the term "borough" is somewhat unique, the notion of an intermediate level of government is common to the American local government scene. The borough "corresponds generally to the county in other states."[29] By statute, the borough is a government for an "area."[30] This is in contrast to a city, which is a government for a "community."[31] The framers of the constitution anticipated that an average size borough would be between 1,000-2,500 square miles.[32] Presumably, an area could include a number of communities and their outlying areas.[33] Clearly, the framers intended to create a system of two-tiered, local coexistent governments.

But the framers also intended local government to be flexible enough to adjust to future developments. It has, therefore, been observed that:

> Boroughs in different parts of Alaska may serve two quite different purposes. In areas which include cities, they may constitute a second tier of government. In other areas, they may themselves be the sole or primary local units.[34]

The Alaska Supreme Court has recognized this by stating that the Constitution does not require the coexistence of boroughs and cities.[35]

There is a strong indication that the original concept of the borough was strongly linked to home rule. This is most notably demonstrated in committee answers to delegate questions regarding the unorganized borough.

> V. Rivers: ... In the extent that the benefits that the legislature sets up will offset the added cost to the people, anc the extent of their desire for home rule will govern how far they go in organizing those boroughs, but it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated boroughs...[36]

This sentiment is noticeable in comparing the respective constitutional sections dealing with cities and boroughs. Whereas the constitution specifically states that "Cities shall have the powers and functions conferred by law or charter."[37] (emphasis added) The comparable clause dealing with boroughs is less specific providing that, "The legislature shall classify boroughs and prescribe their powers and functions."[38] (emphasis added) It remains unclear whether such prescription should be by specific enumeration or reservation. Nevertheless, inclusion of reference to boroughs in Article X, Sections 9 and 10 leaves no doubt that general law boroughs were constitutionally contemplated.

ii) Cities. In contrast to boroughs, cities are statutory defined as the local government unit for "communities."[39] The local government

## PART II

## COMPARISONS OF GOVERNMENTAL AUTHORITY

The question of governmental authority is actually a question of the respective jurisdiction of the governments in question. Basically there are two types of jurisdiction: Territorial jurisdiction, i e., the geographical area over which a government's authority extends; subject matter jursidiction, i.e., the topical areas over which a government has the authority.

### A. TERRITORIAL JURISDICTION

i) Municipalities. The Alaska Constitution provides that boundaries are determined by the Local Boundary Commission.[1] The Local Boundary Commission is charged by statute with establishing boundaries upon municipal incorporation[2] and subsequent boundary alterations.[3]

The territorial jurisdiction of Alaskan cities is ill-defined by Alaskan statutes. The statutes provide for the creation of boundaries,[4] which presumably infers that boundaries constitute the jurisdictional demarcation of a city.[5] This inference is further reinforced by statutes which provide for extra-territorial jurisdiction. A municipality may provide parks, roads, trails, playgrounds, emergency medical services, cemeteries, and airports outside its municipal boundaries.[6] Additionally, cities outside boroughs may exercise extra-territorial curfew regulation.[7]

In contrast, a borough's territorial jurisdiction is clearly defined in regards to each respective power. Certain powers are "area-wide," i.e., a power of an organized borough exercised throughout the borough.[8] These include education, planning, platting, zoning, and tax assessment and collection and such additional powers acquired by the borough through transfer or referendum.[9] The borough may exercise other municipal powers as "non-area-wide powers," i.e., powers exercised only in the area outside of cities.[10] First class boroughs may exercise any municipal power as a non-area-wide power by ordinance.[11] Second

The basic model for the regional Native nonprofit organization was established under the terms of the Indian Self-Determination Act. That Act authorizes contracts between the BIA and Native governments or, in their place, Native organizations. Generally BIA programs in Alaska cannot be effectively administered at the village level. The sheer cost of administering such programs at the village level makes such contracting not feasible. In response to this problem, Natives have organized along regional lines to form Native organizations which can effectively contract with BIA for the operation of BIA programs within their region.[94] With the exception of the Inupiat Community and the Tlingit/Haida Central Council, none of these regional Native nonprofit organizations possess de jure governmental authority. Rather, they only provide those services normally provided by BIA or other federal or state agencies under a contract with those agencies. In this way, they are capable of performing governmental functions without the prerequisite governmental stature.

The most notable example is illustrated in the court case State v. Aleut Corporation.[93] In that case, several Native organizations sued the Alaska Division of Lands to prevent a proposed sale of lands adjacent to their communities. In addition to various villages, the plaintiff's list included the Bristol Bay Native Corporation and the Aleut Corporation, both regional corporations formed under the terms of the Alaska Native Claims Settlement Act. The plaintiffs in that case sued under AS 38.05.305, which provided that the Division should give notice and consult with incorporated municipalities and other organized communities adjacent to lands proposed for sale by the state. The court recognized that ANCSA regional corporations perform a number of quasi-governmental functions in rural Alaska, however, the Court specifically held that for the purposes of the Alaska Lands Act, regional Native corporations formed under ANCSA did not possess the requisite governmental attributes to qualify them for notice and consultation under the terms of the then existing statute. Subsequent to the Alaska Supreme Court decision, the Alaska Legislature amended the Alaska Lands Act to specifically require the Division of Lands to give notice to the regional Native profit corporations prior to a proposed sale of lands by the state. In 1979, the legislature again amended Section 305 to require the Division of Lands to give notice and consult with village corporations formed under ANCSA. These notices are similar to those given to organized municipalities. In light of this legislative history, it would seem that the Alaska Legislature intended to vest in ANCSA corporations certain specific governmental powers in spite of their general corporate character.

A second type of quasi-governmental Native organization is characterized by the regional Native nonprofit corporation. The activities of these regional nonprofits substantially vary. Their activities include Self-Determination Act contracting for the administration of BIA programs; contracting from HUD for the administration of housing projects; contracting under Title VI, the Comprehensive Employment and Training Act, for the operation of Native CETA programs; etc.

The organization of the Inupiat Community under the Indian Reorganization Act presents a similar case. Prior to the passage of ANCSA, the Inupiat Community organized several Northern Slope villages to form a regional IRA. The Department of the Interior takes a position for the purpose of the Indian Self-Determination Act, that the Inupiat Community cannot enter into contracts or accept grants without the prior approval of the affected villages.[89] In both cases, the Solicitor has depended upon the terms of the Indian Self-Determination Act itself which defined "Indian Tribe" as:

> any Indian tribe, band, nation, or other organized group or community including any Alaskan Native or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs of services provided by the United States to Indians because of their status as Indians.[90]

In these special cases, it is unclear which is the special purpose government and which is the general purpose government. As a general rule, Indian nations have the power to determine their own form of self-government in accordance with the political and cultural history.[91] This is in accordance with the principle that "the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal governments existed."[92] Under these circumstances, it is necessary to review an organization's status on a case-by-case basis. In light of the Cogo decision, however, it is also necessary to review any relevant specific statutory law to determine if the respective organization has a special function under federal law.

Native Quasi-Governments

In addition to the general purpose governments and the special purpose governments outlined above, there exists entities which, for the lack of a better term, may be called Native quasi-governments. These types of organizations are not governments in the formal sense, however, they exercise a variety of functions which are generally exercised by governments. In rare cases, these types of organizations have been formally recognized as exercising governmental authority.

at least analogous to the tribal organization found in the "lower 48." This principle is recognized under Alaskan state law and was enunciated by the Alaska Supreme Court in Ollestead v. Native Village of Tyonek.[85] In that case, the court recognized the tribal status of the Native village of Tyonek council.

It is, therefore, clear that to the extent that they exist, Alaska Native Village Councils organized under Indian Reorganization Act are recognized as local tribal government organizations.

Special Purpose Governments

While it is clear that the general purpose governments of Alaskan Natives are organized at the village level, additional special purpose Native governments exist which complicate the governmental pattern of Alaskan Natives. Most notable in this category is the Tlingit/Haida Central Council.

The specific status of Tlingit/Haida Central Council was litigated in Cogo v. the United States.[86] In that case, an individual brought a lawsuit against the Council to require inclusion in the preparation of the tribal roll under the Tlingit/Haida Settlement.[87] In that case, the council successfully claimed sovereign immunity as a tribal organization. The plaintiffs argued that the Council was not a tribal organization, and, therefore, could not assert tribal sovereign immunity. Specifically, the plaintiff pointed to the language in the Indian Self-Determination Act which seems to indicate that in Alaska, the village council was the tribal organization.[88] The court rejected the plaintiff's claim stating that the language in the Indian Self-determination Act was irrelevant for the purposes of this suit and went on to state that, although the Tlingit/Haida Central Council was certainly not a tribal organization for the purposes of the Indian Self-Determination Act, it was a tribal organization for the purposes of Tlingit/Haida Settlement. This case has clearly established a principle that special purpose tribal governments exist in Alaska, however, the exact extent of such special purpose tribal governments has not been fully delineated.

1936 to specifically extend its provisions to the Territory of Alaska.[79] The operation of the Indian Reorganization Act under the 1936 Alaska amendment was substantially different than the general application of the Act in the "lower 48." The adoption of the Alaska amendment marked the extension of the reservation policy to Alaska. Under the Act, Indian communities could petition the federal government for the creation of reservations.[80] Between 1934 and 1949, several IRA reserves were established. The IRA reserve policy, however, was greatly opposed by non-Native residents of Alaska and through the operation of territorial politics, lawsuits and other pressures on the Bureau of Indian Affairs, the Bureau abandoned the policy of creating IRA reserves in Alaska.[81] Even though the reservation policy was abandoned by the Bureau, the organizational efforts of the Bureau left in its wake a number of organized Native villages without reservations. Those few reservations actually formed pursuant to the Act were later revoked by the Alaskan Native Claims Settlement Act.[82] The net result of this course of events has left a number of Native governments continuing to operate under their IRA constitutions.

The legislative history accompanying passage of the Alaska amendment clearly indicates that Congress intended to recognize the Alaska Native village as analogous to a tribal organization. A House report stated:

> The proposed amendment, number 1 above, set out is necessary because of the peculiar nontribal organization under which the Alaska Indians operate. They have no tribal organizations as the term is understood generally. Many groups that would otherwise be termed tribes live in villages which are the basis of their organization.[83]

In this sense, the Alaska amendment was consistent with the general statutory purpose of the Indian Reorganization Act, which was

> To stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real limited authority and by prescribing conditions which must be met by such tribal organizations.[84]

In light of these Congressional enactments and legislative history, it is clear that the Alaskan Native IRA Village Council is equivalent or

tribes. For example, Native villages receive identical treatment as Indian tribes under the Indian Self-Determination Act,[70] the State and Local Fiscal Assistance Act,[71] the Housing and Community Development Act,[72] the Comprehensive Employment Training Act,[73] and the Indian Child Welfare Act.[74] Additionally, Congress has recognized self-governing qualities of Alaska Native communities when it provided for the extension of state civil jurisdiction over Alaska Natives. In applying PL 83-290 to Alaska, Congress expressly reserved that:

> Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community, in the exercise of any authority which it may posess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil cause of action pursuant to this section.[75]

The executive branch has likewise dealt with Alaska Native villages as Native governments where it exercises discretion. The best example of this is the Omnibus Crimes Control and Safe Streets Act which places responsibility of the Secretary of the Interior to determine those Indian tribes which perform law and order functions.[76] Under this authority, the Secretary of the Interior has recognized several Alaska Native villages as exercising the law and order functions including the employment of tribal police, establishment of tribal courts, corrections functions, and the adoption a law and order code.[77]

i) I.R.A.s. A second type of general Native government in Alaska is the "IRA Village Council." IRA stands for Indian Reorganization Act, or the Howard-Wheeler Act, which was passed in the 1930s in an effort to modernize Indian or Native American governments.[78] The Act originally applied only to the "lower 48." Its application in Alaska was somewhat unique. A 1934 version of the Indian Reorganization Act provided that only an "Indian tribe or tribes residing on the same reservation" could organize to adopt constitutions under the Act. Since few reservations existed in Alaska at the time, the Act had, in its original form, doubtful utility in Alaska To address the special problems of Indian organization in Alaska, Congress amended the Indian Reorganization Act in May of

General Purpose Governments.

It is commonly stated that there are two types of general Native governments in Alaska: Traditional Councils and IRA Councils.[66] In practice, there is little difference between the operation of these two types of government. The distinction between the two governments is largely theoretical. This distinction is important, however, when the authority or status of the government comes into question.

i) Traditional Councils. In a strict sense, traditional councils are not traditional to the Alaska Native people. As pointed by David Case, the traditional precontact Native governments were primarily based on family ties.[67] Traditional councils have been formed in reaction to contact with the non-Native culture for local representation of the Native community before outside interest. Many of these councils have adopted formal traditional constitutions while others seem to operate according to an unwritten constitution like the United Kingdom. In all cases, the basic level of organization is the village.

The basis of these government's authority rests in their retained sovereignty, i.e., the principle that absent express Congressional action to the contrary, Indian nations retain the inherent power of internal self-government.[68]

This observation has led to several inquiries regarding the tribal status of Alaskan Native villages. Although the question of tribal status in Alaska is intriguing from an ethnic and political perspective, its resolution has doubtful legal significance. More important that tribal status however, is the general recognition of a group's authority to govern itself. This recognition is directly linked to its dependent status vis-anvis the federal government.[69] In turn, a Native community's dependent status is determined by legislative and executive course of action respecting the Native community in question.

Congress has specifically extended this recognition to Alaska Native villages and has treated them in the same manner as other Indian

areas may organize a special service area for the conducting district coastal management programs.[62] These programs operate to guide state agencies in the operation of their programs throughout the coastal areas of the state. While the state continues to be the basic provider of basic services, the service area boards operate as a centralized planning agency for the area. The board of the service area is popularly elected.

Third, the regional education attendance areas (REAA) are service areas providing eudcational services within the unorganized borough.[63] Like the coastal zone management areas, the REAA's are controlled by a popularly elected board, but were mandatorally organized by the legislature after a settlement of the "Molly Hootch" case.[64]

Finally, the legislature has "impliedly" authorized organization of volunteer fire departments for unorganized areas of the state through the state revenue sharing program.[65] Under this program, local fire departments may organize under regulations adopted by the state fire marshall. Upon approval and registration of the departments, the organizations are eligible for state funding. Generally, these departments enjoy substantial fiscal autonomy, provided that they confine their activities to fire protection.

As noted above, there is great variety in the organization and operation of these special service areas. At the present time, the authority of these special service areas has not been challenged in court, so that it is impossible to define the limits of the legislature's discretion as to the manner and form that these service areas may take. If the past record is an indication of legislative authority, it can only be stated that the legislature possesses broad discretion in creating and organizing service areas, provided they are defined taxing authority.

## C. ALASKA NATIVE GOVERNMENT ORGANIZATION

As with state chartered local governments, Alaskan Native governments can be categorized as general or special purpose governments. Additionally, there exists "quasi-governmental" entities.

range of services for a community without city incorporation. This concept is not beyond the framer's contemplation, in that both pro-integration, and anti-integration factions within the Constitutional Convention characterized cities as "a collection of service areas".[57] It must be remembered, however, that a collection of service areas lack independent taxing authority possessed by cities. Thus, a collection of service areas would be totally dependent on intergovernmental transfers, whether from the borough or the state. Furthermore, a collection of service areas would be subordinate to borough regulation in areas of "local control". The collection of service areas, however, could exercise substantial autonomy in areas of state interest, as defined by the legislature.

Service areas have their greatest utility in the unorganized boroughs. The constitution directs the legislature to provide necessary services in the unorganized boroughs, "allowing for maximum local participation and responsibility."[58] To implement this section, the legislature provided that it may authorize "service areas" in the unorganized borough.[59] It is agreed that such service areas do not possess powers of fiscal autonomy,[60] however, they may exercise other powers delegated by the legislature.

The legislature has seen fit to authorize four types of service areas in the unorganized borough - i.e.: 1) aquaculture service areas; 2) coastal resource service areas; 3) regional educational service areas, and 4) volunteer fire departments.

The legislature authorized the Commissioner of Commerce and Economic Development to declare aquaculture service areas.[61] The purpose of these service areas are to provide fishery enhancement services. The service area board is comprised of representatives of member user groups.

The coastal zone management service areas are general planning units for coastal areas of the state. Whereas, coastal boroughs are automatically designated coastal zone management districts, unorganized

revenues from intergovernmental transfers. For example, under the terms of A.S. 29.89.030 (2), a health district operating a hospital may qualify for state revenue sharing. Although, the sponsoring municipality would initially receive the revenue sharing payments, the municipality is required to transfer such payments to the service area to be used for health services at the discretion of the hospital "directors".

The second major limitation on a service area's autonomy is related to the operation of the "local activity rule." As the Court stated in Macauley, the legislature may delegate to service areas power beyond the regulation of the parent municipality in areas which are the subject of state concern. It follows, therefore, that service area autonomy is inversely related to "local" concerns. For example, a municipality could certainly regulate the use of municipal property regardless of whether it was assigned to the service area, since municipal property is purely a local concern.[54] Of course, is is not easy to define what is a "local" concern as opposed to a "state" concern. This is even less clear under the borough form of government in that the framers of the constitution intended boroughs to assume greater responsibility in the area of traditional state concerns as state government "decentralized." The framers seemed to have accepted this ambiguity, and left the matter to the legislature. The courts, in turn, have recognized this role for the legislature by holding that municipal regulation is invalid in the face of contrary statutory law.

In spite of these limitations, service areas would seem to be remarkably flexible mechanisms of local government. For example, the Constitution authorized intergovernment cooperative agreements between "any local governments" for joint administration of any functions or powers.[55] Presumably, these provisions would apply to service areas since they are local governments. This view is supported by the fact, that only cities and boroughs are authorized to transfer powers, while "all local governments" are authorized to enter into intergovernmental agreements.[56] Thus, it would seem possible for co-extensive service areas to enter into cooperative administrative agreements for such things as centralized accounting and budgeting, personnel management and property management systems. Such mechanisms could be used rather extensively to provide a wide

exclude the exercise of governmental authority by governments other than cities and boroughs.

This balance is further demonstrated in those constitutional provisions which provide that when a borough is organized, existing service districts shall be "integrated" into the borough government.[49] Once a borough is organized, the assembly may create service areas within its borders.[50] This latter power is subject to the single prohibition that services areas cannot be established where such services can be rendered by annexation to an existing service area or city.[51] This prohibition is consistent with the general preference for integration rather than separate incorporation.

It is quite clear that service areas are only "semi-autonomous." As indicated above, the service area would be subject to the exclusive "fiscal jurisdiction" of the assembly. Beyond this, however, the framer's contemplated that service area boards could be set up and exercise substantial powers. This was clarified by delegate Fischer who stated:

> ..., it is the intent of the committee that when you establish a service area you could, say, establish a separate school board,...to supervise the school functions...[52]

Thus, it is possible for a service area to exercise substantial power independent of the general borough assembly.

It must be remembered, however, that the service area may never exercise total autonomy. There seems to be two chief limitations on the service areas. First, the service area may not unilaterally tax. The Constitution specifically provides that only cities and boroughs may tax.[53] As indicated above, this limitation on service areas was perceived by the framers as the sufficient link needed to achieve local government coordination. There remains, however, substantial autonomy even in fiscal matters as indicated by the Macauley v. Hildebrand case. A school district may maintain separate financial records. Similarly, while service areas have limited control over tax revenues, they may possess substantial autonomy with respect to

however, provided for service areas and districts which seem to be semi-autonomous special purpose governments. In understanding the role of special purpose governments, it is necessary to recognize that service areas represent a compromise between the constitutional delegates who argued in favor of wholly integrated local governments, and those delegates who favored continuing the independent school districts, health districts and P.U.D.s formed under the territorial government. In expressing this compromise, delegate Vic Fischer stated:

> Mr. Johnson, it was not the intention of the committee to do away with any existing school districts just by the enactment of this article. (Sec 15). The intent was to leave them within a new framework of government.... what we visualize is putting them under the general fiscal jurisdiction of the larger entity, which includes all the people within the particular school district.[44]

This was again explained by delegate Rivers who stated:

> Mr. President, the idea was that the general powers of government would be with the general elected representatives of the people. Now, as Mr. Fischer has pointed out, the special functions in regards to the use of one group for one special purpose such as health, education or anything else, the power to take the board and take its powers away, the powers of the boards would probably continue except for the taxing power being centralized in the one taxing agency which would thus have its own appraising, its own assisting agency, its own condemnations.[45]

This point was recognized by the Alaska Supreme Court in Macauley v. Hildebrand[46] where the Court held that a home rule borough may not require its school system by ordinance to participate in centralized accounting where the Legislature has delegated express authority to the school board to resist such requirements. The Court based its decision upon the theory that education was an area of "pervasive state authority." The obvious conclusion, therefore, is that service areas may exercise substantial autonomy in areas of "pervasive state authority." In a similar manner, the legislature could provide substantial autonomy to public utility districts since regulation of public utilities is also an area of state concern.[47] Thus, while the constitution provides that "all local powers shall be vested in boroughs and cities",[48] it does not

committee of the Constitutional Convention considered the option of abolishing the city form of government. It was felt, however, that such a move was "too drastic a step," and it was felt that the existing territorial units of governments should be perpetuated.[40] On the other hand, it was also stated that,

> "... we visualize the possibility that as the borough becomes a more definite unit of government over the years, which we hope it will, the scope better defined, that all the functions that can best be carried out on the unified basis be transferred over to the borough."[41]

In City of Douglas v. City and Borough of Juneau,[42] the Court recognized that "Unification is consistent with the purpose expressed in Article X, Section 1 of minimizing the number of local government units." But in preserving the city, the convention did not intend to subordinate the city to the borough as indicated by the following exchange:

> HURLEY: The borough then has nothing to say about the services that the city offers its own residents within its boundaries. Is that true?
>
> ROSSWOG: Yes, the city should remain as much the same as today, or practically the same unless there are some gradual changes in the future. They can delegate powers back and forth but the borough would not tell the city that they had to supply certain services or couldn't supply certain services. That is why the two are set up as having the authority.
>
> HURLEY: In essence, then, you have two local government units?
>
> ROSSWOG: Yes, that is right.[43]

Thus, while the momentum set in force by the Constitutional Convention contemplates eventual dissolution of cities in favor of boroughs, the interim is governed by the principals of sovereign coexistence.

Special Purpose Governments

As noted above the integrated/unified local government is the preferred vehicle of local government in Alaska. The constitution,

class boroughs may only exercise certain enumerated powers as non-area-wide powers by ordinance. These include regulatory power over fireworks, animals, motor vehicles, snow vehicles, garbage, water pollution. A second class borough may only acquire other municipal if such powers are specified in its charter or subsequently acquired by referendum.[12]

ii) Native Government. Native Village constitutions, whether adopted under the traditional form of government or under the Indian Reorganization Act, generally fail to define the exterior boundaries of their territorial jurisdiction. It is, therefore, necessary to look to common law in order to determine the respective jurisdictions of the tribal organizations.

Generally, it is said that tribal law and custom are applicable within "Indian country."[13] This rule was not altered when Congress extended the State of Alaska's jurisdiction to Alaskan Indian country. Congress expressly reserved that Indian law and custom shall be given full force and effect in the determination of civil causes of action arising within Indian country in Alaska.[14]

This observation, however, begs the question to whether Indian country exists in Alaska, and, if so, what are the limits of Indian country in Alaska? Unfortunately, in Alaska the question whether Indian country exists is largely disputed, and supported by a vacillating history of cases.

As Felix Cohen illustrates in his early attempt to define the term Indian country, the term is a dynamic concept. Originally, the concept seems to have been born out of respect for the territorial integrity of Indian nations.[15] Later, the idea was supported in the Jacksonian policy of Indian removal to reserves, a policy designed to physically separate Indians and the immigrant culture.[16] From thence, the concept found its way into the early Indian Intercourse Acts to indicate Indian lands west of the Mississippi.[17] From this point, the courts and Congress have separately, albeit tangentially, developed the concept of "Indian country."

Congress repealed the definition section of the Act in 1834 and failed to reenact a substitute general definition of Indian country.[18] Later, however, Congress defined the term Indian country in relation to specific crimes.[19] The only current federal statutory definition of Indian country exists in 18 USC 1151 which defines Indian country as:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation,

(b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state, or

(c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

It should be noted that this definition of Indian country only applies to a set of federal criminal statutes contained in Title 18 of the U.S. Code. The term Indian country, however, is also found in 28 USC 1360 dealing with state civil jurisdiction over Indians. The result is that there is no general statutory definition for Indian country, nor is there a statutory definition for Indian country in the civil sense.

The resulting ambiguity from the lack of a statutory definition of Indian country led to a series of Supreme Court decisions laying down the principal common law definition of Indian country. Felix Cohen states that the first ruling by the Supreme Court on the issue came in Bates v. Clark,[20] which stated in essence that:

> "It follows from this that all the country described by the Act of 1834 is Indian country, remains Indian country so long as the Indians retain their original title to the soil, and ceases to be Indian country when ever they lose that title, in the absence of any different provision by treaty or act of Congress."

This basic principle was expanded in Donnelly v. U.S.,[21] where the Court stated that executive order reservations constituted Indian

country even though the respective band did not possess original title to the land in question.

Of more importance to the Alaskan situation however, was the case U.S. v. Sandoval,[22] which held that Pueblo lands not held in trust by the United States, but owned in fee simple by a Native community under a Spanish land grant, was in fact Indian country. In his treatise on the federal-Indian relationship, David Case pointed out that the Sandoval doctrine presents a clear analogy to the Alaskan situation. Like the New Mexico pueblos, Alaska Native communities own land in fee simple through their Native corporations. In the Sandoval case, the court looked to the statutory definition embodied in 18 USC 1151 and held that the Pueblos of New Mexico were clearly "dependent communities" within this definition of Indian country. In a similar case, U.S. v. Chavez,[23] the Court defined Indian country as "any unceded lands owned or occupied by an Indian nation or tribe of Indians." If these Court cases are to be literally applied to the Alaska situation, it is clear that Indian country does exist in Alaska. However, the matter has never truly been settled.

The modern federal courts have only addressed the question whether Indian country exists in Alaska on three occasions. In the first case, In re McCord,[24] the Court heard a petition in a proceeding for a writ of habeas corpus arising from a conviction for statutory rape occurring upon the Tyonek Indian Reserve. In that case, the Court followed the Donnelly decision and held that the executive order reservation was in fact Indian country which denied state jurisdiction to prosecute the defendant in the case. The second major case following McCord by one year, was U.S. v. Booth.[25] In that case, the court held that the Metlakatla Indian Reservation did not constitute Indian country because the reservation was not a "reservation in the traditional sense." The Court further distinguished the case from McCord by noting the different conditions and history behind the Metlakatla Reservation. The decision in the McCord case, however, led to a general public outcry of concern over the lack of law and order within Indian country in Alaska. Alerted to this apparent gap in jurisdiction, Congress passed an amendment to

PL 83-280 (P.L. 280) including Alaska among those states where mandatory state jurisdiction extended over Indian country within the borders of the state.[26] The legislative history behind this action clearly indicates that the Congress reacted to the nolding in the McCord case, and indicates that Congress clearly desired to overrule and reverse the precedents set by that case.[27] If the application of PL 280 to Alaska was a congressional reaction to McCord, rather than Booth, it is safe to assume that the holding in McCord was a correct statement of the legal crisis prior to the application of PL 280 to Alaska. That Act specifically states that the State of Alaska shall have jurisdiction over Indian country within its borders. It therefore seems incredible to assert that Indian country does not exist in Alaska.

But the doctrinal confusion regarding the existence of Indian country in Alaska has continued. This is primarily due to the nature of the cases in which the claim of Indian country arises. For example, in the People of South Naknek v. Bristol Bay Borough,[28] the plaintiffs claimed a tax exemption for Native townsites within the borough by claiming that the townsites were Indian country and therefore exempt from state taxation. The court firmly refused to attempt an answer as to whether or not the land in question was in fact Indian country. The Court, however, noted the historical confusion over the question of Indian country in Alaska. The Court blamed much of this confusion on "one of the principal Indian jurisdictional cases that has emerged from Alaska," specifically, the Organized Village of Kake v. Egan.[29] Like Naknek, the Kake case arose out of a claim denying state jurisdiction. It is important to note, however, that Kake did not deal with the question of Indian country per se, but addressed a narrower question of whether state law applied to off-reservation Indians. Kake, like Naknek, did not address the question whether Indian country exists in Alaska.

It should be noted that the mere existence of Indian country and consequent tribal jurisdiction is not an exclusive claim to jurisdiction and does not exclude state criminal and civil jurisdiction. As noted earlier, Alaska is subject to the mandatory provisions of PL 280 which authorized the extension of state jurisdiction over Indian country. As

a general rule, however, the application of PL 280 does not create exclusive state jurisdiction nor does it substantially affect tribal jurisdiction. In Bryan v. Itasca County,[30] the Court stated that:

> . . . nothing in its [PL 280] legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to states would result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes into little more than private voluntary organizations.[31]

In reaching this conclusion, the court noted that 28 USC Section 1360(c) provided for full force and effect of any tribal ordinances or customs heretofore or hereafter adopted by an Indian tribe if not inconsistent with any applicable civil laws of the state. In light of these cases, it would seem that territorial jurisdiction over those areas which can be determined to be Indian country, would seem to be concurrent between the state and the tribe.

There remains, however, substantial concern that the Alaska Native Claims Settlement Act placed in question the existence of Indian country in Alaska. Specifically, concern centers around Section 19 of the Act, which revoked existing reservations in Alaska. The supporters of this theory contend that, when the reservations were revoked, the territorial jurisdictions of the respective villages were destroyed. The argument, however, rests upon the proposition that Indian country is dependent upon the existence of reservations. The Supreme Court has clearly announced that there is nothing magic in the term "reservation."[32] Other forms of Indian country exist in addition to reservations. It is also clear that tribal jurisdiction is not dependent upon federal ownership of the territory in question.

The Pueblo cases arising out of the New Mexico situation clearly demonstrate these principles. In the Chavez case, Indian country was defined as "any unceded land owned or occupied by an Indian nation or tribe of Indians." It is not necessary to establish clear unequivocal boundaries. Rather, it is only necessary that the lands in question are occupied by "distinctly Indian communities" recognized and treated by the government as dependent communities entitled to its protection.[33] Applying this

rule to Post-ANCSA Alaska it is quite easy to identify those villages in rural Alaska which continue to be "distinctly Native communities." Such communities retain substantial cultural, social, and economic characteristics identifiable as Native and therefore these villages clearly fall within the definition of a dependent Indian community enunciated in the Chevez decision. Additionally, it must be recognized that ANCSA clarified continued Native title to certain lands within the state. Under the terms of the Act, Alaskan Native aboriginal claims to the land were extinguished.[34] In compensation for the extinguishment of such claims, Alaska Native villages were allowed to select and receive substantial amounts of land surrounding the villages.[35] The main effect of this act was to continue Native occupancy and ownership of a substantial amount of land surrounding Native communities. Thus those lands selected and ultimately conveyed to the village corporations clearly constituted "unceded lands owned and occupied" by the Native villages concerned. Again, the definition of Indian country as specified in the Chavez case is clearly met. As noted earlier, the fact that such lands were conveyed in fee simple was ruled irrelevant in the Sandoval case.

This view is consistent with a recent solicitor's opinion which stated that,

> The continued existence of Indian country in Alaska, in our view, does not conflict with the Settlement Act, and consequently, that Act should not be construed to have abolished Indian country or the possibility that Native villages might qualify as "dependent Indian communities."[36]

The opinion then considered a number of factors including whether the Native village was modern and urban in character, a high percentage of Native residents, the village's elibiligy to receive federal services, and the land tenure pattern, and concluded that,

> In our view, these factors are sufficient to support presumption that the area (Allakaket) is a dependent Indian community and, therefore, Indian country for the purposes of the liquor laws.[37]

Of course, this does not address the substantial concern which may arise upon subsequent land transfers by the respective Native

communities. The problem presents itself in two distinct situations. First, what is the status of lands originally selected by a village corporation and then conveyed by the corporation to non-Natives? Secondly, what is the status of lands subsequently acquired by the Native village?

The basic rule governing subsequently acquired Indian lands and their respective status as Indian country was laid down in United States v. McGowan.[38] In that case, the lands in question were lands owned by the United States and purchased out of funds appropriated by Congress for this purpose. The ruling that such lands were in fact Indian country relied on the role of the government in the establishment of the colony. The role of the federal government in the creation of the Reno Colony is substantially analagous to the role of the federal government in the identification and conveyance of lands received under the terms of ANCSA. Subsequent purchases of private land by Alaskan Native villages in fee simple would by definition not involve the federal government. Under the rationale of McGowan, the diminished federal role in the identification of Indian lands would substantially impact the status of those lands under the McGowan test. Subsequently, acquired land which would not involve federal government participation in their acquisition would not necessarily extend village jurisdiction.

The above type of subsequent acquisition, however, should be sharply contrasted from acquisitions authorized under the Indian Reorganization Act.[39] Lands acquired in this manner would fall under the black letter rule of McGowan, so that lands subsequently acquired pursuant to the terms of the Indian Reorganization Act would clearly extend village jurisdiction to those lands.

The possibility that a village might sell or otherwise dispose of village lands to nonmembers of the community presents a substantially different problem. In the case Seymour v. Superintendent,[40] the United States Supreme Court held that lands conveyed to non-Indians within the exterior boundaries of a former reservation did not lose the character of Indian country. This rests upon the theory that once Congress has set aside certain lands for the use and occupancy of

Indians, such use and occupancy shall not be disturbed. Broadly applying this principle to Alaskan Native villages, it would seem that lands within the Alaskan Native village selections authorized under the terms of ANCSA, would continue to be Indian country in spite of subsequent conveyance of such lands to non-Indians by the village.[41] In contrast to these decisions, however, is the decision in DeCoteau v. District County Court.[42] In that case, the Court held that the Lake Traverse Indian Reservation in South Dakota was terminated and returned to the public domain and, hence, Indian country on the Lake Traverse reservation ceased to exist on this reservation. The Court in DeCoteau noted that the Act in question was a ratification of a prior negotiated agreement which was fully intended to terminate the reservation. By the terms of the agreement itself, the Indians would "cede, sell, and relinquish, and convey" all the remaining land in the reservation. The court distinguished Matz and Seymour as being cases involving unilateral Congressional action rather than possession or sale of land by the Indians. From these two lines of cases it is unclear whether that a sale of Indian lands by a village would result in the relinquishment of tribal jurisdiction over those lands.

Re: T. Cook Alakanuk Bia land

iii) Summary Comparison. In summary, it seems clear that the territorial jurisdiction of state municipal governments are basically defined in terms of their boundaries. Borough's territorial jurisdiction may be limited in regards to a number of powers by the existence of cities within its boundaries. Finally, all municipalities may exercise extraterritorial jurisdiction in respect to certain enumerated powers. The procedure for enlarging or diminishing boundaries is statutorily prescribed.

In contrast, a Native village government's territorial jurisdiction is defined in reference to the village's "Indian country." It is most likely that a village's Indian country is coextensive with lands received under ANCSA, and any other lands subsequently acquired with federal participation. It is unclear whether village's Indian country is diminished through unilateral sale or cession of village lands.

## B. PERSONAL JURISDICTION

In contrast to a municipal government, tribal government has very limited personal jurisdiction. It is generally assumed that personal jurisdiction of a municipality extends to all or most individuals within its territorial jurisdiction. This may depend upon the subject matter involved (see below). A tribe's jurisdiction is generally linked to its membership. The U.S. Supreme Court enunciated the basic principles of tribal personal jurisdiction in the companion cases, Oliphant v. Suquamish[43] and U.S. v. Wheeler.[44] In Oliphant, the Suquamish tribe attempted to enforce a local traffic ordinance against a nontribal member. In its decision, however, the Court denied the tribe's claim to jurisdiction over nonmembers. In Wheeler, however, the Court upheld the Navajo Reservation's claim to enforcement jurisdiction over tribal members.

There are basically two ways to interpret the meaning of these cases. In the broad sense, the Oliphant decision can be interpreted as denying tribal jurisdiction over non-members. It is important to note, however, that the Court in Oliphant did not overrule the holding in U.S. v. Mazurie.[45] In that case, the Court upheld the extension of tribal liquor ordinances over non-members of the tribe. Although the cases seem irreconcilable at first glance, there was a substantial difference between these two cases. In Mazurie, the Court upheld the authority of the tribe to prescribe the ordinance and stated that such legislative acts extend and apply to nontribal individuals. The actual enforcement mechanism in the Mazurie case were federal authorities, i.e., the federal courts. In contrast, the tribe in Oliphant was attempting to enforce tribal ordinances through tribal courts. The only way these two cases can be reconciled is to recognize that tribal ordinances extend to non-members but that tribes lack the authority to enforce such ordinances against non-members. The result is that tribes must seek alternative enforcement mechanisms against nontribal members, i.e., the state or federal courts. As noted in Bryan v. Itasca, federal courts are not available in a PL 280 state such as Alaska since federal jurisdiction has

generally been withdrawn. Thus, in Alaska the state courts are the only forum for the enforcement of most tribal ordinances against non-members.

As noted above, "PL 280" requires the state to give "full force and effect" to valid tribal ordinances in civil cases.[46] This supports the notion that a village would have prescriptive jurisdiction over non-tribal members. It also clarifies that state enforcement of tribal ordinances is clearly required by federal law in civil matters.

There remains, of course, the question of criminal cases. PL 280 has no comparable requirement for "full force and effect" of tribal ordinances in criminal cases. There exists, however, two lines of authority on this issue. Some states have extended "full faith and credit" to tribal ordinances by holding that a tribe is a "territory" under 28 USC 1738.[47] On the other hand, many states have refused full faith and credit, but have extended "comity" to tribal ordinances.[48] The issue remains unresolved.[49]

## C. SUBJECT MATTER JURISDICTION

Subject matter jurisdiction refers to the types of issues with which a government may concern itself. Often subject matter jurisdiction is referred to as the "powers" of a government. Title 29 of the Alaska Statutes enunciates, in a comprehensive manner, the powers of state chartered local governments. In contrast, there exists no similar comprehensive and authoritative exposition of tribal powers. Understanding tribal powers requires a thorough review of a substantial body of federal and international common law. Finally, there exists a less formidable body of federal common law governing the interaction of these respective jurisdictions.

### 1) Concurrent Jurisdiction

There are two basic principals governing the interaction between municipal and tribal governments.

The first principle was enunciated by the United States Supreme Court in Williams v. Lee.[50] In that case, the United States Supreme Court held that states have jurisdiction over Indians except where such state jurisdiction infringes upon tribal self-government. This test was specifically applied to Alaska in Organized Village of Kake v. Egan.[51] In that case, the Court analyzed the development of this principle and stated:

> "these decisions indicate that even on reservations, state laws may be applied to Indians unless such application would interfere with reservations, self-government, or impair a right granted or reserved by federal law."

In explaining these lines of decisions, the Supreme Court further stated that, "it must be remembered that the Courts in applying the Williams test, have dealt principally with situations involving non-Indians."[52] In these situations, both the tribe and state fairly claim an interest in asserting jurisdiction. The Williams test was designed to resolve this conflict by providing that the state could protect its interest in its non-Native citizens up to the point where tribal self-government would be affected.[53] In fulfillment of this policy, cases arising between tribal members fell within the exclusive interest of the tribal government.

The second major principle is a modification of the above rule required by the fact that Alaska is governed by the operation of Public P.L. 280.[54] Generally, this law confers upon the state criminal and civil jurisdiction to adjudicate matters between Natives within Indian country. It is important, however, to understand the parameters of PL 280 as recently defined by the courts. The courts have generally attempted to limit the effect of PL 280 because of the devastating impact the law has had on tribal governments."[52] In Brian v. Itasca County, the U.S. Supreme Court in commenting on PL 280 stated:

> "nothing in this legislative history remotely suggest that Congress meant the acts extension of civil jurisdiction to the states should result in the undermining or destruction of such tribal governments as did exist in a conversion of the affected tribes in the little more than "private volunteer organizations," a possible result if

> tribal governments and reservation Indians were subordinated to full panoply of civil regulatory powers, including taxation of state and local governments. The act itself refutes such an inference: There is notably absent any conferral of state jurisdiction of the tribes themselves and Section 4 C, 28 U.S. C Section 1360(C) (28 U.S. CS Section 1360 (C)), providing for the "full force in effect" of any tribal ordinances or custums "heretofore or hereafter adopted by An Indian Tribe...if not inconsistent with any applicable civil laws of the state, contemplates the continuing vitality of tribal government."[56]

The court went on in a footnote to further explain this policy of promoting Native governments. In a comment of particular importance to Alaska, the court stated:

> "the suggestion is that since tribal governments are disabled under many state laws from incorporating as local units of government, general regulatory control might relegate tribal governments to a level below that of counties and municipalities, thus essentially destroying them, particularly if they might raise revenue only after the tax base had been filtered through many governmental layers of taxation. Present federal policy appears to be returning to a focus upon strenghthening tribal government...and the Court of Appeals of the Ninth Curcuit has impressed the view that courts are not obliged in ambiguous instances to strain to implement an assimilationist policy Congress has now rejected, particularly, where to do so will interfere with the present Congressional approach to what is after all an ongoing relationship."[57]

This general policy, favoring the strengthening of tribal governments has two effects.

First, PL 280 does not confer upon a state general civil regulatory control over Indian country.[58] Although the Supreme Court has failed to fully define what the scope of "regulatory" means, it is clear that taxation of personal property on trust land,[59] zoning authority,[60] and outdoor advertizing61 in Indian country are beyond the state's authority.

The second effect of Brian v. Itasca was that PL 280 only made applicable to Indian country those state laws which "had a general applicability throughout the state." In short, this general principle denies the authority of local governments to exercise authority over Indian country since their authority does not extend throughout the state.[62] This basic principle, if applied in Alaska, could have a crippl-

ing effect on rural Alaskan municipal governments. The result would be the creation of local governments chartered under state law whose authority only extended over non-Indians. The end result would be the creation of parallel local government units incapable of exercising jurisdiction over the respective persons subject to the other local government's personal jurisdiction.

2) Local Government Powers.

The basic rule regarding the powers of a tribal government is that such powers are not in general delegated powers granted by Congress, but rather are inherent powers of a limited sovereignty which has never been extinguished.[63] This has recently been compared with the concept of home rule under Alaska state law.[64]

In contrast, Alaskan municipalities are of two types. A home rule municipality, like an Indian tribe possesses all local government powers not reserved from it by state law.[65] A general law municipality possesses powers delegated to it by state law.[66] Basically, general municipalities exercise four types of powers.

A general law municipality possesses "general powers" related to the municipal corporate identity. These powers include the following powers: be sued; employ municipal officers and officials; levy taxes and special assessments; enforce ordinances; prescribe penalties for violations; acquire manage, control, use, and dispose of personal and real property; promote legislation for the municipality; expend funds for community purposes; and borrow money and issue evidence of undebtedness.[67] By statute, all municipalities possess the unilateral authority to exercise these powers.

Second, general law municipalities "regulatory powers," which relate to: public rights-of-way facilities to services, traffic and general transportation including buses, taxis, etc., animal control, sales of goods, foods, and alcoholic beverages, dangerous insect and rodent control, recreational devices, building codes, public nuisance abatement,

garbage & solid waste collection, water and air pollution, licensing of day-care facilities, police powers, or other general health safety and well-being welfare functions.[68]

As a general rule, cities possess the unilateral authority to exercise the regulatory powers. Boroughs, however, are subject to a narrower grant of authority depending on whether the power is area-wide or non-area-wide (see Part II (i) above).

Third, Alaska Statutes outline a number of municipal facilities and services which general law municipalities may provide. These include services and facilities relating to streets and sidewalks, sewage treatment facilities, harbors, flood control, health and hospital services, cemeteries, police and jail services, cold storage, telephone, lights, power, heat, water, transportation, community centers, libraries, recreation facilities, airport facilities, garbage facilities, fire protection, parking, urban renewable, consumer protection, and historical sites, buildings and monuments.[69] Any city may exercise the powers necessary to provide these facilities, however, boroughs must assume the powers to provide these facilities and services in a like manner required for the exercise of regulatory powers. Third class boroughs are not specifically authorized to provide such facilities and services.

Fourth, general law municipalities are authorized to exercise what are commonly called area-wide powers, i.e., education, and planting, platting, and zoning authority. Generally, first and second class boroughs have the statutory authority to unilaterally provide exercise such powers on an area-wide basis.[70] All third class boroughs may provide educational services on an area-wide basis and may, upon voter approval, exercise planning and zoning authority. As a rule, cities do not exercise such powers except when they are located outside borough boundaries.[71]

An exhaustive comparison of these powers is certainly beyond the scope of this project, however, it is possible to select areas for special consideration.

i) Police Powers. While municipalities possess police powers,[72] tribes possess the power to regulate the conduct of members.[73] The federal government has withdrawn tribal jurisdiction over most felony crimes by enactment of the Major Crimes Act,[74] and Assimilative Crimes Act.[75] Both the tribe and the municipality are limited from prescribing a punishment for violation of an ordinance in excess of $500 and/or thirty (30) days in jail.[76]

Municipalities are prevented from operating "courts" since the Alaska Constitution provides for an integrated court system under state government.[77] This constitutional reservation of power to the state, however, does not prevent municipalities from operating "administrative tribunals" capable of enforcing ordinances.[78] Such tribunals, however, are subject to the same constitutional guarantees protecting the rights of the accused, where the ordinance provides for the regulation of acting which traditionally connotes criminality.[79]

In contrast to municipalities, Native governments possess the inherent power to create courts to enforce their ordinances.[80] While tribal courts are not generally subject to the individual guarantees of the Bill of Rights,[81] they are subject to the guarantees of the Indian Civil Rights Act of 1968,[82] which applies the constitutional protections of the Bill of Rights to Indian governments.

ii) Planning. Both tribes and municipalities possess planning authority. Alaska statutes specifically provide for municipal planning authority. Within organized boroughs, planning is an area-wide function of the borough.[83] Of course, the borough may also delegate such powers to a city within its borders.[84] Outside organized boroughs, first class cities are required, and second class cities may exercise planning powers.[85] In unorganized areas of the state, planning authority rests with the Department of Natural Resources.[86]

Tribal planning authority is a power retained by tribes in the absence of contrary federal law. This authority is already expressly recognized by the state. While the Court in State v. Aleut Corp.,[87]

held that ANCSA regional corporations lacked governmental planning authority so as to require the State Division of Lands to give notice of pending land actions, the Court also held that traditionally organized Native villages constituted local authorized planning agencies.[88]

While both entities enjoy substantially similar planning authority, the entities implement this authority in substantially different ways. Muncipalities have authority to directly implement their plans through zoning, platting,[89] and operation and licensing. The municipality, however, is not able to direct state agencies to comply with local plans. For example, the prior A.S. 29.33.090(d) required certain state land management programs to comply with municipal plans. This was repealed.[90]

Municipalities also may implement tneir plans through its licensing power over vehicles, animals, day care facilities, etc.[91]

A tribe's most potent implementation tool is its recognized authority to license. For example, in U.S. v. Mazurie,[92] the Supreme Court upheld a tribe's right to license bars owned by non-Natives on fee simple land within Indian country. Secondly, a village may regulate the nature of member's ownership rights in property.[93] By defining members property rights, a tribe can restrict uses of property which are delitereious. Finally, there is some authority to believe that a Native village government may exercise zoning authority over Native land. In Santa Rosa Band of Indians v.Kings County,[94] the Court struck down local zoning ordinances holding that "the extension of local jurisdiction is inconsistent with tribal self-determination and autonomy."[95] This infers, of course, that the local government invaded a power to zone reserved to the tribe.

iii) Taxation. The right of a Native government to tax is a retained sovereign power.[96] The extent of this power is almost wholly uncertain, since few Native governments exercise th's power. The courst however, have upheld tribal taxes on business,[97] occupations,[98] or to accompany tribal permits,[99] regardless of whether the tax was levied against members or non-members.

The taxing powers of municipalities are more clearly defined. They may levy sales and use taxes,[100] and property taxes.[101] These taxing powers are subject to a substantial number of exemptions and limitations.[102]

Conclusion. While the municipalities and tribes do not have co-extensive powers, they have many similar areas of concern where their powers overlap. It should be remembered that the tribal organization is a governmental unit with broader areas of concern and responsibility than the municipality. For example, tribal powers include regulation of property rights, marital relations, and child custody.[103] Tribes provide employment, welfare, economic development, child protection, and various other services generally felt to be beyond the scope of local government. As local government in Alaska develops along the path of decentralization envisioned by the framers, it is likely that municipal governments will also address these subject areas. In any case, it is clear that village and municipal government are not the same thing. It is also evident that they are closer than commonly perceived.

## PART III

## SUGGESTIONS TO INCLUDE NATIVE VILLAGE GOVERNMENTS WITHIN THE ALASKAN LOCAL GOVERNMENT SYSTEM

The decision to allow inclusion of Native village government within the state local government is, of course, a policy issue. Several factors must be considered in making this decision. First is the question whether such action is consistent with the Alaska Constitution. Second, the actions of other states must be considered. Thirdly, the backdrop of federal law needs to be considered. Finally, the state interest in non-Native citizens needs to be addressed.

### A. THE CONSTITUTION

Substantial concern exists as to whether the proposed action is consistent with the Alaska Constitution. The proposal raises two issues. First, the proposal must be analyzed to determine whether it is consistent with the constitutional scheme for local government. The local government committee of the Constitutional Convention articulated five basic principles with which the proposal may be compared, i.e., self-government, unified system, prevention of overlapping tax authorities, flexibility, and state interest. Additionally, the proposal raises a question whether it is consistent with the equal protection clause of the Alaska Constitution.

1. Self-government. Maximum local control over local government was a primary goal of the framers. This policy is specifically enunciated in Section 1 of Article 10 of the Constitution which provides that, "the purpose of this Article is to provide for maximum local self-government..." This concern is reflected in other provisions of Article 10. For example, Section 6 provides that the legislature shall provide for the performance of services that it deems necessary and advisable in the unorganized boroughs "allowing for maximum local participation and responsibility." (emphasis added) Section 9 provides that home rule charters of first-class

municipalities shall be approved by popular election. This policy favoring local self-government in municipal matter is consistent with federal policy favoring self-determination of Indian tribes. Fundamental to self-government/self-determination, is the right of people to determine what form their government shall take and to establish rules and regulations regarding the management and operation of that government. For a variety of reasons, several Alaskan Native villages have failed to organize as second-class city under the Alaska state law. The prefer rather to organize themselves exclusively as Alaska Native villages. In many cases, such organization reflects a community decision to organize a local government which best reflects the cultural and social character of the respective community. Under this rationale, the state should encourage communities to organize themselves under any authorized governmental form which best represents the respective communities' social, cultural and economic pattern. The inclusion of Native governments within the system of Alaska state local government promotes this policy. This action would broaden the number of local options available to communities desiring to organize, thereby leaving greater control at the local level.

2. Integrated local government system. The framers of the Alaskan Constitution desired to create a single system of local government within Alaska. As noted by this study, however, two parallel systems of local government exist in Alaska, i.e., state chartered municipalities and tribal government. The quality and quantity of interaction between these two types of government varies from community to community. The quality and quantity of possible interaction ranges from substantial cooperative efforts to substantial opposition. Often times coordination between governments is merely a function of interlocking office holders. Where the Native council and the city council are substantially the same, the respective governmental efforts are highly coordinated. In contrast, where the councils are not interlocked there is little coordination and counterproductive efforts often result. State and federal programs often depend on the existence of local cooperation. Nonrecognition of Native governments is a impediment to this local cooperation.

Non-recognition problems also result where a community is exclusively organized as a Native village government. Such communities are not immuned from the same problems which plaque communities organized as municipalities. Where the municipality may draw on the resources of the state to help address such problems, the Native village encounters greater reluctance by the state to render equal assistance. The obvious solution to this problem is for the community to organize as a municipality. The community would in fact only trade problems--i.e., the community would trade a reluctance on part of the state to render assistance in exchange for the duplicity and confusion which results from parallel governments.

The inclusion of the Native government within the local government system, therefore, would further state policy favoring a unified local government system. It would promote cooperation where parallel governments exist and it would alleviate the necessity of creating parallel local governments where none exist now.

3. Prevention of overlapping taxing and authorities. As noted above, the framers of the Alaska Constitution specifically intended to eliminate overlapping tax authorities and promote physical integration within local government. For this reason, Article 10, Section 2, specifies that cities and boroughs are the only local governments authorized to tax under the Alaska Constitution. As noted above, however, this plan is somewhat frustrated by the existence of Native government which possess authority to levy taxes and dues on members and non-members. Additionally, the eligibility of Native villages to receive intergovernmental revenue transfers frustrates the state's objective to facilitate fiscal integration of local government. This lack of fiscal integration within the community leads to a number of problems including duplicate accounting systems, redundant and excessive administrative costs and, in some cases, program duplication. The framers had hoped to avoid such problems in adopting a policy favoring fiscal integration. The inclusion of Native governments within the local government system will help avoid these inefficient fiscal management systems.

4. Flexibility. Throughout the Constitutional floor debates, the drafters of Article 10 emphasized their desire to provide a "framework" for local government which would be flexible enough to meet community demands throughout a highly pluralistic state such as Alaska. Native governments represent a flexible accommodation to the need for pluralistic representation in local government. It, therefore, follows that the inclusion of such governments fulfill a constitutional policy favoring flexibility in Alaskan local government.

5. State interest. As noted above, the framers of the Alaska Constitution felt that strong local government was a mechanism to facilitate the decentralization of state government. It was fully intended that strong local government could perform traditional state functions much better than a centralized government structure. This plan, however, is dependent on the existence of local government. Since the state does not recognize Native governments, these local mechanisms are unavailable to the state. The inclusion of Native governments within the state system of local government makes available to the State existing government entities through which the State may operate. In this sense, the Native government can serve as a conduit for the provision of state services. In a limited sense, the state has already adopted this policy. For example, in the Coastal Zone Management Act, the Rural Development Act, the Municipal Trust Land (14c) Program, the Community Legal Assistance Program, the Community Miscellaneous Assistance Program and various state contracting programs utilize Native government to administer and otherwise implement these programs which require substantial community participation. The general inclusion of Native governments within the local government system of the State of Alaska will make available to the state a valuable local instrument.

6. Equal Protection. It is unfortunate that the Alaska Constitutional Convention failed to address the issue of Native local governments. In the heady atmosphere of the convention, the delegates seemed to assume that the state mechanism would be comprehensive. The record fails to indicate that the convention ever considered that viable Native governments would continue. In this vacuum it is difficult to analyze the

constitutionality of state legislation which seeks inclusion of Native government in the local government system. Generally, however, there exists concerns whether such legislation would violate the equal protection clause of the Alaska Constitution.[2] Since this is a novel question in Alaska, we must look to sister states for guidance.

The Supreme Court of Minnesota was forced to deal with the issue in State v. Forge.[3] In that case, non-Indians sought to challenge the constitutionality of a compact between the state and the Chippewa Tribe over ricing and fishing. The state legislation vested certain rights in members of the Chippewa tribe that did not extend to state citizens in general. The court upheld the statutes in the face of a challenge based on the equal protection guarantees of the Minnesota Constitution.

In deciding that the state action did not violate the state constitutional guarantee of equal protection, the Court noted that the compact related to the reconciliation of claims between the state and the Indian tribes. As such, the classifications made by the state law rationally related to the competing claims of the state and the tribes.[4] It is important to note that the court's finding was based upon Indian treaty rights, which could not be used as a basis for Alaskan legislation. Nevertheless, the Court noted that:

> Even in the absence of treaty rights, the United States Supreme Court has frequently upheld legislation that singles out Indians for particular and special treatment.[5]

Subsequent to State v. Forge, the United States Supreme Court dealt with the issue directly in United States v. Antelope.[6] In that case, Antelope was tried for murder under the Major Crimes Act. The defendant argued correctly that if he were not an Indian, he would have been charged under the Assimulative Crimes Act for manslaughter. The court held that the statute did not create an impermissible racial classification since the constitution specifically authorizes particular and special treatment of Indians.[7]

There is one distinction, however, which may distinguish Alaska's and Minnesota's Constitution. The standards of the equal protection clause under the Minnesota Constitution are synonymous with the U.S. Constitution's equal protection clause.[8] In contrast, however, the standards of protection under Alaska's equal protection clause is not synonymous with that of the U.S. Constitution.[9] Absent an express ruling to the contrary, however, the Minnesota interpretation is probably an accurate indicator of the Alaskan position.

B. OTHER STATES

Other states have attempted to establish direct tribal-state relations in one of two basic ways - 1) incorporation, or 2) recognition and compact.

1) Incorporation. Incorporation is the formation of a unit of local government. As noted above, such incorporation may result in the formation of either a general or special purpose government. Theoretically, it is possible to incorporate Native governments under state law. In Bryan v. Itasca, the court stated that one reason it was reluctant to extend local government jurisdiction over Native communities was the fact that many states did not allow incorporation of Native government under state law.[10] This implies, of course, that it is possible for a state to allow such incorporation if it removes its self-imposed prohibitions.

As noted above, this has been attempted twice in Alaska's past. Several current second class cities were originally incorporated under the 1957 Village Incorporation Act. The villages lost their village status through the 1972 municipal code revision.[11] In general, the attributes of tribal self-government are no longer present, so that neither the people, the state, nor the federal government recognize these governments as tribal entities.

Direct state incorporation of general purpose Native governments is not common. There are, however, a few instances of such state action.

One example is New Mexico, which provides for the incorporation of Peubleo Indian communities.[12] The courts, however, have ruled that the pueblo's did not gain any powers, rights or duties under this statue, but rather their powers stem from their authority as Indian tribes.[13]

In contrast, Maine has recently enacted the Maine Indian Claims Settlement Act[14] which does not incorporate the tribal enities, but rather delegates to them "all the rights, privileges, powers and immunities" of a state municipality.[15] This includes the authority to enact ordinances, collect taxes and provide general services like any municipality. Conversely, the tribe is subject to all duties, obligations, liabilities and limitations of a municipality in the operation of municipal authority. A major exception is the internal organization of the tribes.

The tribes' jurisdiction extend over "Indian territory" as defined by the Act, which includes newly created reservations (akin to townsites) and surrounding lands conveyed in fee simple to the new Native corporations.[16] As enities possessing municipal authority, the tribal councils have jurisdiction to prescribe criminal and civil ordinances over non-Natives, but may only judicially enforce certain ordinances against members and handle small claims matters between members.[17] The state courts have jurisdiction to hear all other cases.[18] Law enforcement is handled through a cross-deputization of tribal and state police.[19]

The state has also sought to protect nonmember's rights by making municipal authority dependent upon nondiscriminatory delivery of services and guaranteeing enfranchisement in county, state and federal elections.[20]

In considering the Maine Settlement, two major points must be made. First, the Main Settlement was prompted by litigation over both the land claims and governmental claims of the Maine Indians. By comparison, the Alaska Settlement only addressed land claims, and left unresolved the governmental claims of the Alaskan Native people. This oversight is generally attributable to the common perception of P.L.-280 in the pre-ANSCA period. It must be remembered that ANCSA preceded

Bryan v. Itasca,[21] which was decided in 1976. Prior to 1976, the general feeling was that P.L. 280 replaced tribal authority. The court in Bryan v. Itasca, however, clearly rejected this analysis, and reasserted that P.L.-280 merely resulted in concurrent state/tribal jurisdiction.

Secondly, except of the delegation of municipal powers, the Maine Settlement Act does not substantially change the respective authority of the state and tribes. Generally, the Act serves as a restatement of the law as currently understood. Thus, the Maine statutory scheme may serve as a useful model for incorporation of general purpose Native government under a state's authority.

In contrast to general purpose incorporation, some states have sought to declare Indian tribes as special purpose governments. For example, Florida, like Connecticut, has established a state reservations which in effect is an extension of a federal Seminole reservation.[22] In addition, however, the state has declared the whole Seminole Reservation (both federal and state portions) and the Miccosukee Reservation as "special improvement districts."[23] While the state recognizes that the tribes may regulate their members and lands as other tribes,[24] the state law provides that the tribal councils (organized as I.R.A.s) shall be the governing body of the districts, and are granted law enforcement, housing, and health powers, along with providing a variety of state services.[25]

It is interesting to note, that Florida is not the only state which has set up state Indian reservations. Connecticut has also established state reservations.[26] Management of the reservations is through an Indian Affairs Council and tribal councils, both of which have state regulatory powers over the reservation.[27] The State Administrative Procedure Act specifically applies to regulatory decisions of the councils. Texas also has authorized state Indian reservations.[28] Furthermore, Texas has extended state recognition of a federally nonrecognized tribe, and committed the state to seek federal recognition.[29] Even more unique than this, Texas has delegated bonding

authority to tribal councils.[30] Under state law, lands held in trust by the state and the rents, royalties, revenue and income from such lands, may be pledged to back the bonds.[31]

While the above states have attempted various types of incorporation, many states have taken the intermediate step of creating State Commissions on Indian Affairs.[32] A fairly representative example is Minnesota which created an Indian Affairs Board.[33] While the tribes are not brought within state government directly, the board is a state commission comprised of various state commissioners, state legislators, and tribal officials. The commission does not attempt to exercise governmental authority over tribes. Rather it acts as a liaison between state and tribal service programs.

Simiarly, in California, state law authorizes the formation of school districts within Indian reservations.[34] Unlike Florida, either the tribal governing body or an independently selected body is the governing body of such a district.

2) Recognition and Compact. Recognition is a concept borrowed from international law. It is the process whereby one government acknowledges the authority of another government. It is more than taking note of a mere fact. It is the process whereby two governments seek to establish intergovernmental relations. There are two types of recognition - recognition of the community and recognition of the government. Recognition of the community is acknowledgement that the community is a legal enity capable of being organized under an independent and effective government.[35] Recognition of the government is acknowledgement that an individual or body of individuals act as the government for the community.[36]

The use of the concept of recognition is quite useful in the context of Native governments since the state is not attempting to create a racially defined institution under its own authority. Rather the State is acknowledging the existence of the Native communities and governments. Thus,

the Native government gains no authority from the State, but merely enters into cooperative relations under its existing authority.

States typically implement recognition of Native governments in one of two ways. Either a state may extend general purpose recognition to Native governments, and provide for a systematic procedure for entering into compacts, or the state may adopt an incremental policy of limited recognition for specified purposes.

The Interlocal Cooperation legislation in Nevada,[37] Washington[38] and South Dakota[39] are good examples of legislation which reflect this first policy. Typically, these statutes allow state and local governments to enter into agreements providing for the joint exercise of powers, procedures for entering into such agreements, and financing of joint programs. In the above three states, the Interlocal Act simply defines entities eligible to enter into these agreements to include Indian tribes. Nevada has clarified this inclusion by enacting legislation which guarantees the rights of self-government of Indian tribes;[40] and provides that the administrative jurisdiction of state agencies is not extended over Indian country.[41]

In contrast, other states have adopted an incremental approach to recognition and compacts with Native government. A good example of this approach is Minnesota. A dispute between the State of Minnesota and the Chippewa Tribe arose over ricing and game regulation. The dispute led to a substantial amount of litigation which in turn led to an out-of-court settlement in the form of a ricing and game management compact between the state and the tribe.[42] The compact is a limited effort by the state and tribe to cooperate in these limited subject areas, and does not attempt to establish an ongoing general relationship.

A more common area of limited state-tribal cooperation is in the area of law enforcement. In New Mexico, for example, state law provides general cross-deputization of state and tribal police.[44] Under this agreement, pueblo and Navaho tribal police also carry an appointment under

state law, and may, therefore, enforce state law within Native communities. State police also carry a tribal appointment.

C. FEDERAL LAWS

In considering inclusion of Native governments within the state local government system, the backdrop of federal law will have substantial effect. Of prime concern is the extent state law attempts to regulate the internal organization of Native government organization. Secondly, there is future legislation to be considered.

First, the Williams' doctrine prohibits states from regulating the internal self-government of Indian tribes.[45] Thus, the state could not mandate incorporation of Native governments under Title 29. Rather, the state could only authorize such incorporations upon consent of the tribe.

The Alaska constitution authorizes only three forms of local government - cities and boroughs which are capable of possessing all local government powers; and service areas/districts which are only capable of possessing enumerated powers.[46] Therefore, the legislature is limited to these modes of organization. The legislature may classify, define powers, and define manner of incorporation. Thus, in order to provide for the incorporation of a Native government under state law, the legislature must create a class of city, borough or service area, and define the powers of such government in a manner consistent with the Native government character.

If the legislature provided for state incorporation of Native governments as boroughs, however, the constitutional provisions vesting in the legislature the authority to regulate composition and apportionment of borough assemblies[47] would be inconsistent with the Williams' doctrine, which prevents state regulation of internal organization. This inconsistency is irreconcilable.

On the other hand, if the legislature provides for incorporation as a city, there exists no comparable constitutional claim to internal regulation. The state would merely create a class of city over which it disclaims authority to regulate composition.

The remaining option is the service area. The use of service areas in the unorganized areas of the state is relatively simple. Since such service areas operate by delegation of authority, the legislature may simply adopt the Florida or Maine plan and delegate to Native governments certain powers. In contrast, service areas within organized areas are subject to borough regulation. While the legislature may authorize boroughs to create a class of service area appropriate to the Native government, the character of borough regulation is equally important. Borough regulation which violates the Williams' test would invalidate the plan. To avoid this, the legislature may declare that the furtherance of Native self-determination is a matter of state interest, and under the local activity rule, the legislature could preempt borough regulation of Native service area composition.

Thus it is conceivable that the state could provide for incorporation of Native government as cities and service areas whether within or without organized boroughs.

The second consideration is the proposed Tribal-State Compact Act which is currently before the U.S. House of Representatives (see Appendix C). The implementation of the tribal-state paradigm would be substantially affected by the terms of the Act. In its current form, the bill specifically authorizes states and local governments to enter into agreements with Native governments. Such legislation is needed in non-P.L. 280 states because of recent court decisions invalidating such agreements.[48]

In addition to merely authorizing tribal-state agreements, Sec. 102 of the proposed Act provides federal assistance to the entity assuming new obligations under the terms of a tribal-state compact. If passed, the Act will provide a mechanism to assist the state in its constitutional

plan of decentralization. By entering into eligible arrangements, the state may take advantage of available federal funding to facilitate implementation of state programs. Such agreements are more likely to operate in rural areas of the state where program costs are greatest. Use of such federal funding will decrease the burden on the state budget that such programs represent. While the state enjoys its present wealth, the need for federal assistance is less, yet, as projected state revenues decline in the future, the need for federal assistance will increase.

## D. NON-NATIVES

The greatest concern over inclusion of Native village governments into the Alaska local government system is the preception that the Native governments are racially defined institutions. As such, it is feared that non-Natives will be relegated to a status of second class citizens in their own communities. This view is founded on two questionable assumptions: 1) non-Natives cannot participate in Native government, and 2) non-Natives have no rights under a Native government.

It is a general rule of law that a Native tribe has the exclusive authority to determine its membership.[49] This power specifically includes the power to provide for the adoption of non-Natives into the tribe.[50] This general rule is subject to one exception. The Secretary of the Interior is charged with the responsibility of determining tribal enrollment for the purposes of distributing tribal trust funds.[51]

In contrast, Native governments providing services under federal contracts may also render services to non-Native tribal members, since, for the purpose of contracting, "Indian" is defined in terms of tribal membership.[52] Benefits provided through state revenue sharing are required by state procedures to be equally available to non-Native residents of the respective communities. Thus, it is quite possible for non-Natives to fully participate in Native government.

Participation by non-Natives in Native government is quite common, despite efforts of the B.I.A. to discourage the practice. In one case,

a Native village constitution goes so far as to guarantee non-member/ non-Native heads of households representation on behalf of their Native children before the Native council.[53] In practice, Native councils are reluctant to open village roles to non-Natives who may be transient or are reluctant to establish permanent ties with the community. This is understandable in that membership in a village generally carries with it cultural duties and obligations. This reluctance is analogous to the policy of the federal government to extend citizenship to aliens.

The second major concern relates to the individual rights of non-Natives under Native government. The prime guarantee of individual rights under a Native government is the Indian Civil Rights Act of 1968.[54] The Act mandates that a Native government provide many of the same individual protections provided under the U.S. Constitution. These include:

- free exercise of religion
- freedom of speech, press and assembly
- freedom of unreasonable search and seizure
- protection from double jeopardy and self-incrimination
- protection from taking of property without compensation
- right of due process and counsel
- protection from cruel and unusual punishment and excessive bail
- right to equal protection of the laws
- prohibition of bills of attainder or expost facto laws, and
- right to trial by jury

These rights extend to members and non-members alike.[55]

There is some concern that the Act only provides relief through the right of habeas corpus. This concern focuses around dicta contained in Santa Clara Pueblo v. Martinez.[56] In that case, the Court reviewed a tribal ordinance which conferred benefits upon tribal members based upon a distinction between patrilinial/matrilinial ancestors. In dicta, the Court stated that Congress only provided one clear remedy for plaintiffs under the Act - i.e., habeas corpus. A full reading of

Martinez, however, reveals that the holding of the case rests upon a test which balances two current policies of federal Indian law - i.e., self-determination and protection of individual rights. As one commentator remarked, "In litigation under the Indian Civil Rights Act, federal court jurisdiction outside the scope of habeas corpus proceedings has been firmly established.[57]

## CONCLUSIONS

It is clearly feasible to include Native village government into the state local government system. This may be done in one of two ways - either through compacts (see Appendix A) or direct incorporation (see Appendix B).

The first draft bill (see Appendix A) would be sufficient to authorize tribal state compacts. In addition to recognition, the bill defines the method whereby the State will engage in relations with the Native villages. The proposal provides that Native villages could participate in state programs to the same extent as second-class cities. It does not delegate to tribes general local government powers but does recognize the existing tribal powers retained by Native governments. The bill will clarify the status of Native village laws before state courts.

The bill also proposes cooperative agreements between the state and the Native governments to carry out state programs. This section anticipates the passage of the Tribal-State Compact Act which would allow federal funding of programs conducted under a State-Tribal agreement, and thus, reduce the burden on the state treasury for those areas affected by these agreements.

Finally, the bill conditions the relationship upon the Native government's compling with anti-discrimination provisions. This, of course, exempts federally funded Indian programs. The bill allows the Governor to enforce compliance through withdrawal of recognition.

The bill does not attempt to expand the jurisdiction of the State or the Native village. Section three (3) allows municipalities and village governments to enter into similar agreements.

The second draft bill (see Appendix B) would also provide for state-tribal compacts. In addition to this recognition, the bill allows direct incorporation of the Native government as a third class city. As a third class city, the government would have the attributes of a municipality and a Native village government. To avoid conflicts with the Williams doctrine, state law which regulates the internal operation of a city government are not made applicable to the third class city.

Other provisions of the bill are comparable to the first draft.

## APPENDIX A

## A BILL

For an Act entitled: "An Act Relating to Native Village Governments."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes Native Villages as distinct, independent, political communities exercising original tribal soverienty in

dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted Native village government, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. ELIGIBILITY FOR STATE PROGRAMS. A Native village government, for a village which is not incorporated under this title, and is not located within an organized borough is,

a) eligible to participate in all state programs to the same extent and in the same manner as a second-class city;

b) entitled to notice concerning proposed actions by the state to the same extent as a government of a second-class city is entitled to notice; and

c) entitled to consultation with the state on state actions and programs which affect the village to the same extent that the government of a second-class city is consulted on state actions and programs.

Sec. 29.--.030. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judical, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The

Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.040. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.050. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or

village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing this this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.060. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC, Sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

## APPENDIX B

## A BILL

For an Act entitled: "An Act Relating to Native Village Governments Establishing Third Class Cities."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) Provide for incorporation of Native village.

(3) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

## CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes the Native villages as distinct, independent, political communities exercising original tribal soverienty in dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted governing body of Native village, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. INCORPORATION OF THIRD CLASS CITIES.

a) A Native village government as defined in this chapter shall be eligible to incorporate as a third class city.

b) Nothing in this chapter shall prevent such Native governments from exercising any power retained by that government by virtue of its tribal authority.

Sec. 29.--.030. ORGANIZATION OF COUNCIL.

a) A third class city shall be organized pursuant to the organic documents for the Native village government seeking incorporation under this chapter.

b) The following provisions of this title shall not apply to third class cities.

1) A.S. 29.?3.200-250 (organization of city counci ).

2) A.S. 29.48.130-260 ( administrative procedures).

c) A third class city shall possess all powers of a second class city outside boroughs as provided in A.S. 29.43.

Sec. 29.--.040. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judical, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.050. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a

rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.060. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing this this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.070. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC, Sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local governmen', with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

96TH CONGRESS
2D SESSION

# S. 1181

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1980

Referred to the Committee on Interior and Insular Affairs

# AN ACT

To authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "Tribal-State Compact Act of 1980".

DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the policy of this Nation to continue to preserve and protect the tribes of the American Indian people. The policy of this Nation is premised on the status of tribal governments as a continuing part of the American political fabric. Accordingly,

the United States has a responsibility to establish a legal framework which will enable the tribes and the States to achieve maximum harmony and facilitate their cooperative efforts in the orderly administration of their governments. Federal enabling authority for the establishment of viable intergovernmental agreements between the tribes and the States based on mutual consent must be established.

DEFINITIONS

SEC. 3. For purposes of this Act:

(a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community which is exercising powers of self-government and which is recognized by the Secretary of the Interior as eligible for services provided by the United States to Indians because of their status as Indians.

(b) "State" means any of the States of the United States, including cities, counties, municipalities, or other political subdivisions thereof.

(c) "Secretary" means the Secretary of the Interior unless otherwise designated in this Act.

(d) "Indian country" shall be defined in accordance with the provisions in section 1151 of title 18, United States Code.

# TITLE I—AUTHORIZATION OF COMPACTS AND AGREEMENTS

SEC. 101. (a) Notwithstanding the Act of August 15, 1953 (67 Stat. 588), as amended, or any other Act transferring civil or criminal jurisdiction over Indians within Indian country from the United States to the various States, or establishing a procedure for such transfers, and notwithstanding the provisions of any enabling Act for the admission of a State into the Union, the consent of the United States is hereby given the States and the Indian tribes and the same are hereby authorized to enter into compacts and agreements between themselves on matters relating to (1) the enforcement or application of civil, criminal, and regulatory laws of both within their respective jurisdiction, and (2) allocation or determination of governmental responsibility of States and tribes over specified subject matters or specified geographical areas, or both, including agreements or compacts which provide for concurrent jurisdiction between the States and the tribes, and (3) agreements or compacts which provide for transfer of jurisdiction of individual cases from tribal courts to State courts or State courts to tribal courts in accordance with procedures established by the laws of the tribes and States.

(b) Such agreements and compacts shall be subject to revocation by either party upon six months written notice to

the other unless a different period of time is agreed upon. No agreement may provide for a period for revocation in excess of five years unless first approved by a majority of the adult enrolled Indians within the affected area voting at a special election as prescribed in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), but such approval shall not curtail the right of the parties to revoke the agreement by mutual consent within a shorter period of time.

(c) Agreements or compacts entered into under the provision of this section must be filed with the Secretary within thirty days of consummation. In the event an agreement is not so filed, it shall be subject to immediate revocation by either party. The Secretary shall cause the jurisdictional provisions of any such agreement, compact, or revocation to be published in the Federal Register.

(d) Such agreements, compacts, or revocation thereof shall not affect any action or proceeding which arose prior to the effective date of such an agreement, compact, or revocation, and no such action or proceeding shall abate by reason of such agreement, compact, or revocation unless specifically agreed upon by all parties to any such action or proceedings and by the parties to the agreement or compact.

(e) Nothing in this Act shall be construed to: (1) enlarge or diminish the jurisdiction over civil or criminal matters which may be exercised by either State or tribal governments

except as expressly provided in this Act; (2) authorize or empower State or tribal governments, either separately or pursuant to agreement or compact, to expand or diminish the jurisdiction presently exercised by the Government of the United States to make criminal, civil, or regulatory laws for or enforce those laws in the Indian country; (3) authorize or empower the government of a State or any of its political subdivisions or the government of an Indian tribe from entering into agreements or exercising jurisdiction except as authorized by their own organizational documents or enabling laws; (4) authorize agreements or compacts which provide for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or (5) to enter into agreements or compacts for the transfer of unlimited, unspecified, or general civil and criminal jurisdiction of an Indian tribe, except as provided under section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326).

(f) Nothing in this Act shall be construed as impairing or restricting the right of the United States, States and Indian tribes to enter into negotiations with each other with respect to settlement of property rights arising from aboriginal ownership, treaties or other Federal laws or judicial decisions.

FUNDING AND IMPLEMENTATION—FEDERAL ASSISTANCE

SEC. 102. (a) In any agreement or compact between an Indian tribe and a State authorized under this Act, the United States, upon agreement of the parties and the Secretary, may provide financial assistance to such party for costs of personnel or administrative expenses in an amount up to 100 per centum of costs actually incurred as a consequence of such agreement or compact, including indirect costs of administration which are clearly attributable to the services performed under the agreement or compact. In determining the amount of Federal assistance, if any, to be provided the Secretary may consider among other things:

(1) Whether or not the party assuming an obligation under the agreement or compact is already obligated or entitled to perform the function which is the subject of the compact.

(2) Whether or not the Federal assistance will cause or enable the contracting party to perform the function at a standard above that which it is already obligated to perform.

(3) The financial capacity of the contracting parties to underwrite the expenses without Federal assistance.

(4) The extent to which the success or failure of the compact may depend upon Federal assistance.

(5) The extent to which the proposed compact or agreement will contribute to fostering of community relations between Indian and non-Indian communities.

(6) The extent to which the proposed compact or agreement will enhance protection of resources of both Indian and non-Indian communities.

(7) The comparative costs if the function which is the subject of the compact or agreement were to be performed by the United States.

(8) The extent to which Federal funding is already supplied through revenue sharing, grants in aid, or other Federal program moneys.

(b) Whenever a party to such agreement or compact seeks financial assistance from the United States, to offset their costs, such party shall prepare a detailed statement of the projected costs; a copy of such statement shall be supplied to the other party; and the original of such statement shall be supplied to the Secretary at the time said agreement or compact is tendered to him for his approval.

(c) In any agreement or compact in which one of the parties qualifies for Federal assistance, the other party shall be supplied with copies of all vouchers for payment at the time they are submitted and shall be fully informed of all payments made by the United States to the recipient party. In the event disputes arise between the parties, either party

may request an audit. The books and records of the party receiving Federal assistance which are relevant to the agreement or compact shall be open to inspection by authorized representatives of the United States.

(d) In the funding of governmental operations authorized under this Act, the Secretary may enter into agreements or other cooperative arrangements with any and all other Federal departments, agencies, bureaus, or other executive branches for transfer of funds or contributions of funds appropriated for programs within the category of the functions to be performed by the parties under such agreements or compacts, and such departments, agencies, or bureaus are hereby authorized to use such funds in the implementation of this Act.

(e) All Federal departments, agencies, and other executive branches are authorized to provide technical assistance and material support and assign personnel to aid tribal and State authorities in the implementation of the agreements or compacts they may enter into under the terms of this Act.

(f) The Secretary is hereby authorized to promulgate such rules and regulations as may be necessary to carry out the purposes of this Act.

(g) There are authorized to be appropriated such sums as may be necessary during fiscal year 1981 not to exceed $10,000,000 and each subsequent fiscal year in order to

carry out the agreements or compacts entered into pursuant to this title. Such funds shall be expended by the Secretary only after determination that there are no funds available from alternative sources as provided in subsection (d) of this section. The Secretary shall provide for such records as may be necessary for the accounting and justification of the funds expended under this authorization.

## TITLE II—PLANNING AND MONITORING BOARDS

SEC. 201. (a) The Secretary is hereby authorized and directed to encourage the tribes and the States to establish councils, committees, boards, or task forces comprised of representatives of the States and individual tribes, or on a statewide or regional basis, to discuss and confer upon jurisdictional questions which exist between the parties, and to provide Federal representatives at such conferences.

(b) In furtherance of this objective, the Secretary is authorized and directed to provide adequate representation of tribal members at such conferences, and such further conferences among the tribes as may be necessary for their separate deliberations, and to participate in the payments of expenses in employment of reporters, transcription of statements, and preparation of reports as may be appropriate.

(c) Beginning October 1, 1980, funds appropriated pursuant to the Act of November 21, 1921 (42 Stat. 208), may be utilized for the purposes of this title.

## TITLE III—JUDICIAL ENFORCEMENT

SEC. 301. Any party to an agreement or compact entered into in accordance with this Act may bring a civil action to secure equitable relief, including injunctive and declaratory relief, for the enforcement of any such agreement or compact, but no action to recover damages arising out of or in connection with such agreement or compact shall lie except as specifically provided for in such agreement or compact. The United States district courts shall have original jurisdiction of any civil action authorized by this section. States and Indian tribes, by entering into compacts or agreements in accordance with this Act, shall be deemed to have consented to suit with respect to the subject matter of such compacts or agreements unless the agreement or compact specifically states otherwise.

Passed the Senate May 30 (legislative day, January 3), 1980.

Attest: J. S. KIMMITT,

*Secretary.*

## FOOTNOTES

PART I

1. D. Case, The Special Relationship of Alaskan Natives to The Federal Government, pp. 119-127 (ANF, 1978).
2. Preliminary Report on Borough Government, p. 11 (Alaska Legislative Council, 1960) [hereinafter cited "Preliminary Report"].
3. id.
4. id. at 14
5. 37 Stat. 512 See Preliminary Report, at 12.
6. R. Cease & J. Saroff, The Metropolitan Experiment in Alaska, p. 2 (Praeger, 1968).
7. id.
8. Chapter 11, SLA 1915; amended Chapter 25, SLA 1917; repealed (h.23, SLA 1923.
9. Preliminary Report, supra, at 12-13
10. 25 U.S.C. 476
11. Sen. Rpt. 1080, 73rd Cong. 2d Session, 1 (1934)
12. Preliminary Report, supra, at 14
13. id., at 15
14. id.
15. Chapter 150, SLA 1957; amended Chapter 79, SLA 1959.
16. Con. Cov. Proc., Pt.4, p. 47
17. id. at 2161
18. Ak. Const., Art. X, Sec. 2.
19. Con. Cov. Proc., Pt. 6, p. 59.
20. Con. Cov. Proc., Pt. 4, pp. 2616-7.
21. id., pp. 2613-4
22. See Comments by Delegate Lonberg, Con. Cov. Proc., Pt. 4, p. 2651.
23. A.S. 29.08.020
24. AK. Const., Art. X, Sec. 3 & 7.
25. AK. Const., Art. X, Sec. 4.
26. AK. Const., Art. X, Sec. 8.
27. AK. Const., Art. X, Sec. 5.
28. AK. Const., Art. X, Sec. 6.
29. Walters v. Cease, 380 P.2d 263 (Alaska, 1964)
30. A.S. 29.18.030
31. A.S. 29.18.011
32. Con. Cov. Proc., Pt. 4, pp. 2621-2.
33. id.
34. Local Government Under The Alaska Constitution, p. 46 (1959, Public Administration Service).
35. City of Douglas v. City and Borough of Juneau, 484 P.2d 1040 (Alaska, 1971). See also Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska, 1974).
36. Con. Cov. Proc., Pt. 4, p. 2650.
37. Ak. Con., Art. X, Sec. 7.
38. id, Sec. 3.
39. A.S. 29.18.011
40. Con. Conv. Proc., Pt. 4, p. 2654.

41. id.
42. 484 P.2d 1040 (Alaska, 1971).
43. Con. Conv. Proc., Pt. 4, p. 2653.
44. id, at 2623
45. id, at 2624.
46. 491 P.2d 720 (Alaska, 1971).
47. Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska, 1970).
48. Ak. Const. Art. X, Sec. 2.
49. id, Sec. 15.
50. id, Sec. 5.
51. id.
52. Con. Conv. Proc., Pt. 4, pp. 2719-20.
53. Ak. Const., Art. X, Sec. 2 See Liberati v. Bristol Bay Borough, 384 P.2d 1130 (Alaska, 1978).
54. Wien v. City of Ketchikan, 383 P.2d 721 (Alaska, 1963).
55. Ak. Const., Art. X, Sec. 13.
56. id.
57. Compare Con. Conv. Proc. Pt. 4, pp. 2713 and 2652.
58. Ak. Const., Art. X, Sec. 6.
59. A.S. 29.03.020
60. 1961 Op. Attorney General No. 24
61. A.S. 16.10.380
62. A.S. 46.40.110 et. seq.
63. A.S. 14.08.031
64. Hootch v. Alaska State-Operated Schools, 536 P. 2d 793 (Alaska, 1975)
65. A.S. 29.89.040
66. D. Case, supra at 130.
67. See generally id., at 119-127.
68. Cohen, Handbook on Federal Indian Law, 122 (1948); 55 ID14 (1934) Powers of Indian Tribes; Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).
69. U.S. v. Sandoval 231 U.S. 28 (1913)
70. P.L. 93-638, Sec. 4(a)
71. P.L. 92-512, Sec. 108(b) (14)
72. P.L. 93-383, Sec. 102(a) (1)
73. P.L. 93-203, Sec. 302
74. P.L. 95-608, Sec. 4(8)
75. 28 U.S.C. 1360 (c)
76. P.L. 90-351, Sec. 601(b)
77. See Fed. Reg. (May 25, 1973) p. 13758; Fed. Reg. (July 10, 1980) p. 46581-2.
78. 25 U.S.C. 476
79. 25 U.S.C. 473(a)
80. 25 U.S.C. 466
81. See generally D. Case, supra, at 38-40
82. 43 U.S.C. 1618
83. House Rept. No. 2244, 74th Cong., Second Session, .2 (1936).
84. Senate Rpt. No. 1080, 73d Cong., Second Session, 1 (1934).
85. 560 P.2d 31 (Alaska, 1977)
86. 465 F. Supp. 1286 (D.C. Alaska, 1978).

87. Act of June 19, 1935 (49 Stat. 388), as amended by Act of August 19, 1965 (79 Stat. 543).
88. P.L. 93-638, Sec. 4(a).
89. Field Solicitor's memorandum, Status of the Inupiat Community of the Arctic Slope for Self-Determination Act contracting and other purposes, May 1, 1979 (unpublished).
90. 25 U.S.C. 450(b).
91. Pueblo of Santa Rose v. Fall, 273 U.S. 315 (1927).
92. Williams v. Lee, 358 U.S. 217 (1959).
93. 541 P.2d 730 (Alaska, 1975).
94. See D. Case, supra, at 136-141.

PART II

1. AK. Const. Art. X, Sec. 12
2. A.S. 29.18.090
3. A.S. 29.68
4. A.S. 29.18.050 et. seq. and A.S. 29.68
5. See generally. Fairview Public Utility District No.1 v. City of Anchorage, 368 P.2d 540 (Alaska, 1962)
6. A.S. 29.48.037
7. A.S. 29.43.100
8. A.S. 29.78.010 (18)
9. A.S. 29.33.010 et. seq. A third class borough may only exercise taxing and education powers. A.S. 29.41.010
10. A.S. 29.78.010 (19)
11. A.S. 29.38.010
12. A.S. 29.48.020; A.S. 29.38.020; A.S. 29.38.030
13. F. COHEN, supra at 5
14. 2 U.S.C. 1360(c) (PL 83-280) states
    Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant this section (i.e., which arise in Indian country).
15. See PRICE, LAW AND THE AMERICAN INDIAN, 79-84, (1973)
16. id
17. Indian Intercourse Act of 1834 (4 Stat. 729)
18. F. COHEN, supra, at 5-6
19. id. at 6n60
20. 5 U.S. 240 (1887)
21. 228 U.S. 243 (1913)
22. 231 U.S. 28 (1913)
23. 290 U.S. 357 (1933)
24. 151 F. Supp 132 (Alaska, 1957)
25. 161 F. Supp 269 (Alaska, 1958)
26. P.L. 85-615
27. 1978 Op. Atty. Gen. File No. J-66-001-67, J-66-503-77. Memo re: State Taxation of Alaska Natives and Business Enterprises Operated by Native Organizations. p.21
28. 466 F. Supp 860 (Alaska, 1979)
29. 369 U.S. 60 (1962)
30. 426 U.S. 373 (1976)

31. Citing U.S. v. Mazurie, 419 U.S. 544 (1975); See also Santa Rose Band of Indians v. Kings County, 532 F.2d 655, (9th Cir., 1975)
32. U.S. v. McGowan, 302 U.S. 535 (1938)
33. U.S. v. Sandoval, supra
34. 43 U.S.C. 1603(e)
35. 43 U.S.C. 1611, 1613
36. U.S. Solicitor's Opinion, (Oct. 1, 1980), p. 2.
37. id.
38. 302 U.S. 535 (19380.
39. See generally 25 U.S.C. 465, 473(a)
40. 368 U.S. 351 (1962)
41. See Matz v. Arrnet, 412 U.S. 481 (1973)
42. 420 U.S. 452 (1975)
43. 436 U.S. 191 (1978)
44. 436 U.S. 313 (1978)
45. 419 U.S. 544 (1975)
46. 28 U.S.C. 1360(c)
47. Jim v. C.I.T. Financial Services Corp., 87 N.M. 362, 533 P.2d 751 (N.M., 1975). 28 U.S.C. 1738, requires that: Acts, records, and judicial proceedings (of any State, Territory or Possession) shall have the same full faith in credit in every Court within the United States and its Territories and Possessions as they have by usage in the Courts of such State, Territory or Possession from which they are taken. See also In re Buehl, 87 Wash 2d 649, 555 P.2d 1334 (1976); Ragsdale, Problems in Application of Full Faith and Credit for Indian Tribes, 7 N. Mex. L. Rev. 133 (1977)
48. Fox v. Fox, 542 P.2d 918 (Or. Apn., 1975); Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950)
49. Compare Santa Clara Pueblo v. Martinez, 98 S.Ct. 1670 (1978) and U.S. v. Wheeler, supra.
50. 358 U.S. 217 (1959)
51. 369 U.S. 69 (1962)
52. id, at 75-76
53. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973).
54. P.L. 83-280 (67 Stat. 588), amended to add Alaska, P.L. 85-615 (72 Stat. 545). Now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections.
55. See Goldberg, Public Law 280: The Limits of State's Jurisdiction Over Rservation Lands, 22 UCLA Law Review 535 (1975).
56. 426 U.S., 388-89 citing U.S. v. Mazurie, supra.
57. id.
58. id, at 384
59. id.
60. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir., 1975)
61. Morongo Band of Mission Indians v. Area Director, IBILA 79-18-A (1979).
62. See generally Goldberg, supra; Santa Rosa Band of Indians v. Kings County, supra.
63. F. COHEN, supra, at 122
64. D. CASE, supra, at 152-3
65. A.S. 29.08.010

66. A.S. 29.08.020
67. A.S. 29.48.010
68. A.S. 29.48.035
69. A.S. 29.48.030
70. A.S. 29.33
71. A.S. 29.43
72. A.S. 29.48.030 (7); Town of Ketchikan v. Greenbaum, 5 Alaska 396 (1915)
73. 55 I.D. 14 (Powers of Indian Tribe)
74. 18 U.S.C. 1153
75. 18 U.S.C. 1152
76. Compare A.S. 29.48.200 and 25 U.S.C. 1302 (7)
77. Ak. Const. Art. IV, Sec. 1
78. See McKenzie, YOU HAVE THE RIGHT, 25-27 (AFN, 1976); Keiner v. City of Anchorage 378 P.2d 406 (Alaska, 1963); State v. Lundgren Pacity Const. Co. Slip Op. 1980 (Alaska, 1979).
79. Gutherie, Analysis of Amendment to HB 533 proposed by Tanana Chiefs, Legislative Affairs Agency (March 21, 1980), citing Baker v. City of Fairbanks, 471 P.2d 386; Alexander v. City of Anchorage, 490 P.2d 910 (1979)
80. Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (1959)
81. Talton v. Mayes, 163 U.S. 376 (1896)
82. 25 U.S.C. Sections 1301-1303
83. A.S. 29.33.070. et. seq.
84. A.S. 29.33.070(b)(2)
85. A.S. 29.29.43.040
86. A.S. 38.05.037
87. 541 P.2d 730. See P.24 infra, for discussion
88. id, at 737-8
89. A.S. 29.33.070 et. seq.
90. Sec. 45, Chap 85 SLA 1979
91. A.S. 29.48.035
92. 419 U.S. 544 (1975)
93. Johnson v. Chilkoot Indian Village, 957 F. Supp. 384 (D. Alaska, 1978)
94. 532 F.2d 655 (9th Cir., 1977)
95. id, at 663
96. Buster v. Wright, 135 F.947 (8th Cir. 1905). Iron Crow v. Oglala Sioux Tribe, supra; Barta v. Oglala Sioux Tribe, 259 F.2d 553. (8th Cir., 1958), cert. den. 385 U.S. 932 (1959); 55 I.D. 14, 28 (1934) (Powers of Indian Tribes)
97. Buster v. Wright, supra.
98. Maxey v. Wright, 105 F. 1003 (8th Cir., 1900)
99. Morris v. Hitchcock, 194 U.S. 384 (1904)
100. A.S. 29.53.415 et. seq. (boroughs); A.S. 29.53.440 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
101. A.S. 29.53.010 (boroughs); A.S. 29.53.400, 410 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
102. A.S. 29.53.020, et. seq.
103. 55 I.D. 14 (1934) (Powers of Indian Tribes). See also Indian Child Welfare Act, P.L. 95-608

PART III

1. Con. Conv. Proc., Pt. 6, p.478
2. AK. Const., Art. I, Sec. 1, provides that this constitution is dedicated to the principles...that all persons are equal and entitled to equal rights, opportunities, and protection under the law;...
3. 262 N.W. 2d 341 (Minn., 1977)
4. id., at 348
5. id., at 348n24 citing Morton v. Mancavi, 417 U.S. 535 (1974) and McClanahan v. Arizona State Tax Comm., 411 U.S. 164 (1973)
6. 430 U.S. 641 (1977)
7. U.S. Const., Art. 1, Sec. 8
8. 262 N.W. 2d, at 347n.23
9. State v. Erickson, 574 P. 2d 1 (Alaska, 1978); Isakson v. Rickey, 550 P. 2d 358 (Alaska, 1976); Lynden Transport, Inc. v. State, 522 P. 2d 1125 (Alaska, 1974)
10. 426 U.S., at 388-9
11. A.S. 29.08.050(b)
12. N.M. Stat. Ann. Sec. 53-9-1.
13. Toledo v. Pueblo de Jemez, 119 F. Supp. 429 (D.N.M., 1954)
14. 30 M.R.S.A. Sec. 6201 et. seq.
15. 30 M.R.S.A. Sec. 6206
16. 30 M.R.S.A. Sec. 6206
17. 30 M.R.S.A. Sec. 6206
18. 30 M.R.S.A. Sec. 6204
19. 30 M.R.S.A. Sec. 6210
20. 30 M.R.S.A. Sec. 6206
21. 426 U.S. 373 (1976)
22. Fl. Stat. Sec. 285.06
23. id., Sec. 285.17
24. See id., Sec. 285.061 (2). See Solicitor's Opinions, No. M-36907 (Nov. 14, 1978) Criminal Jurisdiction on Seminole Reservations in Florida.
25. Fl. Stat. Sec. 285.18
26. Conn. Gen. Stat., Sec. 47-63, et. al.
27. Conn. Gen. Stat., Sec 47-65(d)
28. Texas Stat., Chapter XLIV, Acts of the 5th Legislature, 1854
29. Texas Stat., Art. 5421z, Sec. 11A
30. Texas Stat., Art. 5421z, Sec. 12
31. Texas Stat., Art. 5421z, Sec. 18
32. These states include California, Delaware, Idaho, Montana, Maryland, Massachusetts, Michigan, Minnesota, North Dakota, Oregon, South Dakota, Wisconsin, and Wyoming.
33. Minn. Stat., Sec. 922 et. seq.
34. Cal. Code Educ. 4084
35. KELSEN, PRINCIPLES OF INTERNATIONAL LAW, 387 (2nd ed., 1966)
36. id., at 399
37. Nev. Rev. Stat. Sec. 277.080 et seq
38. R.C.W. 39.34
39. S.D. Compiled Laws Ann. Sec. 1-23-24 et seq
40. Nev. Rev. Stat. Sec. 233A.120
41. Nev. Rev. Stat. Sec. 233A.130

42. See State v. Forge, 262 N.W. 2d 341 (Minn. 1977); Minn. Stat. 97.431
43. Or. Rev. Stat. Sec. 390.845
44. N.M. Rev. Stat. 29-1-11. See also Tribal-State Compact Act of 1978. Hearings on S.2502 before the U.S. Senate Select Committee on Indian Affairs, 95th Cong., 2d Sess. 35-36, 183-189, and 252-259 (1978) Statements on cross-deputization in other states.
45. See generally Part II(B)(1) supra.
46. See generally Part II(B) supra.
47. AK. Const., Art. X, Sec. 4
48. See White v. Califano, 437 F. Supp. 543 (1977); Black v. District Court, 158 Mont. 523 (1973); Kennerly v. District Court, 400 U.S. 423 (1971)
49. 55 ID 14 (1934), Smith v. Bonifer, 154 F.883 (1909); Ollestead v. Native Village of Tyonek, 560 P.2d 31 (1977).
50. Smith v. Bonifer, supra.
51. 25 USC 163
52. 25 CFR 271.2 (i)
53. Proposed IRA Constitution for Dish-Ina-Nek, Art. 5, Sec. 4
54. 25 U.S.C. 1301
55. Dodge v. Nakai, 298 F. Supp. 26 (D. Ariz., 1969); Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (10th Cir., 1975)
56. 436 U.S. 49 (1978)
57. MANUAL OF INDIAN LAW, B-9 (The American Indian Lawyer Training Program, Inc., 1976)

**NANA DEVELOPMENT CORPORATION, INC.**
4706 HARDING DRIVE, ANCHORAGE, ALASKA 99503
TELEPHONE (907) 248-3030



November 11, 1980

Mr. Palmer McCarter, Director
Division of Local Government Assistance
Department of Community & Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Palmer:

Recently I had a discussion with Bert Griest concerning the requirement of AS 29.48.260 that a municipal corporation must dispose of real estate by public auction or sealed bids.

As you know, a number of villages, including several in the NANA region, are in the process of developing new housing. In several of these communities, the only lots suitable for construction of new homes are located outside the patented townsites on land that is selected and will eventually be conveyed to ANCSA corporations. Since new housing units are needed now, the Regional Housing Authorities understandably want to proceed with construction of homes in advance of transfer of ownership of the lots. By itself, this does not present any difficulty provided the permission of the ANCSA corporation and the interim land manager, (in most cases the BLM), is obtained. The problem arises later when BLM grants title and a reconveyance of the lots is requested by the owners of the new homes.

The Settlement Act amendments in the D-2 bill contain a provision whereby a Native corporation may transfer land to a shareholder for the purposes of constructing a family dwelling and not have that distribution of land be treated as a taxable distribution of assets. However, that method of granting title is not prefered by all ANCSA corporations. The ideal method, in our judgement, is to include these lands within the 1280 acres reconveyed to the municipal corporation. But a difficulty arises when the municipality seeks to reconvey title to the home owner. State law requires a public auction or sealed bid procedure since these lots were not occupied in 1971 and there is no requirement that they be reconveyed directly by the village corporation pursuant to Section 14 (c) of ANCSA.

It may be appropriate to bring this to the attention of the committee working on amendments to Title 29, provided my understanding of what the statute requires is correct. I expect you will know whether the committee is already aware of the problem. If an amendment is needed, it seems to me, a waiver provision similiar to AS 29.48.260 (d) would work. In this instance, waiver from the auction and bid requirements need only be available to a municipality reconveying land received from a ANCSA corporation if the reconveyance is to grant a village resident title to his homesite, and perhaps for other public purposes.

Best regards.

Sincerely,

Don Argetsinger
Vice President

DA/mt

cc The Honorable Arlis Sturgulewski - Alaska State Senate
Jack Chenoweth - Legislative Counsel
Bert Griest



Draft of Revised Title 29 with Index

# CITY OF KENAI

"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

November 10, 1980

Mrs. Marilyn Dimmick
P. O. Box 151
Ninilchik, Ak 99639

Re: Title 29 Provision

Dear Marilyn:

You mentioned the other day that I had sent you a list of some changes which I believe should be made in the revision of Title 29, but I do not remember getting the letter off nor the changes suggested.

Therefore, I am suggesting that an amendment be made to AS 29.33.050 (copy attached) as follows:

> "The area within the boundaries of an organized [EACH] borough constitutes a borough school district which shall [AND] establish[ES], maintain[S], and operate[S] a system of public schools on an area-wide basis with such authority and responsibility in the organized borough as provided in AS 14.14.060."

I believe the original intent of this statute was merely to set up boundaries of a school district which should be autonomous under the direction of an elected school board except for the fiscal and other responsibilities given to the borough under the provisions of AS 14.14.060 (copy attached) and subject to such directions as provided by the state in Title 14.

Unfortunately the wording that now exists implies that the borough itself has responsibility for the school district even though AS 14.14.060 gives only limited powers to the borough and places full operational authority in the elected school board. The result has been that every time a suit has been brought against the school district the borough has been joined in this suit at considerable expense of time even though the suit may be on teachers' salaries or something else for which the borough has

no responsibility. For instance AS 14.09.010 (copy attached) provides for the department to provide for transportation of pupils and grants authority to school districts to enter into contracts for operation of transportation systems, to report to the department, and to receive reimbursement from the state for operation of the transportation system. Yet in Kenai Peninsula Borough v. State, 532 P.2d 1019, 1024, 1026 (1975) (copy attached), the Supreme Court denied any liability of the state for an accident occuring due to the transportation system and stated that "the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with Carver." In fact, the borough had no control whatsoever over this contract which was a contract of the school district as recognized by the Court when it stated, "The bus was not owned by the state, and Carver entered into the contract with the borough school district, not the state." [emphasis supplied] The suit, however, was brought against the borough and there was no effort to show non-responsibility - evidently because the insurance company who represented the borough also represented the school district and would have been responsible in any case.

The borough has also been put to the loss of time and expense in suits over teachers' salaries and other negotiations for which the borough has no authority and no responsibility. IN KPEA v. Kenai Peninsula Borough School District and Kenai Peninsula Borough, 572 P.2d 416 (1977), the trial court first ruled that the defendants should negotiate on certain items and later reversed itself to restrict the order to the school district, but refused to grant summary judgment to the borough and was upheld by the Supreme Court, which then refused appeal by the borough (since no judgment had been taken against it), denied borough's petition for certiorari, and then violated its own rules (Civil Rule 54(b)) by entertaining appeal by the school district on judgment against less than all the parties without an express determination that there was no just reason for delay and express direction for entry of judgment. In view of the two cases cited, it is obvious that any relief from responsibility without authority will have to come from the legislature.

Although the borough may be responsible for failures to act properly in areas in which it has authority over the school

system which may or may not be shared by the school district, certainly in the area of operations the school district is autonomous from the borough and there should be no responsibility in those areas on behalf of the borough.

Sincerely,

Ben

Ben T. Delahay
City Attorney

BTD/md

Enclosures

cc: Ted Berns
Anchorage Municipality Attorney

Russ Walker
Attorney for City of Ketchikan
and Ketchikan Gateway Borough

chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power conferred in, or assumed by means of §§ 250—290 of, this chapter once that power is being exercised by a borough. (§ 2 ch 118 SLA 1972)

**Borough may not regulate sale and use of fireworks.**—A borough's acquisition of the areawide health function does not give it authority to regulate the sale and use of fireworks. 1965 Op. Att'y Gen., No. 12.

## Article 2. Assessment and Collection of Taxes.

Section
30. Assessment and collection

**Sec. 29.33.030. Assessment and collection.** Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 53 of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city. (§ (§ 2 ch 118 SLA 1972)

## Article 3. Education.

Section
50. Education

**Sec. 29.33.050. Education.** Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. (§ 2 ch 118 SLA 1972)

**Constitution requires pervasive state authority in field of education.** — The constitutional mandate of Alaska Const., art. VII, § 1, for pervasive state authority in the field of education could not be more clear. First, the language is mandatory, not permissive. Second, Alaska Const., art. VII, § 1, not only requires that the legislature "establish" a school system, but also gives to that body the continuing obligation to "maintain" the system. Finally, the provision is unqualified; no other unit of government shares responsibility or authority. Macauley v. Hildebrand, Sup. Ct. Op. No. 741 (File No. 1550), 491 P.2d 120 (1971).

**And such authority is not diminished by delegating certain educational functions to local boards.**—That [illegible] legislature has seen [illegible] to delegate certain education [illegible] [illegible] in [illegible] that Alaska [illegible] might be adapted [illegible] [illegible] conditions of different localities does not diminish constitutionally mandated state control over education under Alaska Const., art. VII, § 1. Macauley v. Hildebrand, Sup. Ct. Op. No. 741 (File No. 1550), 491 P.2d 120 (1971).

**A newly incorporated borough assumes administrative responsibility for a state-operated school** within its boundaries immediately after incorporation. 1963 Op. Att'y Gen., No. 23.

The law provides that the organized borough shall provide, establish, maintain, and operate the schools within its boundaries. Ownership of state-operated schools must be conveyed by the state to the local school district as soon as possible after incorporation. The transfer of direct administration of these schools should be made shortly after incorporation prior to the beginning of the next [illegible] year, and as quickly as is consistent with continuity of

not to exceed $50,000. The bond shall be conditioned on the officer's honest and faithful disbursement and accounting of all money that may come into his official custody. The bond shall be filed with the clerk of the school board. This section does not apply to an officer who has been bonded under AS 29.23.520. (§ 1 ch 98 SLA 1966; am § 21 ch 53 SLA 1973)

**Effect of amendment.** — The 1973 amendment substituted "29.23.520" for "07.25.060" at the end of the fourth sentence.

**Legislative committee report.** — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

**Sec. 14.14.050. Annual audit.** (a) The school board in each school district shall, before October 1, of each year, provide for an audit of all school accounts for the school year ending the preceding June 30. To make the audit the school board shall contract with a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the district. One certified copy of the audit shall be filed with the commissioner and one certified copy shall be posted in a public place at the principal administrative office of the district.

(b) The audit shall conform in form to requirements established by the commissioner. The commissioner shall withhold all payments of state funds after November 15 to a school district which fails to file a certified copy of the audit with the department.

(c) The commissioner may provide for a reaudit or an audit check in a school district if in his judgment it is necessary to substantiate the reported expenditures.

(d) The school board shall not make the audit if an audit which satisfies the requirements of this section and which is filed and posted as required by this section, is made according to AS 29.48.220. (§ 1 ch 98 SLA 1966; am § 22 ch 53 SLA 1973)

**Effect of amendment.** — The 1973 amendment substituted "29.48.220" for "07.29.150" at the end of subsection (d).

**Legislative committee report.** — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

**Sec. 14.14.060. Relationship between borough school district and borough.** (a) The borough assembly may by ordinance require that all school money be deposited in a centralized treasury with all other borough money. The borough administrator shall have the custody of, invest and manage all money in the centralized treasury. However, the borough assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibility of a centralized treasury.

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

accounting. However, the assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibilities of the accounting system.

(c) The borough school board shall submit the school budget for the following school year to the borough assembly by April 1 for approval of the total amount. Within 30 days after receipt of the budget the assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within 30 days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is automatically approved. By May 31, the assembly shall appropriate the amount to be made available from local sources from money available for the purpose.

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

(e) The borough school board is responsible for the design criteria of school buildings. To the maximum extent consistent with education needs, a design of a school building shall provide for multiple use of the building for community purposes. Subject to the approval of the assembly, the school board shall select the appropriate professional personnel to develop the designs. The school board shall submit preliminary and subsequent designs for a school building to the assembly for approval or disapproval; if the design is disapproved, a revised design shall be prepared and presented to the assembly.

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

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

(h) School boards within the borough may determine their own policy separate from the borough for the purchase of supplies and equipment. (§ 8 ch 118 SLA 1972)

Applied in [illegible] Supe Borough, Superior Court [illegible] Dist. C.A. No. [illegible] and C.A. No. [illegible] (1973).

History of public education in Alaska [illegible] Sup. Ct. Op. No. [illegible] (1973).

involving his pecuniary interest unless the member has disclosed that interest to the board and the remaining members have approved the member's participation in the voting. (§ 2 ch 124 SLA 1975)

**Sec. 14.08.141. Regional resource centers.** A regional educational attendance area or any other school district in the state may participate in regional or statewide resource centers which may be established by the department. Services provided by a resource center include, but are not limited to accounting, payroll and other fiscal services, media services, instructional support services, bilingual-bicultural educational services, in-service and staff development services, student services, diagnostic services, school management and training services and school board member training. Funds for the operation and administration of a regional resource center shall be provided by the department. (§ 2 ch 124 SLA 1975)

**Sec. 14.08.151. Land and buildings.** — The ownership of land and buildings used in relation to regional eductional attendance area schools shall remain vested in the state, and use permits shall be given to the regional school boards. (§ 2 ch 124 SLA 1975)

## Chapter 09. Transportation of Pupils.

Section
10. Transportation of pupils
20. Transportation for nonpublic school students

**Sec. 14.09.010. Transportation of pupils.** (a) The department may provide for the transportation of pupils who reside a distance from established schools, and in order to accomplish that purpose may

(1) require school districts to enter into contracts with the department for the administration, supervision, operation or subcontracting of the operation of transportation systems for students to and from the schools within their service area;

(2) require all school districts, transportation contractors and other recipients of state transportation funds to submit to the department an annual report, which includes a financial statement and other operational data required by the department;

(3) permit school districts to (A) establish supplementary systems of student transportation for students ineligible to utilize transportation facilities paid for by the state, (B) charge fares or fees for the supplementary transportation systems, and (C) use local tax funds to pay, in whole or in part, the cost of the supplementary system.

(b) Each school district mentioned in (a)(1) of this section is entitled to receive reimbursement from the state for the operation of the transportation system on a unit cost basis determined by the department.

(c) The school board of a district, or the department for areas not within school districts, shall designate as hazardous those routes which cannot be safely traveled by children not served by school bus. The designation may recognize hazards that exist only part of the time and in these instances the designation shall be applicable only during the time the hazards are found to exist. The board or the department shall provide for the transportation of pupils on routes designated as hazardous. The additional cost of the transportation in a district shall be shared equally by the district and the department. Eligibility to receive school bus service on routes designated as hazardous shall not be subject to restrictions based on the minimum distance between established schools and the residences of pupils. (§ 1 ch 39 SLA 1966; § 1 ch 98 SLA 1966)

**Revisor's note (1966).** — Chapter 39, SLA 1966, amended AS 14.10.070 by adding a (c). Chapter 98, SLA 1966, revised Title 14 and the wording of AS 14.10.070 became AS 14.09.010. Therefore (c) as added by ch. 39, SLA 1966, is included above as AS 14.09.010(c).

**Editor's note.** — Provisions similar to those contained in this section were formerly codified as AS 14.10.070 and derived from § 37-2-87, ACLA 1949; ch. 51, § 1, SLA 1957.

**Prior law.** — For cases construing former similar provisions, see Tapscott v. Page, 17 Alaska 507 (1958); Matthews v. Quinton, Sup. Ct. Op. No. 31 (File No. 48), 362 P.2d 932 (1961).

**Borough was not acting as an agent of the state in furnishing transportation of pupils.** Kenai Peninsula Borough v. State, Sup. Ct. Op. No. 1124 (File No. 2092), 532 P.2d 1019 (1975).

While the state did supervise the school transportation service insofar as it related to the funding provided by it and also had certain regulations in effect pertaining to the overall safety of the transportation system, the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with a school bus owner to furnish transportation service for specified routes. Kenai Peninsula Borough v. State, Sup. Ct. Op. No. 1124 (File No. 2092), 532 P.2d 1019 (1975).

**Applied** in Girves v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1165 (File No. 2076), 536 P.2d 1221 (1975).

**C.J.S. reference.** — 78 C.J.S. Schools and School Districts § 146.

**Sec. 14.09.020. Transportation for nonpublic school students.** In those places in the state where the department or a school district provides transportation for children attending public schools, the department also shall provide transportation for children who, in compliance with the provisions of ch. 50 of this title, attend nonpublic schools which are administered in compliance with state law where the children, in order to reach the nonpublic schools, must travel distances comparable to, and over routes the same as, the distances and routes over which the children attending public schools are transported. The commissioner shall administer this nonpublic school student transportation program integrating it into existing systems as much as feasible, and the cost of the program shall be paid from funds appropriated for that purpose by the legislature. (§ 1 ch 157 SLA 1972)

struction in question ought not to be given in United States district courts within their respective jurisdictions is not, without more, authority for declaring that the giving of the instruction makes a resulting conviction invalid under the Fourteenth Amendment. Before a federal court may overturn a conviction resulting from a state trial in which this instruction was used, it must be established not merely that the instruction is undesirable, erroneous, or even "universally condemned," but that it violated some right which was guaranteed to the defendant by the Fourteenth Amendment.[2]

Thus, the United States Supreme Court implied that if it were exercising the same supervisory power which, as a state supreme court we are required to exercise over a trial court, it might have held the jury instruction to be reversible error.

The majority opinion on rehearing in Galauska's case condemns the questioned instruction, stating:

> Such an instruction is subject to numerous infirmities. It interferes with the province of the jury to determine credibility of witnesses. It seems to conflict with the presumption of innocence. The instruction serves to raise doubt in the juror's mind as to his role and adds a confusing factor to jury deliberations. (footnotes omitted)

Despite these shortcomings, the majority holds the instruction to be harmless error under the circumstances of Galauska's trial. In Anthony v. State,[3] we reiterated the test for harmless error as previously enunciated in Love v. State[4] stating:

> Only if we can fairly say that the error "did not appreciably affect the jury's verdict" can we conclude that infringement of the right to the instruction was harmless.

Galauska's conviction depended on whether or not the jury believed Roger Peter's version of the incident. As I have indicated in my dissent to the original opinion in this case, I believe that Peter was an accomplice and that Galauska was entitled to his requested instruction that "the testimony of an accomplice ought to be viewed with distrust".[5] In the absence of giving that instruction, I fail to see how it can be said to be harmless error to instruct the jury over defendant's objection that Peter was presumed to speak the truth. Moreover, if we deem the instruction to be erroneous as indicated by the majority, there is no prohibition to its continued use when it is held to be harmless error in a case such as this, for it is hard to envision circumstances where the instruction would be more damaging. I accordingly would hold that the giving of the instruction under the circumstances here involved constituted reversible error.

2. 414 U.S. at 146, 94 S.Ct. at 399, 38 L.Ed.2d at 373.

3. 521 P.2d 486, 491 (Alaska 1974).

4. 457 P.2d 622, 632 (Alaska 1969).

5. The instruction is required by Alaska R. Crim.P. 30(b)(2).

**KENAI PENINSULA BOROUGH and the Home Insurance Company, Appellants,**

**v.**

**STATE of Alaska, Appellee.**

**No. 2092.**

Supreme Court of Alaska.

March 12, 1975.

Borough and its insurer which had made payment in settlement of suit for injuries sustained by motorist in collision with school bus brought suit for judgment declaring that state was required to indemnify borough. The Superior Court, Third Judicial District, Eben H. Lewis, J., ren-

dered judgment for state and borough appealed. The Supreme Court, Boochever, J., held that although state supervised the transportation of pupils insofar as it related to the funding provided by state and also had regulations in effect pertaining to safety of the transportation system, borough in transporting people did not act as agent for the state in either a compelled or voluntary capacity.

Affirmed.

1. Municipal Corporations ⇐54

Where political subdivisions are alleged to have acted as agents of the state, court will apply a much stricter test of agency than when other forms of entities are utilized as to the type of control required to create liability on the part of the state.

2. Municipal Corporations ⇐54

Although state supervised transportation of students insofar as it related to the funding provided by state and state also had certain regulations in effect pertaining to the overall safety of the transportation system, borough in transporting students was not acting as agent for the state in either a compelled or voluntary capacity and state was not required to indemnify borough for settlement made with persons injured in collision with school bus. AS 14.-09.010, 29.33.050; Const. art. 7, § 1.

3. Principal and Agent ⇐8

One may become a compelled agent or servant of another.

4. Indemnity ⇐15(7)
Principal and Agent ⇐23(3)

[illegible] regulations in effect at [illegible] liable to indemnify borough. AS 14.09.-010, 29.33.050; Const. art. 7, § 1.

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Kenneth P. Jacobus, Anchorage, for appellants.

Sanford Gibbs, Anchorage, for appellee.

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

## OPINION

BOOCHEVER, Justice.

The seldom litigated question of when a political subdivision acts as an agent of the state so as to render the state liable for the acts of the subdivision is presented by this appeal.

On January 15, 1969, James Harman was injured and his wife was killed as the result of a collision with a school bus owned by Burton Carver and driven by Darrell Houston. Mr. Harman, individually and as administrator of the estate of his deceased wife, brought suit against the Kenai Peninsula Borough alleging that the bus driver was acting as agent of the borough at the time of the accident. The borough, in turn, tendered defense of the suit to the State of Alaska contending that in furnishing transportation for school pupils, the borough was acting as an agent of the state. The tender was refused. The borough then filed a complaint against the state seeking a declaratory judgment that the state must indemnify the borough for reasonable settlements, judgments, costs and attorney's fees resulting from the Harman suit.

The Harman case was settled for the sum of $[illegible] and the Home Insurance Company as insurer of the borough, contributed $[illegible] to that settlement. The [illegible]

by the court, with the other issues being severed for subsequent disposition. The superior court rendered a judgment in favor of the state, and the borough has appealed.

Therefore, we are confronted with the single issue as to whether the trial court was correct in ruling that the borough was not an agent of the state in furnishing school transportation.[1]

The Alaska Constitution provides that "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State."[2] The legislature has specified that "[e]ach borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an area-wide basis . . . ."[3] The borough admits that in the gene.. operation of the school system, it is exercising a delegated authority from the legislature, so that in the absence of facts not here involved, the state would not incur liability for personal injuries. With reference to the transportation function, however, it is the borough's contention that it was acting as a compelled agent of the state so as to entitle the borough to indemnity for any liability incurred.[4]

The borough bases this argument on AS 14.09.010, which provides in relevant part:

> (a) The [D]epartment [of Education] may provide for the transportation of pupils who reside a distance from established schools, and in order to accomplish that purpose may
>
> (1) require school districts to enter into contracts with the department for the administration, supervision, operation or subcontracting of the operation of transportation systems for students to and from the schools within their service area;
>
> . . . . . .
>
> (3) permit school districts to (A) establish supplementary systems of student transportation for students ineligible to utilize transportation facilities paid for by the state, (B) charge fares or fees for the supplementary transportation systems, and (C) use local tax funds to pay, in whole or in part, the cost of the supplementary system.

Relying on this statute, the borough rests its appeal on an attempt to draw a distinction between the delegation of the legislative function of furnishing school transportation and the creation of a relationship whereby the borough acts on behalf of the state as its agent in furnishing the service. The use of the words "may provide" is said to indicate that the transportation power is in the state, and the words "may require" are claimed to show that the state can compel the local school districts to act as state agents in exercising the pupil transportation function. However, admitting that the transportation power is in the state and that the state has compelled the school district to handle that function is not tantamount to agreeing that the district is acting as the state's agent in providing school transportation so as to impose liability on the state.

It is thus on the slippery distinction between a power delegated to a political subdivision and an agency relationship that the case turns. The borough points to the case of Pantess v. Saratoga Springs Authority[5] which discusses aspects of the distinction as follows:

> Where the State assumes to act directly in the carrying out of its governmen-

1 In light of our ruling here, the other issues pertaining to the right to indemnity no longer require trial.

2 Alaska Const. art. VII, § 1.

3 AS 29.23.040.

4 By so arguing, the borough relies on the statement (Second) of Agency § 224 (1957) which provides:

> One compelled by law or duress to render services to another has power to subject the other to liability as if there were a master and servant relation.

5 225 A.2d 120, 420, 8 N.Y.S.2d 108, 105 (1962).

tal function, even though it create and use a corporation for that purpose, it assumes responsibility for the conduct of its agent. Thus the State may choose to create and maintain a state system of parks, and thereby subject itself to liability for the negligence of its officers and employees (Court of Claims Act, § 12-a; Maltby v. County of Westchester, 267 N.Y. 375, 379, 196 N.E. 295); or, with like liability, it may provide for the imprisonment of young delinquents, and commit their custody to an authorized institution for the purpose. Paige v. State of New York, 269 N.Y. 352, 199 N.E. 617. But when the State delegates the governmental power for the performance of a state function, the agency exercises its independent authority as delegated, as does a city, and its responsibility for its acts must be determined by the general law which has to do with that class of agent and corporate activity, apart from liability on the part of the State. That is the case when the State delegates its state function of education to a school board, its public health function to a local board of health, when it delegates broader governmental functions to a county, city or village. In such instances, there is no authority for making claim against the State, but the agency exercising the delegated authority must respond for its own actionable conduct.

In *Pantess*, the Saratoga Springs Authority was established as a public corporation to develop the "Saratoga Cure" from the spring's water. Such development was expressly declared to be a part of the over-all public health policy of the state. However, the court held that, even though the Authority was an agency exercising governmental powers, "the performance of its functions [was] not so closely allied or held in such intimate relation to the health activities carried on by the State itself . . ." as to make it an agent of the state and thereby impose liability on the state to one scalded in taking the cure.[6]

The *Pantess* case, however, deals only with the results flowing from a determination of an agency relationship or a delegated function, not the distinction between them. We find great difficulty with elucidation of the distinction between a function delegated to a political subdivision so as to insulate the state from liability and the exercising of a function by a political subdivision as a part of the state. The basis of action by any agent is the authority delegated by his principal,[7] so that a delegation is involved in both relationships. The distinction would appear to be one of degree of control. If a political subdivision acts with a substantial degree of independence under authority delegated by the state, liability may not be imposed on the state as a result of such activity. If, on the other hand, an executive department specifically makes a political subdivision its agent to act on its behalf and subject to its control, it may be subjected to liability based on acts of the political subdivision.

Our examination of the sparse authority on this subject indicates that authorized

6. 8 N.Y.S.2d at 106. Significantly, the court relied on an analogy to the state school system, stating:

> These arguments are true in one degree or another, or in one manner or another, as to the public school system of the State. The State determines the qualifications of teachers, and provides for their certification; it sets up standards for their employment; it prescribes courses of study; it provides for the inspection of the schools; it requires [illegible] and it provides for the [illegible] of the schools. [illegible] N.Y.S.2d at 106.

7. Restatement (Second) of Agency § 1 (1957) defines "agency" as:

> (1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.
>
> This [illegible] consent by one person to another to act on [illegible] "Delegation" is defined in Restatement, Second, Agency, New Chapter Topics (1957) [illegible] of [illegible] to act on [illegible]

activities of such subdivisions as municipalities and school districts are almost universally considered to be independent actions not subjecting the state to liability,[8] whereas when a state functions through use of some other type of agency or a private corporation, liability is more likely to ensue.[9] Thus, in imposing liability on the state for injuries to a juvenile placed in a private correctional institution, the New York Court of Appeals pointed out:

> The quasi penal institution in which the claimant was confined was a governmental agency to which the state had committed in part its function to care for wayward minors. But the institution did not thereby acquire a status equivalent to that of the civil divisions of the state.[10]

[1] We have had no case cited to us where liability was imposed upon the state for actions of a political subdivision such as a municipality or a school district.[11] Political subdivisions of a state are creatures of the legislature which prescribes and curtails their authority. They may be subjected to detailed requirements in the exercise of their statutory functions. Yet such legislative regulation has not been held to make the subdivision an agent of the state so as to impose liability. Nevertheless, we can envision situations which might arise where it is clear that the subdivision is acting on behalf of the state as its agent and under its control to such an extent as to impose liability. Where political subdivisions are involved, however, we shall apply a much stricter test than when other forms of entities are utilized as to the type of control required to create liability on the part of the state.[12] To apply such a test, we shall now review the factual context which confronts us in this appeal.

Under the authority of AS 14.09.010,[13] the Alaska Department of Education entered into a contract with the Kenai Peninsula Borough School District (referred to hereinafter as the borough) whereby the borough was to furnish or contract for the transportation of pupils living 1½ miles or more from the school, and the state was to pay a specified amount for each day transportation was furnished. In addition, the state agreed to pay two (2) percent of that amount to the borough as an administrative charge. The borough was authorized to furnish transportation to students living closer to the school provided that it paid the costs for such transportation without the right to state reimbursement. Any contracts entered into by the borough for school transportation were required to be

8. Gonzales v. State, 29 Cal.App.3d 585, 105 Cal.Rptr. 804 (1972); Pantess v. Saratoga Springs Authority, 225 App.Div. 426, 8 N.Y.S.2d 103, 105-06 (1938); see D. R. Smalley & Sons, Inc. v. United States, 372 F.2d 505, 178 Ct.Cl. 593 (1967), and Eden Memorial Park Assoc. v. United States, 300 F.2d 432 (9th Cir. 1962), which hold that a state is not an agent of the United States in performing functions under the Federal Aid Highways Act, 23 U.S.C. § 101 et seq. (1958).

9. *See* Paige v. State, 269 N.Y. 352, 199 N.E. 617 (1936) (state use of a private institution as a reformatory); *see generally* State v. Abbott, 498 P.2d 712 (Alaska 1972); Johnson v. State, 69 Cal.2d 782, 447 P.2d 352 (1968).

10. Paige v. State, 269 N.Y. 352, 199 N.E. 617, 618 (1936) (citations omitted).

11. The borough cites Maltby v. Westchester County, 267 N.Y. 375, 196 N.E. 295 (1935), but in that case, the question was whether the Westchester County Park Commission was acting as an agent of the state or the county in entering into road contracts. It was not a case of the county itself acting on behalf of the state.

12. We do not consider applicable here the "enterprise" theory espoused in Fruit v. Schreiner, 502 P.2d 133, 141 (Alaska 1972) whereby losses to third persons incidental to carrying on an enterprise were held to be a cost of operation and to be borne by the enterprise, with the burden distributed among those benefited by the enterprise. Such a theory could apply with equal force to the borough and the state. Nor do we find pertinent the [illegible] nature of the work test utilized in determining whether an injured workman was an independent contractor or an employee in the private industry context of Ostrem v. Alaska Workmen's Compensation Board, 511 P.2d 1061 (Alaska 1973).

13. Quoted in relevant part at page 4, *supra*.

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approved by the Commissioner of Education as a condition for payment by the state, and subcontracts had to provide that the contractors furnish a complete accounting to the state on forms provided by it of all funds received by the contractor for any service. The borough agreed to furnish the state with such information as route maps, bus time and mileage schedules, driver, vehicle and pupil data, etc. as requested. The borough was to administer and supervise the transportation in accordance with the rules and regulations of the Alaska Department of Education.

In accordance with that contract, the borough entered into an agreement with Burton Carver to furnish transportation services for specified routes. The contract was executed on a form provided by the state, entitled Transportation Sub-Contract Form. The agreement was signed by Carver and by the President of the School Board indicating the approval of the board. At no place in the contract is there an indication that the borough was acting on behalf of the state as its agent, although there is provision for amendment by either the borough or the state Commissioner of Education "if in their judgment a reduction in required transportation services or lack of adequate transportation funds so requires". Liability insurance policies secured by the company were required to be filed with the state as a condition for payment of state monies. The transportation regulations of the Department of Education were made a part of the contract.

The principal, superintendent or teacher in charge of the school unit for which transportation service was provided was designated as the agent of the borough (not the state) for determining arrival or departure time of vehicles, general bus schedules and routing and giving general supervision to the conduct of the transportation operation. The borough had an employee designated as director of transportation who was to take care of the school district transportation and refer to the state Department of Education only matters requiring interpretation as to what was fundable. The state had nothing to do with the establishment of the bus routes and the times for student pickup. It merely reviewed the designated routes to assure that there was no duplicated mileage. The borough could provide for extended routes at its own expense. The school board would determine which of the proposals submitted for transportation services would be selected and would submit its recommendation to the state's Department for concurrence or rejection. Moreover, the borough had the option of furnishing the transportation by means of its own drivers and vehicles or entering into contracts for that purpose.

[2] We conclude that, while the state did supervise the transportation service insofar as it related to the funding provided by it and also had certain regulations in effect pertaining to the over-all safety of the transportation system,[14] the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with Carver.

The situation is closely akin to that existing on the federal-state level discussed in D. R. Smalley & Sons, Inc. v. United States.[15] The court in *Smalley* dealt with a suit by a contractor employed by the State of Ohio to work on highway construction projects as part of the Federal-Aid Highway System of interstate highways. For these projects, the United States would reimburse the State of Ohio to the extent of ninety (90) percent of the total cost of the project. The plaintiff's claim was based on the state's wrongful acts and omissions as a result of which the completion of the projects became consid-

14. [illegible]

15. [illegible]

erably more expensive than originally anticipated. In seeking recovery from the United States, the plaintiff asserted that with regard to these projects, the State of Ohio was the agent of the United States.

> To support this claim, plaintiff points out that: the contracts were drafted pursuant to the regulations and requirements of defendant; the contracts were approved by defendant the work was inspected and approved by defendant as it progressed; changes in plans were approved by defendant; the final completion of the work was inspected and approved by the defendant; and defendant agreed by the provisions of the law to pay the state (for the benefit of plaintiff) ninety per cent of the cost of the contract.[16]

In language which applies with equal effect to the relationship between a state and its various political subdivisions, the court stated:

> The National Government makes many hundreds of grants each year to the various states, to municipalities, to schools and colleges and to other public organizations and agencies for many kinds of public works, including roads and highways. It requires the projects to be completed in accordance with certain standards before the proceeds of the grant will be paid. Otherwise the will of Congress would be thwarted and taxpayers' money would be wasted. These grants are in reality gifts or gratuities. It would be farfetched indeed to impose liability on the Government for the acts and omissions of the parties who contract to build the projects, simply because it requires the work to meet certain standards and upon approval thereof reimburses the public agency for a part of the costs.[17]

The court rejected the agency argument citing Eden Memorial Park Assoc. v. United States,[18] wherein the court stated:

> Moreover, analysis of the Federal-Aid Highways Act indicates that while close cooperation between the United States and the individual states was contemplated, the states or their agencies or officials were in no sense to become agents of the United States in projects authorized by that act.

The borough attempts to distinguish *Smalley* on the basis that the states may elect whether to construct highways under the Federal-Aid Highway Act whereas the borough was compelled to provide school transportation once the state Board of Education decided to require it. It contends that the involuntary nature of its undertaking of the function makes it a compelled agent of the state.

[3] We agree that one may become a compelled agent or servant of another. As noted previously, Section 224 of the Restatement (Second) of Agency (1957) states that "[o]ne compelled by law or duress to render services to another has power to subject the other to liability as if there were a master and servant relation". Similarly, one who volunteers services may be a servant of the one accepting services.[19] Whether one is a compelled or voluntary agent begs the question here involved, i. e., was the borough acting as an agent of the state in furnishing school transportation. It is not contended that the borough is an agent of the state in exercising the function of public education, yet it is compelled by law to maintain and operate a system of public schools on an areawide basis.[20]

We conclude that the borough was not acting as an agent of the state in furnishing transportation of pupils. Our conclusion is supported by the only case to rule

16. 372 F.2d at 507.

17. *Id.* (citations omitted).

18. 300 F.2d 432, 438 (9th Cir. 1962).

19. Restatement (Second) of Agency § 225 (1957).

20. See AS 14.30.010; Hildebrand, 481 P.2d 422 (Alaska 1971).

squarely on the relationship between a school district furnishing such transportation and a state. In Gonzales v. State,[21] the plaintiff brought suit against a school bus driver, the school district, the county and the State of California and other defendants for injuries suffered when the plaintiff was struck by a school bus. In seeking recovery against the state, the plaintiff contended that the school district was the agent of the state in employing the driver so as to make the driver an employee of the state. A California statute imposed liability only on the public entity whose employee caused the injury.

Thus, as in the Kenai case, for the state to be liable, the school district had to be found to be the state's agent. The court held:

> . . . Grace Erickson, at the time mentioned in the complaint and for the previous 19 years, was employed by the District as a bus driver; she was not employed by the State and did not drive or operate a bus owned or controlled by the State, at any time; . . . .
>
> . . . . . .
>
> State agencies, even though exercising a portion of the state's powers of government, are not the state or a part of the state; and may not act on behalf of the state unless authorized to do so by statute. . . . There is no statute conferring authority upon school boards, expressly or by implication, to employ an individual on behalf of the state.
>
> The fact the authority of a school district to operate buses, and the incidental authority to employ bus drivers, is derived from the State through its Legislature, does not support the conclusion a bus driver employed by the District is an employee of the State.[22]

Similarly, there is no Alaska statute or contract authorizing the borough to employ or contract with a driver *on behalf of the state*. The bus was not owned by the state, and Carver entered into the contract with the borough school district, not the state.[23]

[4] The borough makes an additional argument to the effect that a change in the Department of Education regulations made subsequent to the Harman accident indicates that under the former regulations, the borough acted as agent. The regulations in effect in 1969 provided in part that the "Commissioner of Education *shall* direct the school boards to enter into contracts for transportation of pupils who reside a distance of 1½ miles or more from the school,"[24] whereas the current regulation specifies that the Commissioner "*may* in his discretion" establish contracts with districts to provide for transportation of students.[25] The borough contends that this indicates that the state has elected to no longer "require" the borough to provide for the transportation. But the fact that it is discretionary with the Commissioner whether to enter into the contract, does not make it less a requirement on the part of the borough when such discretion is exercised. Moreover, as we have discussed previously, the real issue is not whether the borough was "required" to furnish the transportation, but whether it acted as agent for the state in either a compelled or voluntary capacity.

21. 29 Cal.App.3d 585, 105 Cal.Rptr. 804 (1972).

22. *Id.* at 805, 807 (footnote [illegible] omitted).

23. The Gonzales [illegible] [illegible] students, and the state did not own, operate or [illegible] any of the buses at any time. 29 [illegible] 585, 105 Cal.Rptr. at 806. We [illegible] the more difficult ques[illegible] involved in the instant case.

24. [illegible] 40 [illegible] (Register [illegible]).

25. [illegible] 1971 [illegible]

We conclude that the superior court was correct in granting summary judgment for the state holding that the borough was not acting as an agent of the state in furnishing school transportation.

Affirmed.

**James O. ADKINS, Appellant,**

**v.**

**Michael LESTER et al., Appellees.**

**Brenda S. ADKINS and James O. Adkins, Appellants,**

**v.**

**CITY OF FAIRBANKS and Michael Lester et al., Appellees.**

**Nos. 2078, 2113.**

Supreme Court of Alaska.

Feb. 3, 1975.

Consolidated actions were brought arising out of a collision between an automobile and an unmarked city police vehicle which was at the time responding to a radio report of a burglary in progress but which was not using its siren or flashing red light. The Superior Court, Fourth Judicial District, Fairbanks, Warren William Taylor, J., entered judgment in favor of police officer and city, and motorist and his wife appealed. The Supreme Court, Erwin, J., 530 P.2d 11, reversed and remanded. On petition for rehearing, the Supreme Court, Connor, J., held that although the jury did in fact give a negative response to an interrogatory concerning whether the police officer's actions were a proximate cause of the collision, the way in which the interrogatory was phrased may have led the jury to believe that, having found the officer not negligent, it had to find no causation; and the improperly excluded opinion testimony of investigating officer that the speed of the police vehicle was excessive and was a contributing cause of the accident may have affected the jury's answers on both the negligence and causation issues.

Petition denied.

Rabinowitz, C. J., did not participate.

**Appeal and Error ⇐1056.1(5)**

Although, in actions arising out of collision between automobile and unmarked city police vehicle, jury did in fact respond negatively to interrogatory concerning whether police officer's actions were a proximate cause of collision, the way in which interrogatory was phrased may have led jury to believe that, having found officer not negligent, it had to find no causation; and the improperly excluded opinion testimony of investigating officer that the police vehicle's speed was excessive and a contributing cause of the accident may have affected the jury's answers on both the negligence and causation issues.

O. Nelson Parrish and James Parrish, Fairbanks, for appellant Brenda Adkins.

Burton C. Biss, Anchorage, for appellant James O. Adkins.

Thomas E. Fenton, of Call, Haycraft & Fenton, Fairbanks, for appellee Michael Lester.

D. Rebecca Snow, Law Office of Charles E. Cole, Fairbanks, for appellee City of Fairbanks.

Before CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

OPINION ON REHEARING

CONNOR, Justice.

Appellee City of Fairbanks in its petition for rehearing points out that at page 17 of our opinion we misstate the actualities of the case where we say:

"[illegible] the jury responded that it found no negligence on the part of appellees but did not respond to the ques-

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OF COUNSEL:
G. KENT EDWARDS


November 10, 1980

REPLY TO:
Anchorage

Gordon Ryan, City Manager
City of Kodiak
P.O. Box 1397
Kodiak, AK 99615

Re: Proposed Legislative Changes
Our File 844-10

Dear Mr. Ryan:

Pursuant to your request, I have reviewed Title 29 of the Alaska Statutes and the supplements for the purpose of making recommendations regarding proposed changes to statutory sections that might be presented to the Alaska Municipal League during its meeting in Fairbanks during the week of November 17, 1980. In particularly, I have attempted to locate the statutory sections that have been the source of litigation or disputes in the past. I have also discussed this matter with Mel Stephens and sought his recommendations.

A. I would recommend that the first full paragraph of AS 29.28.070(b) be amended to read as follows:

> (b) Every petition for either the initiative or referendum in the government of a municipality shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities or to a service area, by a number of qualified voters residing within the area outside cities or within the service area, as the case may be, equal to the following per cent of the total number of votes cast at the last regular [GENERAL] election in the city or borough or borough area concerned, or a special election called for the purpose of electing city or borough officers:

The word that has been underlined in the above section is the word to be added by the change in legislation. The capitalized word in brackets will be deleted.

The basis for this recommendation is the ruling by Judge Carlson in the recall case holding that the signature requirement was based on the number of votes cast in the municipality during the last general election. In effect, the signature requirements for initiative, referendum and recall may be substantially increased by this ruling.

B. I would recommend that the provisions relating to the review of a recall petition be amended to provide for a review of the petition by the clerk prior to the time the petition is circulated for signature. Moreover, I would recommend that some procedure be provided for an expeditious review of the clerk's decision by the Department of Community and Regional Affairs if the the clerk determines that the contents of the petition are insufficient.

Possible legislative changes to implement the suggestion would be as follows:

Add a new section 29.28.145 to read:

> (a) A petition seeking recall of one or more municipal officials shall contain the grounds for recall stated with particularity as to specific instances reflecting the alleged misconduct in office, incompetence, or failure to perform prescribed duties. The statement of grounds for recall shall be submitted to the municipal clerk for review as to content, prior to circulation for signature and the municipal clerk shall, within ten (10) days, certify whether the statement is acceptable or unacceptable. The clerk shall not determine whether the statement of grounds for recall is true or false, nor shall the clerk determine whether the specific instances set forth constitute misconduct in office, incompetence or failure to perform prescribed duties. If the petition is determined by the clerk to be unacceptable, the clerk shall specify in writing the reasons for determining the statement to be unacceptable.

(b) A statement of grounds for recall that is determined to be unacceptable by the clerk may be amended and resubmitted, or the clerk's decision may be submitted by the recall proponent to the Department of Community and Regional Affairs for review. Within ten (10) days after receipt, the Department of Community and Regional Affairs shall review the statement of grounds for recall and the clerk's written specification of the reasons why the statement is unacceptable and shall determine whether the grounds for recall are stated with particularity as to specific instances in a form acceptable for the petition.

Section 29.28.150 should be modified to provide as follows:

Petition. (a) The petition containing an accepted statement of grounds for recall shall be filed with the municipal clerk when it has been completed to contain

(1) the signatures and resident addresses of a number of voters as prescribed in Section 70(b) of this chapter for initiative and referendum; and

(2) the date each voter signed the petition.

(b) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition.

Modify Section 29.28.160 to provide:

Examination of Signatures. The municipal clerk shall review the signatures, addresses and dates contained in the petition and shall certify on the petition within ten (10) days of the filing date whether it is accepted or rejected. Until the petition is accepted, a petition signer may withdraw his signature upon written application to the clerk.

The proposed changes recommended above, would provide a procedure for reviewing the statement of grounds in a recall petition prior to the expenditure of the effort that normally

goes into obtaining adequate signatures. Moreover, by establishing in the guidelines for the clerk's decision and providing for review by the Department of Community and Regional Affairs, the modifications would tend to minimize litigation that otherwise occurs.

C. I would recommend that AS 29.33.070(a) be amended to negate any implied power that boroughs now have to review and disapprove capital improvement programs of cities located within the boroughs. This modification might be accomplished by adding a second sentence to subparagraph (a) to read:

> The powers delegated to boroughs under this section shall not be construed to grant to a borough any authority or control over a capital improvement program or project of a city within the borough or a city's right to seek funding of such capital improvements without prior approval by the borough.

This recommendation is based upon the unacceptability of the A95 Review Procedures for Grant Applications. As I understand that review procedure, if a borough does not approve a capital improvement project proposed by a city within the borough, the grant application is rejected. Obviously, there may be other and perhaps better ways of eliminating borough control over city capital improvement projects.

D. I would recommend that Section 29.33.130 relating to judicial review of decisions by the Board of Adjustment be amended. At the present time, if a city has been delegated the authority to act as a Board of Adjustment, the city is invariably named as a party in the appeal from the Board of Adjustment decision. In some instances, the city is designated as the sole party and it is forced to incur the costs and attorney's fees necessary to respond to the appeal. So long as the city is a party to the appeal they are also subject to a judgment for costs and attorney's fees incurred by the party appealing from the Board of Adjustment action.

This problem might be resolved by an additional paragraph within Section 29.33.130 to read as follows:

> If a city acted as a Board of Adjustment pursuant to a power delegated by the borough, the city shall not be named as a party in the action seeking review unless the action of the Board of Adjustment reversed or overturned action by the borough planning

commission. The city may, however, intervene as an interested party in an appeal from a Board of Adjustment decision which related to property within the limits of the city.

E. I would recommend that Section 29.33.120 be amended to specifically provide that appeals to the Board of Adjustment may be heard on the record. It would appear to be wise policy to require an applicant seeking relief from the Planning & Zoning Commission to present a full and complete record of the grounds upon which the relief is based. A record should therefore be adequate for review and decision when supplemented by briefs of the parties. A requirement that de novo hearings be held, which might possibly be implied from the provisions of AS 29.33.110(a), which authorizes the presiding officer to administer oath and compel attendance of witnesses, may encourage the presentation of a minimal case before the planning commission with the thought that the record can always be improved before the board of adjustment.

F. I would recommend that AS 29.33.150 be amended to require city participation in the platting process if the subdivision is located within the city. In particular, that section might be amended to provide that rules and regulations relating to installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements, which are to be located within, operated by or connected to facilities in a first class city, shall be constructed in compliance with requirements that are not less stringent than those established by the city. Moreover, the statute should require approval of the plat by a city within which the platted property is located and to prohibit the filing of the plat until all improvements have been constructed or security, in a form acceptable to the city, has been provided to insure that the improvements will be completed as designed and approved.

The city has in the past, particularly with regard to the Russells Estates Subdivision, been placed in the position where the borough specifications for roads and utilities were far below those required by the city. The city had no authority to prohibit or disapprove the construction but may be required to maintain dedicated roads after they are completed and may assume the responsibility for the proper operation of the utilities. In Russells Estates, the streets were of insufficient width, were improperly constructed and the sewer facilities, which was designed to operate with individual grinders and pumps in the homes failed to operate

properly. As a result, the city incurred substantial expenditures to completely reconstruct the project. The borough naturally assumed no responsibility for the deficiencies that existed. After the developer sold the lots he moved out of state and the city is finding it extremely difficult to obtain any reimbursement for its expenditures.

F. I would recommend that AS 29.53.025(c)(2) be repealed or, if not repealed, modified to eliminate the problem that currently exists with regard to the personal property tax exemption in Kodiak. The framework created by the statute is totally unworkable because the borough is given authority to determine the revenues lost as a result of the exemption. In the case of the personal property tax exemption the borough includes substantial properties on its assessment list for which taxes would not or could not be collected if the borough was levying and collecting the taxes.

It is extremely difficult to recommend modifications for this section because it appears that the appropriate solution would be a repeal of the exemption by the City of Kodiak. That has been attempted once, but a petition for a referendum of the repealing ordinance was filed and ultimately found to be valid by the Superior Court in Kodiak. At the election, a majority of the voters cast their ballots in favor of the referendum.

One possible modification would be to require borough consent for exemption and subject the exemption to an agreement between the municipalities regarding the determination of the revenues lost and the method of repayment. That type of approach would have to provide some method for revoking the consent on the reasonable notice.

Another possible modification would be to amend that section to read as follows:

> (2) A home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough an amount calculated to equal the reasonably anticipated revenues, less costs of collection, lost by the borough because

> of the exemptions or exclusions. The amount of lost revenues shall be determined annually by the assembly, subject to approval by the city council. If the council disapproves the amount determined by the assembly, the city shall appropriate the amount determined by the assembly to have been lost during that year, and the exemption shall thereafter be void with regard to borough taxes levied in future tax years.

The recommendations proposed above are based in substantial part upon the experience I have had in the City of Kodiak over the past six years. Recommendations as to specific language for changes in the statutes are merely rough proposals and would have to be carefully reviewed and refined if it was determined that those proposals could be supported by the Alaska Municipal League. Nevertheless, I believe the problem areas are adequately highlighted and possible solutions proposed.

If you have any questions after you have had an opportunity to review these recommendations, please advise me at your convenience.

Kindest regards.

Very truly yours,

HARTIG, RHODES,
NORMAN & MAHONEY

Robert J. Mahoney

Robert J. Mahoney

RJM:bad

Motion made by Fred Stickman and seconded by Jonah Tokienna

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO. 23

A RESOLUTION: PETITIONING THE STATE OF ALASKA TO FUND AT 100% ADEQUATE FIRE FIGHTING EQUIPMENT FOR RURAL CITIES.

WEHREAS, Fire is a great destroyer of life and property in rural Alaska, and

WHEREAS, rural communities have little economic base from which to purchase and to provide necessary fire equipment,

THEREFORE BE IT RESOLVED: That the State of Alaska fund at 100% adequate fire fighting equipment for rural cities.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE THIS 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

21 OF 30 INVITED MAYOR'S TOOK PART IN THE NOV 6th & 7th CONFERENCE ALL RESOLUTIONS PASSED UNANIMOUSLY EXCEPT 5 & 17

**Motion made by Leo Rasmussen and seconded by John Jenewouk.**

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO. 22

A RESOLUTION: PETITIONING THE ALASKA STATE LEGISLATURE TO AWARD SURPLUS STATE EQUIPMENT AND MACHINERY WITHOUT A BID TO THE NEAREST LOWER LEVEL OF GOVERNMENT.

WHEREAS, Presently excess State equipment is often required to be bid upon, and

WHEREAS, many of the State's smaller communities have no economic base and therefore, no money with which to make a bid.

NOW THEREFORE BE IT RESOLVED: That the Alaska State Legislature pass legislation to award without a bid surplus State equipment and machinery to the nearest lower level of government.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

**Motion made by Jonah Jenewouk and seconded by Melvin Otten.**

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 21

A RESOLUTION: TO INCREASE STATE REVENUE SHARING ALLOCATION FOR EVERY SECOND-CLASS CITY IN RURAL ALASKA.

WHEREAS, the State Legislature has seen fit to fund each city at $25,000.00, and

WHEREAS, the Alaska Municipal League has supported the State Revenue Sharing Program.

NOW THEREFORE BE IT RESOLVED: That the State Legislature be petitioned to increase the basic State Revenue Sharing allocations to $50,000.00 for each city.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

**Motion made by Karl Ashenfelter and seconded by Jonah Tokienna.**

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO. 20

A RESOLUTION: PETITIONING THE ALASKA STATE LEGISLATURE TO FIND PERSONNEL TO FILL DRUG ABUSE ENFORCEMENT AND EDUCATION POSITIONS.

WHEREAS, drug abuse is an increasing problem among the citizens of rural Alaska, and

WHEREAS, the citizenry of the State of Alaska is its most precious resource.

THEREFORE BE IT RESOLVED: That the Northwest Alaska Mayors' Conference petitions the Alaska State Legislature to fund additional law enforcement and education positions to specifically combat drug abuse.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

RRT

SECRETARY

**Motion made by Leo Rasmussen & Mayor Madros and seconded by Mayor Otten.**

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 19

A RESOLUTION: REQUESTING THE APPOINTMENT OF PERSONS WITH THE ABILITY TO INTERPRET AND ENFORCE THE LETTER OF THE LAW; THUS PROVIDING COMPLIANCE TO THE LAW, RESULTING IN AN EQUITABLE SYSTEM IN PROVIDING LAW AND ORDER.

WHEREAS, Leniency to offenders in the area of public order is considered as a major contributor to the breakdown of law and order, and

WHEREAS, this breakdown in law and order is increasingly harmful to the citizenry of rural Alaska.

THEREFORE BE IT RESOLVED: That the Northwest Alaska Mayors' Conference request of the Judicial Council in reviewing appointments for District, Superior and Supreme Court judgeships; to only consider for recommendation, those persons who will more strictly construe law and order for our communities.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

RR, T

SECRETARY

**Motion made by Karl Ashenfelter and seconded by Leo Rasmussen.**

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 18

A RESOLUTION: PETITIONING THE ALASKA STATE LEGISLATURE TO PROVIDE A JUDICIAL SYSTEM FOR RURAL ALASKA.

WHEREAS, there is presently no judicial officer close nearby for most cities of rural Alaska, and

WHEREAS, local ordinances can not be enforced in the absence of a judicial system.

THEREFORE BE IT RESOLVED: That the conference of Northwest Alaska Mayors' petitions the Alaska State Legislature to fund a judicial system that will make a judicial officer available in each city in rural Alaska.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

RRF

**Motion made by John Jenewouk and seconded by Melvin Otten.**

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO: 17

A RESOLUTION: OPPOSING NOME'S CITY ANNEXATION PLAN.

VOTE: YES 2

NO 14

1 ABSTAINED

**Motion made by Karl Ashenfelter and seconded by Jonah Tokienna.**

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 16

A RESOLUTION REQUESTING THE ALASKA STATE LEGISLATURE TO REQUIRE MINIMUM STANDARDS AND INSPECTION TO WHICH ALL NEW HOUSING BUILT IN RURAL ALASKA MUST CONFORM AND TO FUND REBUILDING AND RENOVATION OF EXISTING SUBLEVEL HOUSING.

WHEREAS, much housing built in rural Alaska has been of substandard design and construction, and

WHEREAS, there is presently little standard to which new housing built in rural Alaska must conform.

THEREFORE BE IT RESOLVED: by the Conference of Northwest Alaska Mayors' that the Alaska State Legislature be petitioned to require minimum standards and inspection to which all new housing built in rural Alaska must conform and to fund rebuilding and renovating of existing sublevel housing.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

RRF

**Motion made by Fred Stickman and seconded by Mayor Otten.**

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 15

A RESOLUTION: TO SUPPORT THE LEGISLATIVE ACTION THAT WAS TAKEN DURING THE THE LAST LEGISLATIVE SESSION TO SUBSIDIZE ELECTRIC POWER AND EXPLORE ALTERNATIVE ENERGY SOURCES.

WHEREAS, energy costs are rapidly increasing for Northwestern Alaska, and

WHEREAS, this increasing cost is a growing burden on the citizens of the region.

BE IT RESOLVED: That the conference of Northwest Alaska Mayors' supports legislative action that has been taken to subsidize electric power and explore alternate energy sources for rural Alaska.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

RRC

Motion made by Karl Ashenfelter and seconded by Willie Thomas.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 14

A RESOLUTION: TO REQUEST THE DOT/PF TO PROVIDE ADEQUATE AIRPORT LIGHTING AND TO CONSTRUCT AIRPORTS TO THE MINIMUM LENGTH OF 4,000 FEET AND TO INCLUDE RUNWAYS TO ACCOMODATE PREVAILING CROSSWINDS.

WHEREAS, many airports in Northwest Alaska are not adequate to meet the needs of the citizens of Northwest Alaska, and

WHEREAS, it is the responsibility of the State of Alaska to provide airports in rural Alaska.

THEREFORE BE IT RESOLVED: That the Department of Transportation/Public Facilities and the Alaska State Legislature be requested to provide in northwestern Alaska adequately lighted, well constructed airports of a minimum length of 4,000 feet to include alternate landing strips to accomodate prevailing crosswinds.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by Ted Katcheak and seconded by Karl Ashenfelter.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 13

A RESOLUTION: THAT THE DIVISION OF COMMUNITY PLANNING BE DIRECTED TO PROVIDE ADDITIONAL PERSONNEL TO MEET THE TERMS OF 14 (C) ANCSA IN RURAL ALASKA.

WHEREAS, The Alaska Native Claims Settlement Act sets aside 1,280 acres under 14(c) Reconveyances to municipalities, and

WHEREAS, there is a need for technical assistance in the processing of this section under the ANCSA, and

WHEREAS, the Division of Community Planning is to provide that assistance.

NOW THEREFORE BE IT RESOLVED that the Division of Community Planning be directed to act expeditiously in meeting the terms of 14(c) ANCSA.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by John Jenewuk and seconded by Percy Nayokpuk.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 12

A RESOLUTION: TO HAVE THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO ASSESS THE NEEDS OF THE REGION AND TO SUPPLY THE FUNDS NECESSARY TO PROVIDE SAFE AND SANITARY WATER AND SEWER SYSTEMS TO ALL COMMUNITIES THAT REQUIRE THEM AT THE EARLIEST POSSIBLE DATE.

WHEREAS, there is an immediate need for safe and sanitary water and sewer systems in the communities in the Bering Straits and NANA regions, and the Doyon region; and

WHEREAS, the State of Alaska, Department of Environmental Conservation is charged with providing the funds to construct water and sewer systems in rural Alaska.

NOW THEREFORE BE IT RESOLVED: That the Commissioner of the Department of Environmental Conservation be directed to assess the needs in the Bering Straits and NANA regions respectively, and

LET IT FURTHER BE RESOLVED that funds be earmarked to provide safe and sanitary water and sewer systems in all communities that need them and that construction begin at the earliest possible date.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

Motion made by M. Citta of Koyuk and Seconded by Paul Brown, Sr. of Noorvik.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO: 11

A RESOLUTION TO IMPROVE TELE-COMMUNICATIONS SYSTEMS IN NORTHWEST ALASKA AND TO PROVIDE TWO TRAINED TECHNICIANS TO REPAIR TELE-COMMUNICATIONS EQUIPMENT IN NORTHWEST ALASKA.

WHEREAS, modern maintained tele-communications systems are absent in most of Northwest Alaska, and

WHEREAS, modern, maintained tele-communications are increasingly important in today's world.

THEREFORE BE IT RESOLVED: that the Alaska State Legislature be petitioned to improve tele-communications in Northwestern Alaska and to provide two trained technicians to maintain this equipment.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

**Motion made by John Jemewuk and seconded by Jonah Tokienna.**

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 10

A RESOLUTION: TO INCREASE THE SERVICES PROVIDED BY THE V.P.S.O. PROGRAM TO ALL COMMUNITIES NOT CURRENTLY SERVED BY THE PROGRAM.

WHEREAS, the Village Public Safety Officer Program is deemed to be an excellent effort on the part of the Department of Public Safety, and

WHEREAS, the need for law enforcement still remains largely unmet in all of the communities in the Bering Straits and NANA regions, and the Doyon regions:

WHEREAS, the State of Alaska is the only source of funds for rural law enforcement.

NOW THEREFORE BE IT RESOLVED THAT THE STATE OF ALASKA EXPAND THE V.P.S.O PROGRAM to include those communities in the Bering Straits and NANA regions that are not presently served by the V.P.S.O. Program.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

**Motion made by Karl Ashenfelter and Seconded by Jonah Tokienna.**

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 9

A RESOLUTION TO REQUIRE THE PUBLIC HEALTH SERVICE TO PROVIDE AIR FARES FOR HOSPITAL PATIENTS REQUIRING MEDICAL EVACUATIONS.

WHEREAS, most villagers have little economic resources to pay for air transportation, and

WHEREAS, the Public Health Service has funds to provide air transportation.

NOW THEREFORE BE IT RESOLVED: That the Public Health Service pay patient travel to and from the Norton Sound Hospital and the Kotzebue Hospital.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE THIS 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by John Jemewuk and seconded by Melvin Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 8

A RESOLUTION: That the Department of Community and Regional Affairs provide additional personnel in the area of servicing the region by providing technical assistance.

WHEREAS, The Department of Community and Regional Affairs (LGAD) has the responsibility to provide a wide range of technical assistance to second-class cities ranging from Point Hope to Stebbins and all those in between including Kaltag, Nulato, and Koyukuk on the Yukon, and

WHEREAS, there are only two Local Government Specialists assigned to serve over 30 second-class cities in this region, and

WHEREAS, the needs of second-class cities are becoming increasingly complex and numerous,

NOW THEREFORE BE IT RESOLVED that the Department of Community and Regional Affairs fund one additional Local Government Specialist for the Nome field office.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by Ted Katcheak of Stebbins & Seconded by Fred Stickman, Jr., Kulato.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 7

A RESOLUTION: TO ENDORSE THE SUBSTITUTION OF THE WORD DENALI FOR MCKINLEY.

WHEREAS, we recognize that the place name Denali is an authentic Athabascan origin name for the tallest mountain in North America, and

WHEREAS, Denali is derived from an ancient Athabascan name Denali meaning "Tall one", and

WHEREAS, Athabascan people have strong feelings toward this great mountain because it is virtually in the center of traditional Alaskan Athabascan territory, and because it is thought of respectfully as the one the ancestors viewed, and

WHEREAS, the name "McKinley" has no comparable antiquity or tradition, and

WHEREAS, the Alaska State Legislation has passed a joint resolution recognizing the name Denali, and

WHEREAS, Denali is the name officially recognized by the State of Alaska for said mountain.

NOW THEREFORE BE IT RESOLVED, that the NORTHWEST ALASKA MAYORS' CONFERENCE hereby calls on the United States Board of Geographical Names to recognize the original name of the mountain, Denali.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November 1980.

PRESIDENT

ATTEST

SECRETARY

Motion made by Mayor Stickman and Seconded by Mayor Madros.

NORTHWEST ALASKA MAYORS' CONFERENCE.

November 6 - 7, 1980

RESOLUTION NO. 6

A RESOLUTION: To establish regulations to require certified audits of all R.E.A.A. School Districts and said audits to be made public.

WHEREAS, generally acceptable accounting practices may not be used by all R.E.A.A.'s Districts; and

WHEREAS, any financial information used and generated by some R.E.A.A.'s Districts comes from their Accounting Departments.

THEREFORE BE IT RESOLVED: To request the State to establish regulations requiring all R.E.A.A. School Districts to publicly make available an annual certified audit of their operations.

PASSED an APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

Motion made by John Jenewouk of Elim and Seconded by Percy Nayokpuk of Shishmaref.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 5

A RESOLUTION: OBJECTING TO BIA CLOSING OF MT. EDGECUMBE.

FAILED BY A VOTE OF 12-5

RRF

**Motion made by Karl Ashenfelter and Seconded by John Jenewuk.**

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 4

A RESOLUTION: TO HIRE AN EDUCATION SPECIALIST TO HELP EVALUATE EDUCATION IN NORTHWEST ALASKA.

WHEREAS, there is an apparent deterioration of basic education in Northwest Alaska;

WHEREAS, basic education is apparently being supplanted with alternate courses.

NOW THEREFORE BE IT RESOLVED: That the Northwest Alaska Mayors' Conference requests the State of Alaska to hire an Education Specialist to evaluate education, its delivery in Northwest Alaska, and to provide a listing of proposed changes that would better provide the delivery of basic education to our children.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

**Motion made by Earl Ashenfelter and seconded by James Commack.**

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 3

A RESOLUTION: REQUESTING THE DEPARTMENT OF EDUCATION TO EVALUATE THE ACADEMIC PROGRAMS IN THE VILLAGES IN NORTHWEST ALASKA.

WHEREAS, there are questions regarding the quality of basic academic programs in Northwestern Alaska, and

WHEREAS, there are no apparent systems established to provide this data.

NOW THEREFORE BE IT RESOLVED: That the Department of Education provide a Curriculum Development Specialist to investigate academic programs in Northwest Alaska with special emphasis on Basic Education.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST

SECRETARY

KRF

**Motion made by John Jenewouk and seconded by Karl Ashenfelter.**

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 2

A RESOLUTION: ASKING THAT THE STATE PROVIDE MONIES TO FUND A PERMANENT CITY CLERK OR CITY ADMINISTRATOR POSITION WITH A MINIMUM SALARY OF $1,500.00 PER MONTH FOR ALL CITIES.

WHEREAS, It is almost impossible to hire a capable part-time or full-time City Clerk or Administrator with the monies now provided;

WHEREAS, present State Revenues hardly cover minimal costs of administering small cities.

THEREFORE BE IT RESOLVED: That the State fund a City Clerk or City Administrator position for all cities at a salary not less than $1,500.00 per month.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

SECRETARY

RRF

**Motion made by John Jenewuk and seconded by Charles Riley**

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 1

A RESOLUTION: REQUEST THE HOLDING OF PUBLIC HEARINGS ON THE MOVE OF THE DISTRICT OFFICES OF THE BERING STRAITS R.E.A.A. SCHOOL DISTRICT TO UNALAKLEET.

WHEREAS, the public has not been adequately noticed of the move of the Bering Straits R.E.A.A. School District and its offices to Unalakleet, and

WHEREAS, the public has not been adequately allowed to publicly voice its views on the move, and

WHEREAS, the move of the offices and the Bering Straits R.E.A.A. School District could impair education of the students it is charged with in terms of quality of education.

NOW THEREFORE BE IT RESOLVED: That the NORTHWEST ALASKA MAYORS' CONFERENCE asks that Public Hearings, duly noticed, be held on the potential or occurring move of the offices and headquarters of the Bering Straits R.E.A.A. School District to Unalakleet.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

PRESIDENT

ATTEST:

RRF

SECRETARY

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

# CITY OF FAIRBANKS

ALASKA
99701

CHARLES M. GIBSON
CITY ATTORNEY

BRETT M. WOOD
DEPUTY CITY ATTORNEY

HERBERT P. KUSS
DEPUTY CITY ATTORNEY

MICHAEL P. McCONAHY
ASSISTANT CITY ATTORNEY

*Legal Department*
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

August 5, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 N. Franklin Street
Juneau, Alaska 99801

Dear Ginny:

I am taking this opportunity to write to you concerning several matters which I would thank you to transmit to the committee studying the revision of Title 29.

First, at a recent city council meeting, there was a matter on the agenda concerning the vacation of a certain street in the city which had come to the council with a recommendation from the Borough Planning and Zoning Commission that the vacation of the street be permitted. Because of the time constraints in Section 29.33.220 requiring action by the council within 30 days from the decision of the Commission in which to veto that decision, the council was required to act upon the matter with what they considered to be insufficient information to properly consider the proposal. As a result of this incident, the council reviewed the provisions of Section 29.33.220 and directed me to bring this to your attention for action by the Title 29 revision committee. The last two sentences of this Section (29.33.220) state:

> The assembly or council shall have 30 days from the decision in which to veto the board's decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

It was the feeling of the council that in matters as important as a vacation of a city street, it should require affirmative action, rather than silence, to constitute consent. With that in mind, I respectfully submit the following language, or some variation of it, in place of the last two sentences of the section as it is now written as follows:

> The assembly or council shall have 30 days from the date that the board decision is received by the assembly or council within which to consider the proposed vacation. If the decision of the assembly or council is not received by the board within the 30-day period, then the council or assembly shall be deemed to have vetoed the proposed vacation.

In this way, it would be much easier for the petitioners seeking the vacation to submit a new petition than it would be to have the council or assembly reverse the effect of its failure to act as is now the situation.

Mayor Wood has requested me to seek the committee's consideration of revising the applicable provisions of Title 29 so as to allow a home rule city to enact and implement certain tax incentive measures for the promotion of residential and industrial development within the municipality. As we read the present provisions of Chapter 53 of Title 29, Sections 10 through 350, and 400, there are certain required exemptions as set forth in 29.53.020(a) through (i), none of which would cover the type of tax incentives which the mayor has in mind. Also, the optional exemptions and exclusions in Section 29.53.025, as amended through 1979, are not broad enough to allow the type of residential and industrial tax incentives which he feels are necessary to stimulate economic activity within the community. Subsections (f) and (g) afford some relief in the residential area of concern, but again are not sufficiently broad in scope to permit the provisions that we wish to consider for such legislation. In addition, it is our opinion that the required and optional exemptions and exclusions set forth in Chapter 53 of Title 29 are exclusive, and as such, would not permit a home rule municipality to enact tax incentives for industry which we feel would be desirable. Rather than set forth a statutory scheme to cover a myriad of available or innovative incentives, it occurs to me that it might be more desirable to specifically exempt home rule cities from the provisions of Section 29.53.025, and rather than have the exemption by silence, to insert language in any revision thereof indicating home rule cities to be exempt from these provisions and subject only to constitutional provisions in the taxation of real property situated within the corporate limits.

I would appreciate it very much if you would transmit these suggestions to the committee.

With kindest personal regards, I am

Sincerely yours,

Mac Gibson

Charles M. Gibson
City Attorney

CMG:bc

**distribution of previous year assessed values in the state."**

As the rest of the section was not affected by the amendments, it is not set out.

**Editor's note.** — Section 1, ch. 13, SLA 1973, provides: "Notwithstanding the provisions of AS 29.53.020(f), for the 1973 assessment year the filing date for application for the exemption granted under AS 29.53.020(e) is extended to March 15, 1973."

**Strict construction.**

The courts must narrowly construe statutes granting tax exemptions. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Burden of showing eligibility for exemption.** — A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Exclusive use for nonprofit religious, etc., purposes must be shown.** In order to qualify for an exemption, the taxpayer must show not benefits, but exclusive use for nonprofit religious, charitable, cemetery, hospital or educational purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**When the property in question is used even in part by nonexempt parties for their private business purposes, there can be no exemption.** Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Actual use rather than owner's use should be analyzed in determining eligibility for an exemption.** Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Office space rented to doctors engaged in private practice.** — Office space in a building partially used exclusively for nonprofit hospital purposes, rented to doctors engaged in the private practice of medicine by a nonprofit charitable and religious corporation, was not exempt from taxation. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

While the use of office space by doctor-tenants in conducting their private practices does provide incidental benefits to the adjacent hospital, the office space is not used exclusively for hospital purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Sec. 29.53.025. Optional exemptions and exclusions. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments; and

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

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

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting;

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the

structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later. (§ 2 ch 118 SLA 1972; am § 2 ch 1 FSSLA 1973; am § 1 ch 33 SLA 1975; am § 1 ch 111 SLA 1976; am § 1 ch 262 SLA 1976; am § 1 ch 95 SLA 1977)

Effect of amendments. — The 1973 amendment, effective January 1, 1974, added the second sentence of subsection (a).

The 1975 amendment, effective July 1, 1976, added subsection (e).

The first 1976 amendment added paragraph (3) of subsection (c).

The second 1976 amendment, effective June 25, 1976, added paragraph (2)(D) of subsection (b).

The 1977 amendment added subsections (f) and (g).

Sec. 29.53.035. Farm or agricultural lands. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight per cent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

# NATIVE VILLAGE OF TYONEK, ALASKA

INCORPORATED
TYONEK, ALASKA 99682

MANAGEMENT OFFICE
1675 "C" STREET — ROOM 246
ANCHORAGE, ALASKA 99501



RECEIVED
NOV 3 1980


October 29, 1980

Mr. Bob Lohr
Rural Alaska Community
Action Program
P.O. Box 3-3908
Anchorage, Alaska 99501

Dear Bob:

I have just learned that you needed some input, from small communities, concerning the problems they are experencing, from Villages to Municapalities, We the people of Tyonek, are governed by the I.R.A. Council, we offer Municipal type services.

1. Road Maintance, with a Grant from Bureau of Indian Affairs.

2. Water System, from Public Health Services.

3. Waste Disposal, from Kenai Borough Etc.

Before, we got these Grants, we payed for our own services, What the problem.? We have governed our own people, since we were Incorporated in 1936. under the Indian Reorganization Act. then ANSCA came along, and everyone forgot about the I.R.A., something has to be done, because we are still active, but no land base to govern. We aren't considered as a municipilty, but yet in fact we are, I would recommend very highly that we could be reconized as a municipal government. yet we have the problems of Non-Natives, Historically we have excluded Non-Natives, based on what is called Rule No. 4. We do not discriminate, but we like to live by this rule, simply because it prevents outsiders from coming on our land to sell illegal things, and also because of this rule, we do not have any Bar's, or any controlling interests, we must remain under the I.R.A. Council, in order for us to survive. To become a Public Municipality would mean death to our Culture, and eventually to our land. We would like to share the States money, but we would'nt sell our people out for money.

Sincerely,

Donald Standifer, President
of The Native Village of Tyonek.

cc: Enclosure

TO WHOM IT MAY CONCERN:

We, are not yet ready to form a Municipal Government for reason's that there isn't enought Industry to create enought job's, to pay Taxe's. Light Bill's, Water Sewer, and Waste.

We, have a lot of elderly people and, some disable that would'nt be able to live on what little Welfare they get.

The problem's we have today, are mostly that, we are tied to a Borough of which we don't have any ties. All our Business are in Anchorage, Alaska. our mail, Grocie's, Hospital, all comes thru Anchorage, the only ties we have with Kenai, is the School.

We, cannot get any Grant's out of Community and Regional Affair's without going thru, the Kenai Borough, which mekes it hard for us as there is, so much Red Tape, and being a Small Village, we are always left out of Grants. Before Grants are approved to the Borough, its Citys already have their Grants written, they already know that certain Grants are being approved, as we dont know until, the monies are all spent. We are not kept up to date on any Grants, that comes to the Borough.

In 1978, a Grant of $100,000.00 was approved by the State Legislature to upgrade our Airstrip, we had to turn this grant down, because it had so much strings attached, Such as opening the Airstrip to the Public. To the Public is ok, if they would pay Fee's Etc. but everyone feels that since, they are Tax Payers they should have excess to the Airstrip, since they pay their taxes. It cost us thousands of dollars to maintain the Airstrip, Up grading, Light, and Power, Snow Removal, of which we use our own Equipment and Fuel, Pay our own men to do the necessary work. We recently used some funds from R.D.A. Rural Development Administration, and charged landing fees, although we spent all our monies as stated above, we had to argue with Aircraft Owners over landing fees, and we were accused of trying to shoot people Etc. Its not fair to us to spend all this money to keep up the Airport and not be able to charge landing, and Parking fees, we pay taxes to.

We get grants from the Bureau of Indian Affairs, such as Jonson O'Malley, Self-Determination Act, Title 4 Bilingual, and Cultural. All these Grants, are below living costs, and at times are supplemented by our own funds, just to get someone to work. These Grants are a lot of Red Tape, and takes time to get, making it difficult to get people interested. C.E.D.A. Programs are so Red Taped that one almost have to be living in Poverty, before they qualify. If this is a Training Program it should be just that not a Welfare Program.

I, feel that we should be left alone, and let us decide our own destiny, and if we want to go into Municiple Type Government, we should be able to do it, at our own pace. There is this big problem of Non-Indians coming in, and taking over something that, we have worked for all of our lives, an those before us. We have kept our Traditional and Culture, which is so important to us, all these years and are not about to throw that out for someone else to be fit by. Kenai, Alaska was a nice and beautiful Village once, but they made a mistake by letting the Whites in, today all are staying outside of the Municipal City.

TO WHOM IT MAY CONCERN:

This Village is the only one on the Cook Inlet with all Natives, and must be kept that way, if this Village loses then the State of Alaska loses one of its last Historic Area not only that, but the True Indian way of life Millions of Dollars was spent to keep it, that Millions of our own money, and times we must not let it go.

On the other hand, in time with control, we can form a Municipal type of Government, but only with local control, all the Grants and Monies would be worth nothing, if we lost control, and outsiders took over our Village.

Sincerely,

Emil McCord,
Village Administrator

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

To Members of the Title 29 Revision Committee; FROM:Terry Cook and Alakanuk City Council.
Recommended changes, wording, and questions:

USING TITLE 29 WORK DRAFT COPY:

page 48-line 14; define and spell out AS44.62.310

page 62-line 22; change(Four affirmative)to A majority number of

page 63-line 20; add (.) ,but does not change the term of the seat he was elected to.

page 66-line29; insert or between ", as"

page 67-line 20; add at the end of the sentence(;)of the city;

page 70-line 29; change (general) to regular

page 71-line 14,15; recommended to read: a copy of an annual audit if revenues or expenditures exceed $ or statement of annual income and expenditures;

page 71-line16; add(;)if taxes are assessed or levied;

page 72-line 10; should state by what reasons for "removal from office."

*page 73-line 15; Can a municipallity regulate private or co-operative utility if not owned by the municipality?

page 74-line 23; needs rewording as to how many affirmative votes are needed to adopt an emergency ordinance.

page 75-line 10; insert after the word "sold" ,distributed or made available to the public.

page 76-line 8; the limits should be raised

page 76-line 10; add after "cost" (.)or at no charge as determined by assembly or council.

page 77-line 6; add to read: elections by ordinance and

*page 78-line 5; what happens if there are 3 top candidates that are tied with less than a majority vote? Suggested wording: two or more

page 78-line 20; add at the end of the sentence(.)and authorize the results to be certified.

*page 78-line 24; should this read(more)less ?

page 79-line 19; add a new section: 29.30.105 PETITION EXEMPTION. The governing body may put a question on the ballot without a petition.

*page 83-line 9; Can "misconduct in office" be defined?

*page 85-line 6--14; if all members are recalled or there is not a quorum left, how can a special election be called for?

* denotes a question

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554


Recommended changes, wording, and questions:

page 90-line 13; add after word "contracts" or make agreements

page 95-line 16; change (duces tecum) to plain English!!!!

page 94-line 4,5; change (spread upon) to _____

page 97-line 11; change ($25,000) to $100,000

page 99-line 9; add after word "municipallity" if revenues or expenditures exceed $ _____

page 99-line 10; add after word "audit" if revenues or expenditures exceed $ _____ or if less than $ _____ a statement of annual income and expenditures.

page 109; Repeal sections 29.39.060(Sec.29.43.100), 29.39.070(Sec.29.43.10
and 29.39.080(Sec.29.43.110).

page 115; Sec.29.42.080 the regulations should be adopted by ordinance so that the public has a fair hearing in matters that can affect the

page 116-line 26; add after word "street" as long as it is not an easement across another's private property.

page 122-line 17; change ($500) to $5,000 in value.

# Ttatk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

RESOLUTION NO:

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE'S TITLE 29 REVISION COMMITTEE DECLARING A POLICY AND POSITION ON NATIVE VILLAGE AND TRADITIONAL TRIBAL GOVERNMENTS ENTERING INTO MUTUAL AND CO-OPERATIVE AGREEMENTS OVER GOVERNMENTAL AND JURISDICTIONAL MATTERS WITH THE STATE OF ALASKA

WHEREAS, THE LEGISLATURE HAS DETERMINED that there exists in the State several communities which have Native village and/or traditional tribal governments; and,

WHEREAS, THE LAW AND CUSTOMS OF THESE GOVERNMENTS include defined notions of democracy, liberty and the exercise of personal rights consistent with the State and Federal consitutions; and,

WHEREAS, THE PRESENT ECONOMIC BASE OF THE STATE is based on a non-renewable resource which holds the promise of short life, absent renewable economic diversification; and,

WHEREAS, STOCKS PRESENTLY OWNED BY SHAREHOLDERS OF ANCSA REGIONAL AND VILLAGE CORPORATIONS will be recalled and sold to the general public in the year 1991; and,

WHEREAS, BASED ON THE PAST HISTORY OF ALASKA'S ECONOMIC GROWTH PATTERN, it would not be unreasonable to project similiar economic impact occuring through the unwarranted exportation of job/employment opportunities and local dollars resulting from an outside invasion of private non-State interests in 1991; and,

WHEREAS, THE ANCSA REGIONAL AND VILLAGE CORPORATIONS by 1991 will be a substantial and sizable component of the State's economic base which will be seriously threatened by private non-State interests and entrepeneurships without the ability or accessibility for recognition and mutual and co-operative interaction by the State with Native village and traditional tribal government over jurisdictional and governmental matters.

NOW, THEREFORE, BE IT RESOLVED by:

THE POLICY AND POSITION ON NATIVE VILLAGE AND TRADITIONAL TRIBAL GOVERNMENTS ENTERING INTO

Mark Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

MUTUAL AND COOPERATIVE AGREEMENTS OVER JURISDICTIONAL AND GOVERNMENTAL MATTERS WITH THE STATE OF ALASKA WILL PROMOTE THE EFFICIENT AND APPROPRIATE DEVELOPMENT OF THE STATE RESOURCES AFTER A SHORT DURATION OF NON-RENEWABLE RESOURCE ECONOMIC ACTIVITY.

Trak Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

RESOLUTION NO:

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE'S TITLE 29 REVISION COMMITTEE DECLARING A POLICY AND POSITION ON THE 1979 LOCAL GOVERNMENT STUDY AND THE FINDING OF THE LOCAL GOVERNMENT SYMPOSIUM, HELD AUGUST 4-5, 1979, AS A CONSISTENT POLICY STATEMENT WHICH IDENTIFIES AND ESTABLISHES MAXIMUM LOCAL SELF-GOVERNMENT THROUGH FEDERAL AND STATE PROGRAM DECENTRALIZATION OF FUNDING AND UNIFICATION OF LOCAL EFFORTS FOR EFFECTIVE AND EFFICIENT UTILIZATION OF OPTIMIZED AND FUNCTIONALIZED COMMUNITY RESOURCE DEVELOPMENT AND THE ELIMINATION OF DISINCENTIVES AND BARRIERS WHICH DEPRIVE LOCAL NATIVE VILLAGES OF OPTIMAL AND FUNCTIONAL ASSURANCE OF THE BASIC COMMUNITY AND TRIBAL RIGHTS FOR LIMITED SOVEREIGNTY, SELF-GOVERNMENT, SELF-DETERMINATION AND SELF-SUFFICIENCY AND THE COOPERATIVE EFFORTS OF AND THE COORDINATION WITH OTHER ENTITIES OUTSIDE OF THE TRADITIONAL NATIVE VILLAGE AND COMMUNITY

WHEREAS, TITLE 29 OF THE ALASKA STATE STATUTES is urban-designed and needs to adapt governmental structures and processes to rural needs and conditions; and,

WHEREAS, THE ALASKA STATE CONSTITUTION provides for maximum local self-government and local participation, however, legislative provisions and actions appear to abridge the privileges and immunities of these constitutional provisions; and,

WHEREAS, DECENTRALIZATION OF SERVICE DELIVERY through intergovernmental cooperation is mandated through appropriate federal legislative and administrative provisions and actions with the intent of providing a more economical and efficient method of providing services, promoting participation on the community, not area, level, and establishing unification of local efforts for the optimal and functional assurance of maximum local self-government; and,

WHEREAS, THE URBAN ORIENTED MUNICIPAL GOVERNMENT STRUCTURES of Title 29 lack appropriate optimal and functional assurances of demographic characteristics integral within the systematic isolationism it promotes of Native Villages and Communities with respect to not only identifying geo-

Ttatk Saxman

City of Saxman
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graphic characteristics, but, also, political, economic, cultural and social isolationism; and,

WHEREAS, DECENTRALIZATION AND COORDINATION OF FEDERAL AND STATE PROGRAMS will not be optimized nor functionalized unless the State recognizes the need to provide recepticles for service delivery on the community, again not area, level through legislative provisions and actions for planning and zoning on the community, not area, wide basis through the maximized maintenance of local self-government, slef-determination and self-sufficiency on the local community level; and,

NOW, THEREFORE, BE IT RESOLVED by:

THE POLICY AND POSITION OF THE 1979 LOCAL GOVERNMENT STUDY AND THE FINDINGS OF THE LOCAL GOVERNMENT SYMPOSIUM, HELD AUGUST 4-5, 1979, DECLARES AND RECOGNIZES A CONSISTENT POLICY AND NEEDS STATEMENT WHICH IDENTIFIES AND ESTABLISHES MAXIMUM LOCAL SELF-GOVERNMENT THROUGH FEDERAL AND STATE PROGRAM DECENTRALIZATION OF FUNDING AND UNIFICATION OF LOCAL EFFORTS FOR THE EFFECTIVE AND EFFICIENT UTILIZATION OF OPTIMIZED AND FUNCTIONALIZED COMMUNITY RESOURCE DEVELOPMENT AND THE ELIMINATION OF DISINCENTIVES AND BARRIERS WHICH DEPRIVE THE LOCAL NATIVE VILLAGES OF OPTIMAL AND FUNCTIONAL ASSURANCE OF THE BASIC COMMUNITY AND TRIBAL RIGHTS FOR LIMITED SOVEREIGNTY, SELF-GOVERNMENT, SELF-DETERMINATION AND SELF-SUFFICIENCY AND THE COOPERATIVE EFFORTS OF AND THE COORDINATION WITH OTHER ENTITIES OUTSIDE OF THE NATIVE VILLAGE AND COMMUNITY.

# City of Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
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RESOLUTION NO:

A RESOLUTION OF THE TITLE 29 COMMITTEE FOR THE ALASKA MUNICIPAL LEAGUE 30th ANNUAL LOCAL GOVERNMENT CONFERENCE DECLARING A POLICY AND POSITION ON THE PROPOSED ALASKA STATE STATUTES, TITLE 29, MUNICIPAL GOVERNMENT, REVISIONS MUST REFLECT THE ABILITY, AND NOT INABILITY, OF LOCAL COMMUNITIES TO REACH AND MAINTAIN THE BASIC SOCIAL AND FOUNDATIONAL GOAL OF THE STATE OF ALASKA: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT, THROUGH DELIBERATE AND EQUITABLE STRENGTHENING OF THE ADMINISTRATIVE AND LEGISLATIVE POLICIES AND PROCEDURES AS CONTAINED AND EFFECTED BY THE ALASKA STATE STATUTES AND AS IMPLEMENTED BY AND PROVIDED THROUGH THE STATE OF ALASKA IN FEDERAL AND STATE PROGRAMS AND SERVICES PROVIDING TO RECIPIENT COMMUNITY AND AREA APPLICANTS IN A CURRENT AND DECENTRALIZED MANNER THEREBY ENHANCING AND ENCOURAGING THE REALIZATION OF SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT

WHEREAS: SUBSTANTIAL ECONOMIC AND SOCIAL HARDSHIP is predominant within the rural and suburban communities of the State; and,

WHEREAS: EFFECTIVE AND EFFICIENT PROVISIONS designed with deliberate and equitable strength will enhance and encourage the ability of rural and suburban communities to exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of municipal government subject to the Alaska State Constitution, yet not found in the present provisions of Alaska State Statutes, Title 29, Municipal Government, for the self-actualization of maximum local self-government; and,

WHEREAS: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT as an optimal and functional goal of the State of Alaska can only be reached and maintained through a current and decentralized administration of Federal and State programs and services concentrated at the local community level in order to provide the impetus through community participation and public/private financial lever-

City of Saxman
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aging to appropriately and efficiently combat substantial economic and social hardship and alienation; and,

WHEREAS: DOMINANT URBAN CENTERS WITHIN THE STATE by demonstrating their ability for reaching and maintaining maximum local self-government must support and continue to exemplify this goal by further enhancing and encouraging the proposed Alaska State Statutes, Title 29, Municipal Government, revisions to reflect this needed intent for the continued and consistent viability and longevity of the State of Alaska; and,

WHEREAS: THE EFFECTIVE MANAGEMENT IN AN INTERGOVERNMENTAL CONTEXT is one which excercises and enjoys the legal and political competence and institutional capacities of maximum local self- government and meshes these capacities with those being cooperatively managed or shared from the Federal side; and,

WHEREAS: MAXIMUM LOCAL SELF-GOVERNMENT STRATEGIES require an unprecedented level of intergovernmental interaction, which the various elements of government having specific responsibilities to discharge relative to local government and its constituencies cannot adroitly address the mutual problems inherent in the United States and the State of Alaska self-government approaches without optimal and functional assurance of broad based community participation.

NOW, THEREFORE, BE IT RESOLVED by the Title 29 Committee for the Alaska Municipal League 30th Annual Local Government Conference:

THE POLICY AND POSITION ON THE PROPOSED ALASKA STATE STATUTES, TITLE 29, MUNICIPAL GOVERNMENT, REVISIONS MUST REFLECT THE ABILITY, AND NOT INABILITY, OF LOCAL COMMUNITIES TO REACH AND MAINTAIN THE BASIC SOCIAL AND FOUNDATIONAL GOAL OF THE STATE OF ALASKA: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT, THROUGH DELIBERATE AND EQUITABLE STRENGTHENING OF THE ADMINISTRATIVE AND LEGISLATIVE POLICIES AND PROCEDURES AS CONTAINED AND EFFECTED BY THE ALASKA STATE STATUTES AND AS IMPLEMENTED BY AND PROVIDED THROUGH THE STATE OF ALASKA IN FEDERAL AND STATE PROGRAMS AND

Frank Saxman

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SERVICES PROVIDING TO RECIPIENT COMMUNITY AND AREA APPLICANTS IN A CURRENT AND DECENTRALIZED MANNER THEREBY ENHANCING AND ENCOURAGING THE REALIZATION OF SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF- GOVERNMENT.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

# CITY OF FAIRBANKS
ALASKA
99701

CHARLES M. GIBSON
CITY ATTORNEY

BRETT M. WOOD
DEPUTY CITY ATTORNEY

HERBERT P. KUSS
DEPUTY CITY ATTORNEY

MICHAEL P. McCONAHY
ASSISTANT CITY ATTORNEY




*Legal Department*
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

August 5, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 N. Franklin Street
Juneau, Alaska 99801

Dear Ginny:

I am taking this opportunity to write to you concerning several matters which I would thank you to transmit to the committee studying the revision of Title 29.

First, at a recent city council meeting, there was a matter on the agenda concerning the vacation of a certain street in the city which had come to the council with a recommendation from the Borough Planning and Zoning Commission that the vacation of the street be permitted. Because of the time constraints in Section 29.33.220 requiring action by the council within 30 days from the decision of the Commission in which to veto that decision, the council was required to act upon the matter with what they considered to be insufficient information to properly consider the proposal. As a result of this incident, the council reviewed the provisions of Section 29.33.220 and directed me to bring this to your attention for action by the Title 29 revision committee. The last two sentences of this Section (29.33.220) state:

> The assembly or council shall have 30 days from the decision in which to veto the board's decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

It was the feeling of the council that in matters as important as a vacation of a city street, it should require affirmative action, rather than silence, to constitute consent. With that in mind, I respectfully submit the following language, or some variation of it, in place of the last two sentences of the section as it is now written as follows:

> The assembly or council shall have 30 days from the date that the board decision is received by the assembly or council within which to consider the proposed vacation. If the decision of the assembly or council is not received by the board within the 30-day period, then the council or assembly shall be deemed to have vetoed the proposed vacation.

In this way, it would be much easier for the petitioners seeking the vacation to submit a new petition than it would be to have the council or assembly reverse the effect of its failure to act as is now the situation.

Mayor Wood has requested me to seek the committee's consideration of revising the applicable provisions of Title 29 so as to allow a home rule city to enact and implement certain tax incentive measures for the promotion of residential and industrial development within the municipality. As we read the present provisions of Chapter 53 of Title 29, Sections 10 through 350, and 400, there are certain required exemptions as set forth in 29.53.020(a) through (i), none of which would cover the type of tax incentives which the mayor has in mind. Also, the optional exemptions and exclusions in Section 29.53.025, as amended through 1979, are not broad enough to allow the type of residential and industrial tax incentives which he feels are necessary to stimulate economic activity within the community. Subsections (f) and (g) afford some relief in the residential area of concern, but again are not sufficiently broad in scope to permit the provisions that we wish to consider for such legislation. In addition, it is our opinion that the required and optional exemptions and exclusions set forth in Chapter 53 of Title 29 are exclusive, and as such, would not permit a home rule municipality to enact tax incentives for industry which we feel would be desirable. Rather than set forth a statutory scheme to cover a myriad of available or innovative incentives, it occurs to me that it might be more desirable to specifically exempt home rule cities from the provisions of Section 29.53.025, and rather than have the exemption by silence, to insert language in any revision thereof indicating home rule cities to be exempt from these provisions and subject only to constitutional provisions in the taxation of real property situated within the corporate limits.

I would appreciate it very much if you would transmit these suggestions to the committee.

With kindest personal regards, I am

Sincerely yours,

Mac Gibson

Charles M. Gibson
City Attorney

CMG:bc

distribution of previous year assessed values in the state."

As the rest of the section was not affected by the amendments, it is not set

Editor's note. — Section 1, ch. 13, SLA 1973, provides: "Notwithstanding the provisions of AS 29.53.020(f), for the 1973 assessment year the filing date for application for the exemption granted under AS 29.53.020(e) is extended to March 15, 1973."

**Strict construction.**

The courts must narrowly construe statutes granting tax exemptions. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Burden of showing eligibility for exemption.** — A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Exclusive use for nonprofit religious, etc., purposes must be shown.** In order to qualify for an exemption, the taxpayer must show not benefits, but exclusive use for nonprofit religious, charitable, cemetery, hospital or educational purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

When the property in question is used even in part by nonexempt parties for their private business purposes, there can be no exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Actual use rather than owner's use should be analyzed** in determining eligibility for an exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Office space rented to doctors engaged in private practice.** — Office space in a building partially used exclusively for nonprofit hospital purposes, rented to doctors engaged in the private practice of medicine by a nonprofit charitable and religious corporation, was not exempt from taxation. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

While the use of office space by doctor-tenants in conducting their private practices does provide incidental benefits to the adjacent hospital, the office space is not used exclusively for hospital purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Sec. 29.53.025. Optional exemptions and exclusions.** (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

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

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting;

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the

structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later. (§ 2 ch 118 SLA 1972; am § 2 ch 1 FSSLA 1973; am § 1 ch 33 SLA 1975; am § 1 ch 111 SLA 1976; am § 1 ch 262 SLA 1976; am § 1 ch 95 SLA 1977)

**Effect of amendments.** — The 1973 amendment, effective January 1, 1974, added the second sentence of subsection (a).

The 1975 amendment, effective July 1, 1976, added subsection (e).

The first 1976 amendment added paragraph (3) of subsection (e).

The second 1976 amendment, effective June 25, 1976, added paragraph (2)(D) of subsection (b).

The 1977 amendment added subsections (f) and (g).

**Sec. 29.53.035. Farm or agricultural lands.** (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight per cent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

NATIVE VILLAGE OF TYONEK, ALASKA
INCORPORATED
TYONEK, ALASKA 99682
MANAGEMENT OFFICE
1675 "C" STREET — ROOM 246
ANCHORAGE, ALASKA 99501

RECEIVED
NOV 3 1980

October 29, 1980

Mr. Bob Lohr
Rural Alaska Community
Action Program
P.O. Box 3-3908
Anchorage, Alaska 99501

Dear Bob:

I have just learned that you needed some input, from small communities, concerning the problems they are experencing, from Villages to Municapalities, We the people of Tyonek, are governed by the I.R.A. Council, we offer Municipal type services.

1. Road Maintance, with a Grant from Bureau of Indian Affairs.

2. Water System, from Public Health Services.

3. Waste Disposal, from Kenai Borough Etc.

Before, we got these Grants, we payed for our own services, What the problem.? We have governed our own people, since we were Incorporated in 1936. under the Indian Reorganization Act. then ANSCA came along, and everyone forgot about the I.R.A., something has to be done, because we are still active, but no land base to govern. We aren't considered as a municipilty, but yet in fact we are, I would recommend very highly that we could be reconized as a municipal government. yet we have the problems of Non-Natives, Historically we have excluded Non-Natives, based on what is called Rule No. 4. We do not discriminate, but we like to live by this rule, simply because it prevents outsiders from coming on our land to sell illegal things, and also because of this rule, we do not have any Bar's, or any controlling interests, we must remain under the I.R.A. Council, in order for us to survive. To become a Public Municipality would mean death to our Culture, and eventually to our land. We would like to share the States money, but we would'nt sell our people out for money.

Sincerely,

Donald Standifer, President
of The Native Village of Tyonek.

cc: Enclosure

TO WHOM IT MAY CONCERN:

We, are not yet ready to form a Municipal Government for reason's that there isn't enought Industry to create enought job's, to pay Taxe's. Light Bill's, Water Sewer, and Waste.

We, have a lot of elderly people and, some disable that would'nt be able to live on what little Welfare they get.

The problem's we have today, are mostly that, we are tied to a Borough of which we don't have any ties. All our Business are in Anchorage, Alaska. our mail, Grocie's, Hospital, all comes thru Anchorage, the only ties we have with Kenai, is the School.

We, cannot get any Grant's out of Community and Regional Affair's without going thru, the Kenai Borough, which mekes it hard for us as there is, so much Red Tape, and being a Small Village, we are always left out of Grants. Before Grants are approved to the Borough, its Citys already have their Grants written, they already know that certain Grants are being approved, as we dont know until, the monies are all spent. We are not kept up to date on any Grants, that comes to the Borough.

In 1978, a Grant of $100,000.00 was approved by the State Legislature to upgrade our Airstrip, we had to turn this grant down, because it had so much strings attached, Such as opening the Airstrip to the Public. To the Public is ok, if they would pay Fee's Etc. but everyone feels that since, they are Tax Payers they should have excess to the Airstrip, since they pay their taxes. It cost us thousands of dollars to maintain the Airstrip, Up grading, Light, and Power, Snow Removal, of which we use our own Equipment and Fuel, Pay our own men to do the necessary work. We recently used some funds from R.D.A. Rural Development Administration, and charged landing fees, although we spent all our monies as stated above, we had to argue with Aircraft Owners over landing fees, and we were accused of trying to shoot people Etc. Its not fair to us to spend all this money to keep up the Airport and not be able to charge landing, and Parking fees, we pay taxes to.

We get grants from the Bureau of Indian Affairs, such as Jonson O'Malley, Self-Determination Act, Title 4 Bilingual, and Cultural. All these Grants, are below living costs, and at times are supplemented by our own funds, just to get someone to work. These Grants are a lot of Red Tape, and takes time to get, making it difficult to get people interested. C.E.D.A. Programs are so Red Taped that one almost have to be living in Poverty, before they qualify. If this is a Training Program it should be just that not a Welfare Program.

I, feel that we should be left alone, and let us decide our own destiny, and if we want to go into Municiple Type Government, we should be able to do it, at our own pace. There is this big problem of Non-Indians coming in, and taking over something that, we have worked for all of our lives, an those before us. We have kept our Traditional and Culture, which is so important to us, all these years and are not about to throw that out for someone else to benefit by. Kenai, Alaska was a nice and beautiful Village once, but they made a mistake by letting the Whites in, today all are staying outside of the Municipal City.

TO WHOM IT MAY CONCERN:

This Village is the only one on the Cook Inlet with all Natives, and must be kept that way, if this Village loses then the State of Alaska loses one of its last Historic Area not only that, but the True Indian way of life Millions of Dollars was spent to keep it, that Millions of our own money, and times we must not let it go.

On the other hand, in time with control, we can form a Municipal type of Government, but only with local control, all the Grants and Monies would be worth nothing, if we lost control, and outsiders took over our Village.

Sincerely,

Emil McCord,
Village Administrator

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

To Members of the Title 29 Revision Committee; FROM:Terry Cook and Alakanuk City Council.
Recommended changes, wording, and questions:

USING TITLE 29 WORK DRAFT COPY:

page 48-line 14; define and spell out AS44.62.310

page 62-line 22; change(Four affirmative)to A majority number of

page 63-line 20; add (.) ,but does not change the term of the seat he was elected to.

page 66-line29; insert or between ", as"

page 67-line 20; add at the end of the sentence(;)of the city;

page 70-line 29; change (general) to regular

page 71-line 14,15; recommended to read: a copy of an annual audit if revenues or expenditures exceed $ or statement of annual income and expenditures;

page 71-line16; add(;)if taxes are assessed or levied;

page 72-line 10; should state by what reasons for "removal from office."

*page 73-line 15; Can a municipality regulate private or Co-operative utility if not owned by the municipality?

page 74-line 23; needs rewording as to how many affirmative votes are needed to adopt an emergency ordinance.

page 75-line 10; insert after the word "sold" ,distributed or made available to the public.

page 76-line 8; the limits should be raised

page 76-line 10; add after "cost" (.)or at no charge as determined by assembly or council.

page 77-line 6; add to read: elections by ordinance and

*page 78-line 5; what happens if there are 3 top candidates that are tied with less than a majority vote? Suggested wording: two or more

page 78-line 20; add at the end of the sentence(.)and authorize the results to be certified.

*page 78-line 24; should this read(move)less ?

page 79-line 19; add a new section: 29.30.105 PETITION EXEMPTION. The governing body may put a question on the ballot without a petition.

*page 83-line 9; Can "misconduct in office" be defined?

*page 85-line 6--14; if all members are recalled or there is not a quorum left, how can a special election be called for?

*denotes a question

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554


Recommended changes, wording, and questions:

page 90-line 13; add after word "contracts" or make agreements

page 95-line 16; change (duces tecum) to plain English!!!!

page 94-line 4,5; change (spread upon) to _____

page 97-line 11; change ($25,000) to $100,000

page 99-line 9; add after word "municipallity" if revenues or expenditures exceed $ _____

page 99-line 10; add after word "audit" if revenues or expenditures exceed $ _____ or if less than $ _____ a statement of annual income and expenditures.

page 109; Repeal sections 29.39.060(Sec.29.43.100), 29.39.070(Sec.29.43.105 and 29.39.080(Sec.29.43.110).

page 115; Sec.29.42.030 the regulations should be adopted by ordinance so that the public has a fair hearing in matters that can affect them

page 116-line 26; add after word "street" as long as it is not an easement across another's private property.

page 122-line 17; change ($500) to $5,000 in value.

CHAPTER 45. MUNICIPAL TAXATION

(Chapter 53. MUNICIPAL ASSESSMENT AND TAXATION

Article 1. MUNICIPAL PROPERTY TAX

Sec. 29.45.010. (Sec. 29.53.010.) GENERAL PROPERTY TAX. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter.

Sec. 29.45.020. (Sec. 29.73.070) TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

| | |
|---|---|
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE (AS 14.17) | $ |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100) | $ |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE (AS 29.88) | $ |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89) | $ |
| TOTAL AID | $ |

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) If there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 (AS 29.88) and state aid for miscellaneous municipal services under AS 29.62 (AS 29.89). The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;
(2) household furniture of the head of a family or a household [not exceeding $500 in value];
(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;
(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;
(5) money on deposit;
(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.
(7) real property to the extent and subject to the conditions provided in (j) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization.
(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;
(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;
(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or educational groups [for classroom space]. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) * check (2)

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560-44.62.570.

(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under sec. 25(a) of this chapter.

(h) Except as provided in (g) of this section, nothing in (e)-(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in sec. 25 of this chapter.

(i) In (e)-(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Formerly: AS 29.53.020

Comments: Based on Alaska Association of Assessing Officers (AAAO) recommendation:

(1) Para. (a)(2): deletes $500 limit on exemption of household furniture;

(2) Para. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

(3) Para. (f): clarifies filing of a claim for exemption is a requirement for only the senior citizen exemption under 'e), and not for the other exemptions addressed in the section.

Sec. 29.45.040. (Sec. 29.73.060.) PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. Optional exemptions and exclusions.

(a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) All or any portion of the household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use. "Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles, and the like [the household furniture over $500 in value and the effects of the head of a family or a householder]; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

Formerly: AS 29.53.025

Comments: modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects. Based upon recommendation of AAAO since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.060. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is exempt [fixed at $200 for each 20 acres or fraction of 20 acres]. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.

Formerly: AS 29.53.030

Comments: Deletes $200 valuation figure. AAAO recommends deletion since administrative costs exceed taxes to be realized in carrying property at $200 figure on roll.

Sec. 29.45.070. (Sec. 29.53.035.) FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other

nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of h yearly gross income from the farm use land. The provisions of this sectio do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owne

wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. (Sec. 29.53.040.) MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. (Sec. 29.53.045.) TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. Tax limitations.

(a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaires or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner or community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Formerly: AS 29.53.050

Comments: Technical change requested by AAAO to conform with provisions of AS 29.53.045 (SLA 80)

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Sec. 29.45.110. (Sec. 29.53.055.) NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. Full and true value.

(a) The assessor shall value [assess] property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections 60 [30], 70 [35] and 240 [160] of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Formerly: AS 29.53.060

Comments: Requested by AAAO

Sec. 29.53.130. (Sec. 29.53.070.) RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. (Sec. 29.53.080.) INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request furnish to the assessor or his agent every facility and assistance for the

purposes of the investigation. If refused entry, the assessor may seek a court order to compel entry.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.

Sec. 29.45.150. (Sec. 29.53.090.) STATEMENT. A person who fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a misdemeanor. Upon conviction, he is punishable by a fine of not more than $500, or by imprisonment for not more than 30 days, or by both, together with costs of prosecution.

Sec. 29.45.160. (Sec. 29.53.095.) REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. (Sec. 29.53.100.) ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the

name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. Assessment notice.

(a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest. [and the dates when the board of equalization will sit.]

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Formerly: AS 29.53.110

Deletes requirement that assessor include in the assessment notice the date the board of equalization will meet since many times assessors at that time do not know the dates at the time the notices are mailed. Based on the recommendation of AAAO.

Sec. 29.45.190. (Sec. 29.53.120.) CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. (Sec. 29.53.130.) APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

a notice of intent, submit to the assessor a written appeal specifying the grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

Sec. 29.45.210. Board of Equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, however, may delegate this authority to one or more boards appointed by it for that purpose. An appointed board may be composed of not less than three (3) persons, who may be members of the assembly, private individuals, or a combination thereof. [The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business.] The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance establish the qualifications for membership and adopt rules of conduct of the board.

Formerly: AS 29.53.135

Comments: Change would clarify authority to establish boards of equalization composed of other than assembly members and by ordinance to establish qualifications. Deletion required to allow appointment of boards of three members or more which number may be less than number required for quorum of assembly.

Sec. 29.45.220. Hearing.

(a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed and [or] proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1 except as to supplementary assessments.

(f) [an] The appellant and the assessor may appeal the board's action to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on and limited to the record established at the hearing before the board of equalization. [for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial].

Formerly: AS 29.53.140

Comments: (1) Para. (c): Based on recommendation of AAAO, substitutes and for or to assure must set forth factual grounds in written appeal and prove at hearing;

(2) para. (e): Based on recommendation of AAAO, clarifies that there may be further proceedings after June 1 in event there are supplementary assessments per former section 29.53.150;

(3) para. (f): deletes provisions regarding trial de novo and jury trial and limits scope of review to substantial evidence rule and clarifies confusion created by Wineqardner v. Greater Anchorage Area Borough (534 P.2d 541)

Sec. 29.45.230. Supplementary assessment rolls. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. Any supplementary roll must be finalized and certified on or before September 1 of the assessment year.

Formerly: AS 29.53.150

Comments: Recommended by AAAO. State assessor requires for his purposes all proceedings to be completed not later than September 1, including any supplemental assessments.

Sec. 29.45.240. (Sec. 29.53.160.) TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

procedures, restrictions and conditions of assessing or reassessing proper and of remitting, refunding or forgiving taxes.

**(e)** In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law.

Sec. 29.45.250. (Sec. 29.53.170.) TAX LEVY AND RATE. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of general ordinances, but the rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

**(b)** The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Sec. 29.45.260. (Sec. 29.53.180.) RATES OF PENALTY AND INTEREST. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 10 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments and the first half is not paid when due, the entire tax becomes delinquent and penalty and interest accrue as follows:

**(1)** if the first half is paid when due, the second half is payable on the due date fixed by the assembly for the second half and if not paid is delinquent after that date;

**(2)** a penalty not to exceed eight percent shall be added to all taxes delinquent until the due date fixed for payment of the second half, and interest at the rate of eight percent a year shall be charged on

the whole of the unpaid taxes, not including penalty, from due date until paid in full;

(3) after the due date for the payment of the second half, a total penalty of not more than 10 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalties, from due date until date paid in full.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

(c) If the assembly charges interest on property taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. (Sec. 29.53.200.) VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. (Sec. 29.53.210.) TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

(b) Real property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. (Sec. 29.53.220.) ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide

the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale.

Sec. 29.45.320. (Sec. 29.53.230.) REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

(b) If the tax on property described in Sec. 40 of this chapter or on a leasehold interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. (Sec. 29.53.240.) FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certifie copy of the foreclosure list for the previous year's delinquent taxes in th superior court for judgment;

(2) publish the foreclosure list for four consecutive week in a newspaper of general circulation distributed within the borough or, i there is no newspaper of general circulation distributed within the boroug post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appe on the list a notice advising of the foreclosure proceeding in which a

petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspection at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. (Sec. 29.53.250.) CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. (Sec. 29.53.260.) LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. (Sec. 29.53.270.) GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded

against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeal as provided in AS 29.33.130(e).

Sec. 29.45.370. (Sec. 29.53.280.) ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. (Sec. 29.53.290.) JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. (Sec. 29.53.300.) TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complain and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. (Sec. 29.53.310.) REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year.

During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

(b) A person holding a mortgage or other lien of record covering a part only of a parcel of real property included in the judgment and decree of foreclosure may redeem that part by paying the proportionate amount applicable under the judgment and decree.

Sec. 29.45.410. (Sec. 29.53.320.) EFFECT. Receipt of redemption money by the clerk releases all claims of the borough to the property. The clerk shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk shall file the certificate with the recorder and collect the recording fee from the person redeeming at the time of redemption. The court clerk shall file the certificate as part of the judgment roll.

Sec. 29.45.420. (Sec. 29.53.330.) ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. (Sec. 29.53.340.) POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. Expiration.

(a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000 [$10,000], to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Formerly: AS 29.53.350

Comments: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgment of foreclosure.

Sec. 29.45.450. (Sec. 29.53.360.) DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid

borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

(b) Conveyance gives the borough or the city clear title except for prior recorded liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

(d) No deed is invalid for irregularities, omissions or defects, unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner is forever barred.

Sec. 29.45.460. (Sec. 29.53.370.) DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist

LA-LT20 ordinance shall contain the information required in (a) of this section

(c) The clerk shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the property owner at the last address of record.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. (Sec. 29.53.375.) REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale, including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350(a) of this chapter.

(b) After adoption of an ordinance providing for the retention of a parcel of tax-foreclosed property by the municipality for a public purpose, the right of the former record owner to repurchase the property ceases.

Sec. 29.45.480. (Sec. 29.53.380.) PROCEEDS OF TAX SALE. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and

the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under Sec. 350(a) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.490. (Sec. 29.53.385.) PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

LA-L 20

Sec. 29.45.510. (Sec. 29.53.390.) REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. (Sec. 29.53.400.) POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.540. (Sec. 29.53.410.) LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

Sec. 29.45.570. (Sec. 29.53.415.) SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales or

rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

Sec. 29.45.590. (Sec. 29.53.420.) REFERENDUM, ADOPTION AND MODIFICATION. (a) The assembly shall hold a referendum vote on the question of enacting a sales tax or increasing the rate of levy of sales taxes. Borough sales tax propositions may be presented only once in any 12-month period. A sales tax proposition may be submitted to the voters at a regular or special election or at a general election of the state.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. (Sec. 29.53.440.) POWER OF LEVY. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs.

Sec. 29.45.620. (Sec. 29.53.450.) POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. (Sec. 29.53.460.) COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
P. O. BOX 7300
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

November 4, 1980

John Messenger, Esq.
Preston, Thorgrimson, Ellis
and Holman
420 L Street, Suite 404
Anchorage, Alaska 99501

Re: Title 29 Review - Proposed Revisions to Chapter 53 "Municipal Assessment and Taxation"

Dear John:

In furtherance of our discussion this date, please find enclosed herewith the following:

(1) Draft of proposed revisions to existing chapter 53 (Assessments). Comments to each section indicate the purpose of each proposed change.

(2) Copy of mark-up of chapter 53 prepared by the Alaska Association of Assessing Officers.

(3) Tamara Cook's rewrite under date October 2, 1980, of the required exemptions provisions of existing section 29.53.020.

I would appreciate any observations or comments you may have regarding these proposed or other amendments to chapter 53.

As we also discussed, the major remaining area which I intend to address is the area relating to corrections, cancellations and refund of taxes which I believe will solve many problems currently confronting assessors and administrators of the tax provisions.

Yours very truly,

Russell W. Walker
Municipal Attorney

Enclosures

Sec. 29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a household [not exceeding $500 in value];

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(7) real property to the extent and subject to the conditions provided in (j) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization.

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or educational groups [for classroom space]. <u>If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space</u>.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560-44.62.570.

(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under sec. 25(a) of this chapter.

(h) Except as provided in (g) of this section, nothing in (e)-(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in sec. 25 of this chapter.

(i) In (e)-(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Formerly: AS 29.53.020

Comments: Based on Alaska Association of Assessing Officers (AAAO) recommendation:

(1) Para. (a)(2): deletes $500 limit on exemption of household furniture;

(2) Para. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

(3) Para. (f): clarifies filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section.

Sec. 29.45.050. Optional exemptions and exclusions.

(a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) All or any portion of the household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use. "Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles, and the like [the household furniture over $500 in value and the effects of the head of a family or a householder]; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

Formerly: AS 29.53.025

Comments: modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects. Based upon recommendation of AAAO since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.060. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is exempt [fixed at $200 for each 20 acres or fraction of 20 acres]. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.

Formerly: AS 29.53.030

Comments: Deletes $200 valuation figure. AAAO recommends deletion since administrative costs exceed taxes to be realized in carrying property at $200 figure on roll.

Sec. 29.45.100. Tax limitations.

(a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaires or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner or community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Formerly: AS 29.53.050

Comments: Technical change requested by AAAO to conform with provisions of AS 29.53.045 (SLA 80)

Sec. 29.45.120. Full and true value.

(a) The assessor shall value [assess] property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections 60 [30], 70 [35] and 240 [160] of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Formerly: AS 29.53.060

Comments: Requested by AAAO

Sec. 29.45.180. Assessment notice.

(a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, [and the dates when the board of equalization will sit.]

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Formerly: AS 29.53.110

Deletes requirement that assessor include in the assessment notice the date the board of equalization will meet since many times assessors at that time do not know the dates at the time the notices are mailed. Based on the recommendation of AAAO.

Sec. 29.45.210. Board of Equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, however, may delegate this authority to one or more boards appointed by it for that purpose. An appointed board may be composed of not less than three (3) persons, who may be members of the assembly, private individuals, or a combination thereof. [The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business.] The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance establish the qualifications for membership and adopt rules of conduct of the board.

Formerly: AS 29.53.135

Comments: Change would clarify authority to establish boards of equalization composed of other than assembly members and by ordinance to establish qualifications. Deletion required to allow appointment of boards of three members or more which number may be less than number required for quorum of assembly.

Sec. 29.45.220. Hearing.

(a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed and [or] proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1 except as to supplementary assessments.

(f) [an] The appellant and the assessor may appeal the board's action to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on and limited to the record established at the hearing before the board of equalization. [for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial].

Formerly: AS 29.53.140

Comments:

(1) Para. (c): Based on recommendation of AAAO, substitutes and for or to assure must set forth factual grounds in written appeal and prove at hearing;

(2) para. (e): Based on recommendation of AAAO, clarifies that there may be further proceedings after June 1 in event there are supplementary assessments per former section 29.53.1

(3) para. (f): deletes provisions regarding trial de novo and jury trial and limits scope of review to substantial evidence rule and clarifies confusion created by Winegardner v. Greater Anchorage Area Borough (534 P.2d 541)

Sec. 29.45.230. Supplementary assessment rolls. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. Any supplementary roll must be finalized and certified on or before September 1 of the assessment year.

Formerly: AS 29.53.150

Comments: Recommended by AAAO. State assessor requires for his purposes all proceedings to be completed not later than September 1, including any supplemental assessments.

Sec. 29.45.440. Expiration.

(a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000 [$10,000], to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Formerly: AS 29.53.350

Comments: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgment of foreclosure.

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
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KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

November 4, 1980

State of Alaska
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Attn: Tamara Cook

Re: Title 29 Review - Inclusion of Harbors and Marinas under Extraterritorial Jurisdiction

Dear Tamara:

Please find enclosed a proposed amendment to existing Section 29.48.037 [Extraterritorial Jurisdiction] (new 29.33.020) to clarify the authority of municipalities to provide harbors and marinas outside their boundaries.

As we have mentioned, the City of Ketchikan has for many years leased from the State of Alaska, and operates and regulates, several small but important boat harbors and marinas outside the boundaries of the City.

Yours very truly,

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

cc: City Manager
Ted Berns, Esq.
Lee Sharp, Esq.
Allen Tesche, Esq.
Jim Nordale, Esq.
Ginny Chitwood

Sec. 29.33.020. Extraterritorial jurisdiction.

(a) A municipality may provide parks, roads, trails, playgrounds, cemeteries, harbors, marinas, and airports outside its boundaries, subject to AS 29.33.010, and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Formerly: As 29.48.037

Comments: Expands existing law to include harbors and marinas as facilities a municipality may acquire, operate and regulate outside its boundaries.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

November 7, 1980

Timothy E. Troll
City Manager
City of St. Mary's
P.O. Box 163
St. Mary's, Alaska 99658

Dear Mr. Troll:

I have submitted copies of your letter to members of the Title 29 Policy Advisory Group so that they will be aware of your concern over AS 29.48.260. Your other comments which were originally sent to the Department of Community and Regional Affairs have been made available to the Title 29 Policy Advisory Group as well. Please send any additional comments which you have to me and I will see that members of the Policy Group receive copies.

I talked by phone with Mr. James N. Reeves on November 5, 1980. He indicated that he would like to address the Policy Group at the next meeting they hold in Anchorage. I will inform him of the meeting time and place as soon as it is set. Time is made available during meetings of the Policy Group to any person who wishes to address the group, so perhaps you would like to attend a meeting as well. I expect that the Policy Group will decide to meet again early in December and I will inform the group of your desire that the meeting be held in Anchorage.

Sincerely,

Tamara Brandt Cook

Tamara Brandt Cook
Legislative Counsel

TBC:maf

cc: Title 29 Policy Advisory Group
James N. Reeves

# City of St. Mary's

P.O. Box 163
ST. MARY'S, ALASKA 99658

October 23, 1980

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Ms. Cook:

I would like to request that discussion of A.S. 29.48.260 be placed on the agenda for the first meeting of the Title 29 Policy Advisory Group in December and that myself and James N. Reeves be permitted to make a presentation on this provision. Presently Mr. Reeves and I are working on legal problems related to property in St. Mary's under a Community Legal Assistance Grant from The Department of Community and Regional Affairs. The first project we have undertaken under the grant is an analysis of 29.48.260 and changes that should be made for the benefit of rural communities. 29.48.260 is a very unmanageable statute for this and I suspect most other rural communities. I would consider the work of the Policy Advisory Group successful if it can effect a workable change in this provision.

Hopefully, the meeting will be held in either Anchorage or Bethel as the City cannot afford to send me much further.

Sincerely,

CITY OF ST. MARY'S

Timothy E. Troll
City Manager

cc. James N. Reeves
FAULKNER, BANFIELD, DOOGAN & HOLMES
Suite 510, 425 G. St.
Anchorage, Alaska 99501

P.S. I have also sent along copies of my other comments which I sent to Community & Regional Affairs. I never received acknowledgement of their receipt by the Committee

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

Sec. 29.15.080. (Sec. 29.13.080.) CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter or by initiative referendum as provided in AS 29.30.090-29.30.180 (AS 29.28.060-29.28.110), except that no amendment shall be effective unless ratified by the voters.

Article 2. HOME RULE LIMITATIONS

Sec. 29.15.110. (Sec. 29.13.100.) LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 (29.18.140) Borough Transition

(2) AS 29.12.010 (29.73.050) Municipal Name Change

(3) AS 29.12.040 (29.68.010) Annexation and Exclusion

(4) AS 29.12.080-160 (29.68.030-29.68.110) Merger and Consolidation

(5) AS 29.12.420-29.12.500 (29.68.500-29.68.580) Dissolution

(6) AS 29.15.080 (29.13.080) Charter Amendment

(7) AS 29.24.010 (29.23.555) Conflict of Interest

(8) AS 29.24.020 (29.23.580) Meetings Public

(9) [Effective until January 1, 1981] AS 29.23.020-29.23.050 Borough Assembly Representation

[Effective January 1, 1981 AS 29.24.060; 29.24.080-29.24.140 (29.23.021; 29.23.025-29.23.050) Borough assembly composition and Apportionment; Borough Assembly Members

(10) AS 29.24.150 [29.23.060(c)] Explusion of Borough Assemblymen

(11) AS 29.24.200 [29.23.130(f), Removal of Borough Mayor from Office

(12) AS 29.24.290 [29.23.210(b)] Explulsion of City Councilman from Office

(13) AS 29.24.340[a] (29.23.250[a]) Election and Term of Mayor

(14) AS 29.24.350 (29.23.255) Removal of Mayor from Office

(15) AS 29.24.680 (29.23.540) Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 (29.23.560) Municipal Reports

(17) AS 29.27.010[a][12] (29.48.130[a][12]) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 (29.48.180) Codification

(19) AS 29.30.010, 29.30.030[b]-29.30.040 (29.28.010, 29.28.020[b]-29.28.030 Municipal Elections

(20) AS 29.30.060 [29.28.050(f)] Expulsion, Removal from Office

(21) AS 29.30.210-29.30.330 (29.28.130-29.28.250) Recall

(22) AS 29.33.020 (29.48.037) Extraterritorial jurisdiction

(23) AS 29.33.030 (29.73.020) Eminent Domain

(24) AS 29.33.080 (29.48.033) Garbage and Solid Waste Services

(25) AS 29.33.090[b] (29.48.035[b]) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090[c] (29.48.035[c]) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100-29.33.160 (29.48.040-29.48.100) Utilities

(28) AS 29.33.220 (29.48.210) Expenditure of Borough Revenue

(29) AS 29.33.230 (29.48.220) Post Audit

(30) AS 29.36.010[b] (29.33.010[b]) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020[a] (29.33.050, 29.41.010[d], 14.12.020[a]) Responsibility for education on Military Reservations

(32) AS 29.36.130[c] (29.33.290[c]) Acquisition of Additional Areawide Powers

(33) AS 29.39.020-29.39.060 (29.43.020-29.43.040) Powers of Cities Outside Boroughs

(34) AS 29.42.040[d] (29.33.090[d]) Zoning of State Land for Homesite Entry

(35) AS 29.42.080[b] (29.33.150[b]) Applicability of Local Platting Regulations to State Land in a Municipality

(36) AS 29.45.010-29.45.530 (29.53.010-53.400) Borough and City Property Taxes

(37) AS 29.45.020 [AS 29.73.060(070)] Taxpayer Notice

(38) AS 29.45.580[d] (29.53.415[d]) Interest on Sales Tax

(39) AS 29.48.090 (29.63.065) Exemption from Special Assessment

(40) AS 29.51.420-29.51.430 (29.58.345-29.58.350) Bonded Debt for School Construction

(41) AS 29.51.210[b] (29.58.180[b]) Security for Bonds

(42) AS 29.51.390 (29.58.315) Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. (29.88) Municipal Tax Resource Equalization

(44) AS 29.62. (29.89) State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 (29.73.030) Adverse Possession

(46) AS 29.71.020 (29.73.040) Taxation of Municipalities

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Sec. 29.45.130. (Sec. 29.53.070.) RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. (Sec. 29.53.080.) INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the

Ask Tana to make available to Committee a/

CITY OF KODIAK
ALASKA

October 21, 1980

Senator Arliss Sturgulewski
Alaska State Senate
2957 Sheldon Jackson St.
Anchorage, AK 99504

Dear Senator Sturgulewski:

I am writing to you in your capacity as a member of the policy advisory group for the rewrite of Title 29. In that regard, several weeks previous the Kodiak City Council directed me to determine the level of interest among the home rule communities located within second class boroughs toward addressing the dual responsibilities of those governments. I have enclosed for your review a copy of the letter received back from the City of Palmer voicing their support for a coalition at the Alaska Municipal League to address these problem areas.

I understand that in your capacity on this advisory group board your input would be balanced by those representatives of boroughs who are also on the panel. However, your background in local government management provides a knowledge of the parameters of the problem we are trying to address.

As Mr. Curtis, Manager of Palmer, indicates in his correspondence, communities such as Anchorage, Juneau and Sitka have within these past several years resolved their dual government relationship problems by unifying. This is of course not the only answer. For many of the smaller communities the problem still remains. We would hope that you will be able to assist us by providing some input to your advisory group relative to our concerns. The communities will be requested to meet during the Alaska Municipal League to formulate specific ideas toward the end of clearly

POST OFFICE BOX 1397, KODIAK, ALASKA 99615 PHONE (907) 486-3224

defining the relationship between home rule cities and second class boroughs. I will keep you advised of the progress of our coalition and wish to offer at this time our appreciation for your concern and interest in our problem.

Respectfully yours,

CITY OF KODIAK

Gordon W. Ryan

GORDON W. RYAN
City Manager

GWR/yb

Enclosures

cc: Palmer McCarter, Local Government Assistance

THE HEART OF THE MATANUSKA VALLEY

# CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT
P.O. BOX 1368 • PHONE (907) 745-3271
PALMER, ALASKA 99645

Rec'd 10/20/80

October 17, 1980

Mr. Gordon W. Ryan
City Manager
City of Kodiak
P.O. Box 1397
Kodiak, Alaska 99615

Dear Gordon,

Your letter of September 17, 1980 was received and presented to the Council at their regular meeting of October 14, 1980. I would like to report that our Council wholeheartedly supports your initiatives in this matter of first class and home rule cities within second class boroughs. We are all aware of the gradual erosion of authority away from cities toward boroughs and will enthusiastically join with you and hopefully the other cities in this endeavor.

I will not in this letter attempt to get into specifics of problem areas in Title 29 but would like to suggest a formation of the coalition and the outright commitment of the individual cities involved to put some time and effort into this. Apparently the timeframe is extremely short as the Commission must have a document prepared and presented to the Legislature within the first thirty days of the new Legislative session. If the formation takes place at the AML meeting in November at Fairbanks, there will not be many days left. It would seem that if each city would appoint a person of knowledge and experience, i.e. manager, attorney, clerk, to attend one or two general meetings we could pick out specifics for rewrite and the writing of the new legislation and perhaps prepare resolutions for the adoption by the Council of the various communities as back-up and forward these a.s.a.p. to the Policy Advisory group. We would then have to be prepared to have a representative to care for them to defend our positions. This will not be an easy thing.

I think our Councils must understand that we have lost most of the support from the population areas, particularly Anchorage, which has half of the votes in the State of Alaska, along with Juneau and Sitka who have solved their problems by unification. This was not done without bitter struggles between their original cities and boroughs. In other words, the problems still exist for the remainder of us and I personally do not feel that unification is the solution to all of the problems. A further point to emphasize is that the Alaska Municipal League is severely watered down with boroughs and unified governments to where we cannot expect much support.

I will attempt to help expedite our feelings by sending a copy of this letter to each of the cities you have indicated correspondence with in your letter.

Looking forward to seeing you soon, I remain,

Sincerely,

William E. Curtis
City Manager
City of Palmer

WEC/car

cc: City of Ketchikan
City of Fairbanks
City of Kenai
City of Seward
City of North Pole

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

M E M O R A N D U M

28 October 1980

TO: Technical Committee
Title 29 Revision Commission

FROM: Tamara Brandt Cook
Legal Services

SUBJECT: Changes Recommended to Title 29 by the Technical Committee

Attached is the second batch of the drafting changes we discussed at our 10 October meeting. If you get an opportunity to check these over, I would appreciate it. Take an especially close look at the explanations, since these will form the basis of a memo I prepared to justify these changes to the Policy Group.

Please send me any recommendations for improvements to either the drafts themselves or to the explanations, or I can be reached by phone at 465-4996 November 5th, 6th, and 7th.

maf

Attachments

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

MEMORANDUM 28 October 1980

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Title 29 Revision Commission

FROM: Tamara Brandt Cook TBC
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maf

Attachments

Sec. 20.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by at least ten municipal voters who will sponsor the petition, shall contain the address to which all correspondence relating to the application may be sent and shall be filed with the municipal clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form, and, for an inititative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would not be unenforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

EXPLANATION: This section is new. The first part is modeled after section 2 of the intiative article in the state constitution. As drafted, the section would require the clerk to review an initative for substantive legality, with his decision subject to appeal. This would allow for a judicial determination of the legality of an initiative prior to incurring the expense of an election.

Sec. 29.30.110. PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. The petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days of the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing address of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signtures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, that each signer had an opportunity before signing to read the petition, that he believes each signer to be a municipal voter, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit.

Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days of the date the clerk issues the petition. The statement provided under AS 29.30.110 (a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular municipal election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signtures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: This section carries forward the 60 day signature gathering period. It does not eliminate the possibility of an initiative or referendum on a matter which affects only a service area, but it does require that such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate and vote on a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body, and service areas will then have the authority to become essentially automomous units of government. Changes have been made to require rejection of a signature not accompanied by a legible residence address and to allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) The pages of a petition shall be assembled and filed as a single instrument. Within ten days of the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be amended or supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(3) Within 10 days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures, the sponsors have only ten days to gather the signatures and may not use signatures which were gather prior to the first filing but not submitted, and that they may not use signatures gathered during the period in which the clerk is checking the petition.

Sec. 29.30.140. PROTEST. Repeal

EXPLANATION: Since the clerk determines the sufficiency of a petition, it was felt that allowing a protest to the municipal executive when a petition is rejected to be considered by the assembly or council would serve no purpose. The assembly or council would simply rely upon the clerk, since he has the voter registration records.

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new application for a petition on substantially the same matter may not be filed sooner than six months after the petition is rejected.

EXPLANATION: This section was changed slightly to take into account the application procedure and to clarify that a new petition may not be filed dealing with the same matter, but that a petition on a different matter may be filed sooner than the six month period.

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council the clerk, after certifying it, shall present it to the assembly or council at its next regular meeting or special meeting called for that purpose.

(b) Unless substantially the same measure is adopted, an iniatiative measure presented to the assembly or council shall be submitted to the voters at the next regular municipal election held more than 45 days after the measure was presented to the assembly or council. If the assembly or council adopts substantially the same measure and if it is not vetoed, the petition is void and the question shall not be submitted to the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

EXPLANATION: The changes allow for the submission of a measure at any time of the year, but provides it would be placed before the voters at the first regular election occurring 45 days after submission to the assembly or council. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer makes that determination. This section requires an areawide vote whether the mattter is areawide or nonareawide because a service area should not be allowed to become automonous.

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote, the clerk shall submit the matter to the voters at the next regular or special election. If no regular or special election occurs within 75 days of the certification of a petition, the assembly or council shall hold a special election within 75 days of filing.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it is suspended, becomes immediately effective.

EXPLANATION: The ability to suspend an ordinance or resolution which had taken effect when a petition is filed within 20 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as it is covered under AS 29.13.080. This section once again requires submission of the question to the areawide voters.

Sec. 29.30.180. EFFECT. (a) An ordinance or resolution adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed may not be repealed or amended by the assembly or council within two years of its effective date.

(b) If an ordinance or resolution is repealed in an referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified by the assembly or council.

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition application process.

Sec. 29.30.210. RECALL. An application for a petition for the recall of a mayor or a member of the assembly, council, or school board may be filed with the municipal clerk after the official has served six months of the term for which elected or appointed.

EXPLANATION. This section lists the municipal officials which may be recalled rather than providing for the recall of an elected official in order to avoid the possibility of recalling service area board members who may be elected officials. It clarifies the dates to be used in determining when the six month period has run and includes the possibility of recalling officials who are appointed to elected positions.

Sec. 29.30.220. GROUNDS. Grounds for recall may include any grounds which constitute failure to perform official duties to the satisfaction of petitioners.

EXPLANATION: This section broadens the grounds for recall in order to avoid forcing petitions to name a ground in a petition which has no connection with the real reasons which may inspire a recall effort. It is felt that an elected official ought not to be subjected to being labeled incompetent or guilty of misconduct or failure to perform his duties in a petition when the reason for a recall effort may not be based on any of those things.

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. An application for a recall petition shall contain

(1) the signature and residence address of at least ten voters who will sponsor the petition;

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity as to specific actions, pertinent ordinances, laws, regulations, or judicial decrees.

EXPLANATION: This section requires a submission of an application to the clerk for a recall petition. The clerk will provide petition forms and the application procedure is necessary in order to allow the official sought to be recalled to be given an opportunity to have his statement included on the petition.

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.230, he shall submit a copy of the application to the official who is the subject of the application. The official shall have ten days from receipt of the application to provide the clerk with a statement of 200 words or less if he so chooses.

(b) The clerk shall prepare a recall petition containing

(1) the name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application;

(3) if provided, the statement of the official sought to be recalled;

(4) the date the petition is issued by the clerk;

(5) notice that signatures must be secured within 30 days of the date the petition is issued;

(6) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing address of each signer;

(7) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, that each signer had an opportunity before signing to read the petition, that he believes each signer to be a municipal voter, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section sets forth requirements similar to those proposed under the initiative and referendum procedures as it relates to petition content. Requiring the clerk to prepare the petition insures that it is complete and legible. The period of time within which signatures must be collected has been reduced to 30 days to minimize the period of disruption in government created by a recall effort.

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 30 days of the date the clerk issues the petition. The statement provided under AS 29.30.240(b)(7) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by 35 percent of the voters residing wthin the municipality based on the number of votes cast at the last regular election for that office. If a petition seeks to recall an official who represents a district, the petition shall be signed by 35 percent of the voters residing within the district based on the number of votes cast at the last regular election for that office.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: This section continues the 30 day signature gathering period and clarifies which election is to be used as a standard for determining the number of signatures required. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that is number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The pages of a petition shall be assembled and filed as a single instrument. Within ten days of the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be amended or supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which is insufficient on its face may not be supplemented. It shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

Sec. 29.30.260. NEW PETITION. The rejection of a petition for any reason does not preclude the filing of a new recall petition. However, a new application may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficent signatures alone triggers the waiting period.

Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall submit it to the assembly or council at its next regular meeting.

EXPLANATION: This section requires the clerk to submit the petition at the next regular meeting rather than immediately as required under existing law.

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days, but not sooner than 40 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days but not sooner than 40 days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the petition shall not be submitted to the voters. The assembly or council may not appoint the official who resigns from an office after a sufficient recall petition is filed naming him to the same office.

EXPLANATION: The 40 days requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) the statement of the official which appeared on the recall petition or a statement of 200 words or less which is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES () NO ()".

EXPLANATION: This section makes reference to the fact that the statement of the grounds is limited to 200 words or less and provides that the statement of the official used on the petition will appear on the ballot unless the official provides a different statement.

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that 20 days notice shall be given notwithstanding an ordinance or charter provision to the contrary.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote is required to recall an official. Only those voters residing in the district or area which elects an official may vote on the recall of the official.

EXPLANATION: This section adds a new sentence which makes it clear that if an official is elected by the voters of a district, then only those voters may vote to recall him.

Sec. 29.30.320. EFFECT. If a majority votes to recall an official, the official's seat shall become vacant immediately upon certification of the result of the election. If an incumbent is not recalled at a recall election, an new application for a petition to recall the same incumbent may not be filed sooner than six months after the date the election is certified.

EXPLANATION: The first sentence was added to make it clear when a recalled official looses his seat. The second sentence clarifies the fact that the commencement of the six month period is the date of certification of the election results.

Sec. 29.30.330. SUCCESSORS. (a) If one or more officials is recalled from an assembly or council, the assembly or council, by the affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If one or more officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(d) A person appointed under (a) - (c) of this section shall serve until a successor is elected and takes office.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

NOTICE OF CHANGES
27 OCTOBER 1980

The Title 29 Revision Commission Policy Advisory Group meeting was scheduled for 9:00 a.m., Monday 10 November 1980 in the Chena Room of the Traveler's Inn, Fairbanks.

The time of the meeting has been changed to 10:00 a.m. to accommodate airline scheduling. The place of the meeting has been changed from the Chena Room of the Traveler's Inn to the East Gold Room of the Traveler's Inn.

maf

October 21, 1980

Senator Arliss Sturgulewski
Alaska State Senate
2957 Sheldon Jackson St.
Anchorage, AK 99504

Dear Senator Sturgulewski:

I am writing to you in your capacity as a member of the policy advisory group for the rewrite of Title 29. In that regard, several weeks previous the Kodiak City Council directed me to determine the level of interest among the home rule communities located within second class boroughs toward addressing the dual responsibilities of those governments. I have enclosed for your review a copy of the letter received back from the City of Palmer voicing their support for a coalition at the Alaska Municipal League to address these problem areas.

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Respectfully yours,

CITY OF KODIAK

Gordon W. Ryan

GORDON W. RYAN
City Manager

GWR/yb

Enclosures

cc: Palmer McCarter, Local Government Assistance

THE HEART OF THE MATANUSKA VALLEY

# CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT
P.O. BOX 1368 • PHONE (907) 745-3271
PALMER, ALASKA 99645

Read 10/20/

October 17, 1980

Mr. Gordon W. Ryan
City Manager
City of Kodiak
P.O. Box 1397
Kodiak, Alaska 99615

Dear Gordon,

Your letter of September 17, 1980 was received and presented to the Council at their regular meeting of October 14, 1980. I would like to report that our Council wholeheartedly supports your initiatives in this matter of first class and home rule cities within second class boroughs. We are all aware of the gradual erosion of authority away from cities toward boroughs and will enthusiastically join with you and hopefully the other cities in this endeavor.

I will not in this letter attempt to get into specifics of problem areas in Title 29 but would like to suggest a formation of the coalition and the outright commitment of the individual cities involved to put some time and effort into this. Apparently the timeframe is extremely short as the Commission must have a document prepared and presented to the Legislature within the first thirty days of the new Legislative session. If the formation takes place at the AML meeting in November at Fairbanks, there will not be many days left. It would seem that if each city would appoint a person of knowledge and experience, i.e. manager, attorney, clerk, to attend one or two general meetings we could pick out specifics for rewrite and the writing of the new legislation and perhaps prepare resolutions for the adoption by the Council of the various communities as back-up and forward these a.s.a.p. to the Policy Advisory group. We would then have to be prepared to have a representative to care for them to defend our positions. This will not be an easy thing.

I think our Councils must understand that we have lost most of the support from the population areas, particularly Anchorage, which has half of the votes in the State of Alaska, along with Juneau and Sitka who have solved their problems by unification. This was not done without bitter struggles between their original cities and boroughs. In other words, the problems still exist for the remainder of us and I personally do not feel that unification is the solution to all of the problems. A further point to emphasize is that the Alaska Municipal League is severely watered down with boroughs and unified governments to where we cannot expect much support.

I will attempt to help expedite our feelings by sending a copy of this letter to each of the cities you have indicated correspondence with in your letter.

Looking forward to seeing you soon, I remain,

Sincerely,

William E. Curtis

William E. Curtis
City Manager
City of Palmer

WEC/car

cc: City of Ketchikan
City of Fairbanks
City of Kenai
City of Seward
City of North Pole

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

24 October 1980

TO: Technical Committee
Title 29 Revision Commission

FROM: Tamara Brandt Cook TBC
Legal Services

SUBJECT: Changes Recommended to Title 29 by the Technical Committee

Attached you will find the first batch of the drafting changes which are, hopefully, accurate reflections of the drafts agreed to by the Technical Committee. If you get the opportunity to check these over, I would appreciate it. Take an especially close look at the explanations, since these will form the basis of a memo I prepared to justify these changes to the Policy Group.

Please send me any recommendations for improvements to either the drafts themselves or to the explanations, or I can be reached by phone at 465-4996 November 5th, 6th, and 7th. I will send you the other drafts as rapidly as they are completed.

maf

Attachments

Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and a political subdivision. It is a city of the first class or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

EXPLANATION: A reference to unified municipalities along with a cross-reference to provisions dealing with the organization of unified municipalities has been included so that this section will provide a complete definition of home rule. No substantive change.

Sec. 29.06.050. Repeal

EXPLANATION: This section deals with the transition period following the 1972 revision of the Municipal Code and is of no effect. The reclassification of municipalities to conform to provisions of the 1972 Code were to have been essentially completed within two years of September 10, 1972.

Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or, for a second class city, reclassified after January 1, 1981 is entitled to an organization grant of $150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organization grant.

EXPLANATION: Since no new municipality formed is likely to contain a great enough population to qualify for a grant over the minimum, the provision tying population to the amount of the grant has been eliminated in favor of a flat amount. The amount of the grant has been raised from $25,000 to $150,000 in recognition of the fact that setting up a government has become an expensive proposition and to encourage the formation of local governments despite this expense. In addition, a second class city will qualify to receive that grant as well as a city within an organized borough, whereas the existing law ties the amount of a grant to a second class city and to a first class city in an organized borough to its population. This change encourages the formation of local governments in rural areas where the population may be small. The formation of a city is expensive regardless of the size of the population. It is felt that the grant should be used to cover any initial government operation, so the terms "development and interim" were eliminated as unduly restrictive. The increased grant will be available only to a municipality formed after January 1, 1981.

Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION.

(b) If at least one nomination of a qualified charter commission candidate is not filed in accordance with AS 29.12.240. for each available seat the resolution or petition for unification is void and no election on the question of unification shall be held.

EXPLANATION: Subsection (b) has been added to avoid the expense and inconvenience of an election on unification where there is not enough interest in the question to assure that a charter commission can be formed. An alternative would be to provide for appointment of members when not enough nominations are received, but it was felt that in such cases basic interest in unification was probably lacking so the process should be halted.

Sec. 29.15.020. NOMINATION.

(b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or city council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

EXPLANATION: Subsection (b) has been added to avoid the expense and inconvenience of an election on the question of forming a charter commission if not enough nominations for commission members are received. An alternative would be to provide for appointment of members in such cases but it was felt that failure to nominate a sufficient number of commission candidates indicated a general lack of interest in the formation of a charter commission.

Sec. 29.15.050. INITIATIVE AND REFERENDUM. (a) A municipal charter shall provide procedures for initiative and referendum.

EXPLANATION: This is technical clean-up creating no substantive change in existing law. However, it has been argued that the phrase "charters shall provide the procedures" refers to the procedures set out in Title 29 applicable to general law municipalities. Consequently, "the" has been dropped in order to clarify the fact that home rule municipalities are free to establish procedures which may differ from those set out in Title 29.

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS.

(13) AS 29.24.340(a) (election and term of mayor) Repeal.

(19) AS 29.30.040 (voter qualification) Repeal.

(28) AS 29.33.220 (expenditure of borough revenue) Repeal.

EXPLANATION: AS 29.24.340(a) provides that a home rule city may prescribe additional residency requirements by charter for eligibility to hold the office of mayor. This is not a limitation and does not properly appear in the list of home rule limitations. That section also stipulates that a mayor must be a municipal voter, but it is felt that those sort of administrative decisions ought to be left up to a home rule municipality.

AS 29.30.010 provides that three judges shall be appointed for each polling place and that the assembly or council prescribe rules for conduction elections. These appear to be administrative decisions properly left up to a home rule municipality.

AS 29.30.030(b) provides that the assembly or council may call a special election upon at least 20 days notice. This is an administrative matter properly left up to home rule municipalities. However, it was felt that the section dealing with voter qualifications ought to be included as a limitation on home rule powers to preserve uniformity across the state in this area.

AS 29.33.220 provides that revenues collected on an areawide basis may be expended on general administrative costs and on areawide functions only. Likewise, revenues collected outside cites may be expended on general administrative costs and in providing services outside cities. It was felt that home rule municipalities ought to be given more flexibility in managing revenues.

Sec. 29.65.050. FULFILLMENT OF LAND ENTITLEMENTS.

(j) Notwithstanding AS 29.65.010 - 29.65.130, a municipality which is unable to satisfy its entitlement due to a shortage of vacant, unappropriated, unreserved land suitable for residential, commercial or industrial purposes may fulfill its remaining entitlement by selection of other state land which is vacant, unappropriated and unreserved.

EXPLANATION: This added subsection addresses a problem which has come up when a municipality is formed in an area with little vacant state land nearby. This allows a municipality the option of selecting land not suitable for residential, commercial or industrial purposes rather than being paid for the deficiency, if it desires land for other purposes.

Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. If possible, a judge shall be a voter of the precinct for which he is appointed.

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. "The municipality may not alter voter qualification requirements of this title" was deleted because that issue is addressed in AS 29.28.030. Subsection (b) which makes this applicable to home rule municipalities was deleted to conform to the change suggested in the proposed draft of AS 29.15.110.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance the procedure for the nomination of elected officers by declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

EXPLANATION: This is a technical revision which does not substantively alter existing law.

Sec. 29.30.030. ELECTION DATES. (a) Unless otherwise provided by ordinance, a regular municipal election shall be held annually on the first Tuesday of October.

EXPLANATION: This is a technical revision assuring maximum flexibility for local governments.

Sec. 29.30.040. VOTER QUALIFICATION. (a) A person may vote if he meets the requirements of AS 15.05.010 - 15.05.040, has been a resident of the municipality for 30 days immediately preceding the election, is registered to vote in state elections and is not disqualified under article V of the state constitution.

(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of the precinct, district, or service area in which he votes.

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

EXPLANATION: A reference has been provided to the voter qualification requirements for state elections. A municipality has been granted the flexibility of imposing a requirement that a person be a resident of the area in which he votes to avoid the possibility of people voting on nonareawide matters who will not have to live with the outcome of the vote.

Sec. 29.30.050. MAJORITY ELECTIONS. (a) A municipality may by ordinance provide for a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

(c) Unless provided otherwise by ordinance, a runoff election shall be held within three weeks from the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This has been liberalized to allow a municipality to provide for this by ordinance for certain offices only. Otherwise, the person who receives the greatest number of votes is elected. The provisions specifying when a runoff must be held and the notice requirements is no longer mandatory. In addition, the procedure set out in (c) for municipalities which desire more procedural guidance allows three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoffs and hold them at the same time.

# CITY OF MC GRATH

P.O. BOX 57 MC GRATH, ALASKA 99627
PHONE (907) 524-3825


Jan - Please copy Policy members + Technical Com + Mike W. Thanks Arliss.

October 1, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson St.
Anchorage, Alaska 99504

Dear Senator Sturgulewski,

I am sorry that I did not have the chance to speak to you or make a presentation at the Title 29 Revision Committee meeting on Monday. An illness in the family made me late and an airplane necessitated my leaving before noon. However, I was very pleased by what I witnessed. The discussions on the transfer of land and planning and zoning were very relavent to what we are presently facing. I heard only a portion of Dr. McGinnis' presentation and it upset me. If the Dept. of Health & Social Services is advocating that the second class cities should assume the responsibility for AFDC and Medicaid payments, they should be taken out and shot! Mike Wallerie was making several good points about what it is to be an Alaskan Native and the relationship between the individual and the rest of the community. The Department's plan would be doomed to failure in several communities around the state. This in turn would have other disasterous consequences for other small, second class cities.

Since I was unable to make my planned presentation, I would like to address my remarks to you. I will only be addressing small, second class cities. First, there are two major influences upon the small second class cities. They are their size and remoteness and the fact that the unorganized borough is over organized. I had hoped that Mike Wallerie would touch on this point but he didn't. The committee must realize that eventhough our communities are small that life is very complex in the "bush". A small second class cities must supply a seven member city council, a board of directors for the local ANSCA corporation, at least one advisory school committee (in many instances there are several standing educational committees such as JOM, Indian Ed. etc for the REAA and, if there is a BIA elementary school another set of committees), several members for the Native Village Council or IRA Council and members for other important local committees as well as representatives to regional organizations such as the regional corporation, regional housing authorities, fishand game advisory commissions, and State boards and committees.

Because of the small population and the over organization of the second class cities, it becomes extremely difficult to find qualified people to fulfill all the positions whether voluntary or for pay. This in turn results in lack of service being

performed or offered by the second, class cities. The fact that there are so many second class cities whi ch are not functioning is an indication that the system needs to be simplified. I would offer the committee two recommendations. First, acknowledge that entity which is functioning most efficiently in the community whether it is an IRA Council, a Native Village Council, a community organization or association whatever. The State would be recognizing these organizations as providers of services. They would not have the power to enact ordinances or police functions. As a reciepient of State funds, these organizations would have to assure the State that services are being delivered in a non-discriminatory mannar. The new revenue sharing program does this to some extent. The desired result of this course of action would be the demise of second class cities which do not function, and a simplification of life in the "bush". Second, I would recommend the creation of home rule, second class cities. These cities would not be responsible for the local educational program nor would they be required to have a minimum population of 400. This would allow local communities to evolve a form of local government which is more compatible with local conditions. I acknowledge the fact that developing a charter is difficult and time consuming. However, I feel that it would go a long way to bridge the cultural gap in small, second class cities.

Finally, I would ask the committee to look at the relationship of the small second class cities to the executive branch of the State. Article X, Section 6 makes the legislature responsible for providing services to the unorganized borough through a maximum of local participation and responsibility. In fact, it is the executive branch which provides the services but withouth any local input. The recommendations developed by the C&RA Committees especially the development of service areas along REAA boundaries would simplify things greatly. However, there needs to exist both a means of making local concerns know to the executive branch and a means of recourse for local concerns which are impacted upon by executive branch executive decisions.

I want to thank you for the opportunity to sound off. Furthermore, I apologize for all the typing errors as I ran out of correcting ribbons for my typewriter.

Sincerely,

Robert S. Juettner
City Administrator

For file 7 N's  Put on notice Title 24 mtg.

Chefornak City Council
Chefornak , Alaska 99561

20 June 1980

Local Government Study
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Gentlemen;

We wish to give our full suport to the issue on Capitol Foundation fund. We find it very helpful to our situation because we don't have very much in matching costs to our capitol projects.

Right now we are trying to get funds to build a Cultural Facility but we don't have matching costs. If it is possible, we will introduce the amounts we are trying to get and the matching costs.

We have other capitol projects we would like to get on, but don't have funding.

If we have to fill out forms or questionaires to get those funds, Please don't hesitate to send them to us.

With our support,
Chefornak City Council
Chefornak City Council

cc. D.L.
N.L.

SCOMM

#23:10

# TITLE 29 REVISION

## PROPOSAL FOR RECALL
## (Formerly AS 29.28.130-250)

October 20, 1980

29.30.210 Recall. An application for a petition for the recall of an elected official of a home rule or general law municipality may be filed with the municipal clerk after the official has served six months of the term for which elected or appointed.

(This revision clarifies the dates to be used in determining when the six months period has run; it also adds officials who are appointed to elected positions.)

29.30.220 Grounds. Grounds for recall are

(1) violation of an ordinance, law, or regulation made applicable to the official by his candidacy for or holding of such elected office,

(2) judicially declared incompetence arising out of a medical or mental condition, or

(3) failure to perform a duty of the office prescribed by ordinance, law, or regulation.

(This revision retains the present grounds but attempts to remove some of the ambiguities of the present language.)

29.30.230 Application for Petition. (a) An application for a petition to recall an elected official shall be filed with the municipal clerk.

(b) The application shall contain

(1) the signatures and resident addresses of at least ten qualified voters of the municipality as sponsors,

**(2) the address to which all correspondence relating to the application may be sent,**

**(3) a statement in 200 words or less of the grounds of recall stated with particularity as to specific instances, including reference to the pertinent ordinance, law, regulation, or judicial decree.**

**(This section requires a submission of an application to the clerk for a petition for recall. As provided in a later section, the clerk will provide the recall petition forms. The application procedure is necessary as a part of a new, proposed procedure whereby the official who is the subject of the petition will be given an opportunity to have his statement answering the accusation placed upon the petition before it is circulated.)**

29.30.240 Petition. (a) If the municipal clerk determines that the application meets the requirements of §230, he shall submit a copy of the application to the officer who is the subject of the application.

(b) The officer shall have ten days from receipt of the application to provide the clerk with a statement of 200 words or less which shall be placed on the petition with the statement of the grounds for recall.

(c) The municipal clerk shall prepare a recall petition for circulation by the sponsors. A petition shall contain

(1) the name of the officer sought to be recalled,

(2) the statement of the grounds for recall as set forth in the application,

(3) the statement of the officer sought to be

recalled, if provided,

(4) the date the petition is first issued by the clerk,

(5) a statement that the signatures on the petition must be secured within 60 days of the date first issued,

(6) spaces for the required signatures, the printed name of each person signing the petition, the date of each signature, and both the resident and mailing address of each signer,

(7) a statement to be signed and sworn to by the circulator stating the number of signatures on the petition page or pages, that the circulator personally circulated the page or pages, that all signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names they purport to be, that each signer had an opportunity before signing to read the grounds for recall and the statement of the official printed on the petition, and that he believes each signer to be a qualified municipal voter.

(This section is part of the application-petition procedure and sets forth requirements similar to those proposed under the initiative and referendum procedures as it relates to petition content.)

29.30.250 Required Signatures. (a) Every petition shall be signed by a number of registered voters residing within the territorial limits of the municipality equal to 25 percent of the number of votes cast in the municipality

**at the last state general or primary election which was held on or prior to the date of the first issuance of the petition. The necessary signatures on the petition shall be secured within 60 days of the date the clerk first issues the petition.**

**(b) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.**

(c) A petition signer may withdraw his signature upon written application to the clerk at any time prior to certification of the petition by the clerk.

(d) The petition pages shall be assembled and filed as a single instrument within 60 days of the date of first issuance of the petition.

(This continues the current 60 day signature gathering period. It also clarifies the election which is to be used as a standard for determining the number of signatures required. It is proposed that a state election be used. Prior to the 1972 revision of Title 29, the last gubernatorial election was the standard.)

29.30.260 Sufficiency of Petition. (a) Within ten days of the date the petition is file, the municipal clerk shall certify on the petition whether or not it is sufficient.

(b) If the petition is insufficient, it may be supplemented within ten days with additional signatures which are obtained within ten days after the date on which the petition is rejected. If the petition is insufficient for any other reason, it shall be rejected and filed as a public record.

**(c) Within ten days after the supplementary filing, the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.**

**(The only significant change to the corresponding section of the present law is that the proposed section makes it clear that signatures for the supplementary filing must be those which are gathered during the ten day period after the petition is first rejected.)**

29.30.270 New Application. The rejection of a petition for failure to contain sufficient signatures or for any other reason does not preclude the filing of a new application for a recall petition. However, a new application may not be filed sooner than six months after a petition is rejected.

(The only significant change is to prohibit a new petition if the prior petition was rejected for any reason in addition to rejection for insufficient signatures.)

29.30.280 Submission. If a recall petition is sufficient, the clerk shall submit it to the assembly or council at its next regular meeting.

(No significant change.)

29.30.290 Challenge of Petition. (a) The officer who is the subject of a recall petition submitted to the assembly or council may, within 30 days of the date the petition is filed with the assembly or council, file an action in the superior court for a determination of any of the following questions:

(1) Whether any of the grounds for recall stated are not grounds under §220.

(2) Whether any of the acts alleged do not constitute one or more of the permitted and alleged grounds.

(3) Whether one or more of the accepted signatures should be rejected.

(b) Upon a finding that any of the acts alleged do not constitute a permissible and alleged ground or that any grounds alleged are not grounds set forth in §220 or that sufficient accepted signatures should have been rejected to cause the petition to be insufficient, or for any other reason which the court finds appropriate, the court shall order the petition rejected and shall order the name of the officer subject to the rejected petition to be removed from the ballot.

(c) If an officer who is the subject of a recall petition submitted to the assembly or council files suit under this section, no recall election may be held for the officer who has filed the suit nor for any other officer who is the subject of a recall petition until after the time for appeal of the superior court judgment has passed.

(I believe the foregoing is relatively clear on its face.)

29.30.300 Election. (a) If a regular election occurs within 75 days, but not sooner than 40 days of the later of either the submission of a certified petition or the passage of the time for appeal of a judgment in a suit filed under §290, the assembly or council shall submit the recall at that election.

**(b) If no regular election will occur within such time, the assembly or council shall hold a special election within 75 days, but not sooner than 40 days after, the later of the submission of a certified petition or the expiration of the time for the appeal of a judgment of a suit brought under §290.**

**(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the petition shall not be submitted to the voters. However, the assembly or council may not appoint to such a vacancy the officer who resigns from that office after a sufficient recall petition is filed.**

(The 40 day minimum was added to insure that a petition submitted after the legal notices of the election were published would not complicate the election and that the election would not be held before the 30 days during which the official has to file suit. Added in section (c) is the prohibition against the appointment of an officer who resigns after a sufficient recall petition is filed.)

29.30.310 Form of Recall Ballot. A recall ballot shall contain:

(1) the grounds as stated in 200 words or less in the recall petition;

(2) the officer's statement of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election, otherwise the statement of the officer, if any, which appeared in the recall petition;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? Yes [ ] No [ ]".

(The only significant change is to make reference to the fact that the statement of the grounds is limited to 200 words and also to provide that the statement of the officer which was used in the recall petition will appear on the ballot unless the officer provides a different statement.)

29.30.320 Election Procedure. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election; otherwise, the procedures shall be those applicable to a special municipal election.

(This section was changed to make reference to special election procedures if the election is a special election.)

29.30.330 Majority Required. A majority of those voting on the question must vote in favor of recall to recall an officer. Only those voters in the district or area which elects the officer may vote on the recall of the officer.

(This merely restates in different language the majority vote requirement. The section also adds a new sentence which makes it clear that if the officer is elected by the voters of a district, then only the voters in that district will vote on the recall question.)

29.30.340 Effect. If a majority of those voting on the question vote to recall the officer, the officer's seat shall become vacant immediately upon certification of the result of the election on the question. If an incumbent is not recalled at the recall election, a new application for a recall petition on the same incumbent may not be filed sooner than six months after the date of the certification of the recall election.

(The first sentence is added to this section to

**make it clear precisely when a recalled officer looses his seat. The second sentence has been slightly changed to peg the commencement of the six month period as the date of certification of the election results.)**

**29.30.350 Successors. (a) If one or more officers are recalled from an assembly or council, the assembly or council, by the affirmative vote of a majority of the remaining members, may appoint qualified persons to fill any vacancy created by the recall.**

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. Such appointees, by an affirmative vote of a majority of the appointees, shall appoint such additional members as are required to fill any remaining vacancies.

(c) If one or more officers are recalled from a school board or from a body created by the assembly or council, then the assembly or council may appoint such qualified persons as it deems necessary to fill any vacancy created by the recall.

(d) A person appointed to fill a vacancy under sections (a) through (c) shall serve until a successor is elected, qualified, and takes office.

(e) If the voters recall an officer, the clerk shall conduct an election for a successor to fill the unexpired term. The election shall be held at least ten but not more than 60 days from the date of the certification of the recall election. However, if a regular or special election occurs

**within 75 days of the certification of the recall election, and the certification occurs at least 20 days prior to the latest date upon which first notice of the election must be published, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section; provided, nominations may be filed until the later of seven days before the latest date upon which first notice of the election must be published or the deadline for the filing of nominations for regular elections. Nominations may not be filed before the certification of the recall election.**

(Sections (a) through (d) are new and are submitted to prevent a local government from having to attempt to operate without a quorum of elected officers. Section (e) was changed to take into account times required for election notice and nominations.)

[illegible]
[illegible]
WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
PHONE 465-3739 OR 3739
HOME PHONE 789-7897

[illegible]
VICE CHAIRMAN JUDICIARY COMMITTEE
MEMBER, RULES COMMITTEE
MEMBER, SPECIAL COMMITTEE
ON SUBSISTENCE

House of Representatives

August 26, 1980

Mr. Palmer McCarter, Director
Division of Local Government Assistance
Department of Community & Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Sir:

It has come to my attention that the second class cities and unincorporated village governments in the Bristol Bay Region will experience severe problems in meeting the September 20, 1980 deadline for mailing completed State Revenue Sharing applications to qualify for the $25,000 minimum entitlement provided for in the new law revising the State Revenue Sharing Program. It has further come to my attention that applications were only recently mailed to general law municipalities and that applications for traditional governing councils have yet to be mailed.

The September 20th time deadline is further compounded by the problem that many of the villages in our region are currently unaware of the provision in the new law which provides state aid to eligible governments recognized under the Alaska Native Claims Settlement Act. Another very real problem is the frequency of mail delivery service, which is sporatic at best, to many of the villages in the more remote areas.

A lot of work on the part of rural legislators went into FCCHB 192 reforming the State Revenue Sharing Program to include state aid to unincorporated governments and the $25,000 minimum entitlement provision for small rural municipalities with no tax base.

With the September 20th deadline for mailing applications just around the corner, it appears that many local governments that could take advantage of the new State Revenue Sharing program will be unable to do so. I would encourage your department to strongly consider extending the deadline to allow more local governments desperately in need of such monies to have the time to properly complete the application process.

Thank you.

Very sincerely,

Nels A. Anderson Jr.

Nels A. Anderson, Jr.

cc: Senator George Hohman
Rep. Bill Parker
Sen. Arliss Sturgulewski
Governor Hammond
Commissioner Lee McAnerney, CRA
TUNDRA TIMES
TUNDRA DRUMS

OK

copy title 29 committee

HOME PHONE ADDRESS

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
PHONE 465-3738 OR 3739
HOME PHONE 789-7897

VICE CHAIRMAN, JUDICIARY COMMITTEE
MEMBER, RULES COMMITTEE
MEMBER, SPECIAL COMMITTEE
ON SUBSISTENCE

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Very sincerely,

Nels A. Anderson Jr.

Nels A. Anderson, Jr.

cc: Senator George Hohman
Rep. Bill Parker
Sen. Arliss Sturgulewski
Governor Hammond
Commissioner Lee McAnerney, CRA
TUNDRA TIMES
TUNDRA DRUMS

OK

copy Tulle 29 committee

PHONE (907) 524-3825

August 26, 1980

Arliss Sturgulewski, Senator
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

Dear Senator Sturgulewski,

Back at the beginning of the summer, I attended a meeting called by the Division of Community Planning. It was a "loose meeting" in that the agenda was flexible and covered many areas and concerns. Somewhere in the meeting, we touched upon the changes proposed by the Community & Regional Affairs Committees. If I am not mistaken, everyone agreed that the committees were on the right track especially in regards to the establishment of service areas following REAA boundaries.

Well, it seems that those of us living in the "bush" know more about what happens in Juneau than some of the state employees living and working there. For example, the Dept. of Health & Social Services just unveiled a plan whereby the communities of Holy Cross, Anvik, Shageluk and Grayling which are all in the Iditarod Area School District, REAA 11, will now receive there public health nurse services from Bethel. Ms Lois Bergerson decided that those people would be better served from Bethel than McGrath. Was there any local input from those communities? Was any consideration given to the fact that those people are Athabascans and not Yupiks? Did anyone think to explore the logic behind the boundaries of REAA 11? The answer to all three questions is no. However, Ms Bergerson is adamant that the changes will take effect on Sept. 1 irregardless of any protests.

It is my firm hope that when the Legislature convenes in January, that the Community & Regional Affairs Committees will reintroduce the same package of bills.

Sincerely,

Robert S. Juettner
City Administrator

8/29/80 Admired Bob & waived being to committee → Jim Cooke – Please copy AS 29 Renewed. Committee incl ex-officio + Dept HSS + Fran Ulmer

Doyon Building
1st and Hall Streets
Fairbanks, Alaska 99701
Phone (907) 452-8251

AUG - 5 1980
DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

August 1, 1980

Ms. Lee McAnerney
Commissioner
Dept. of Community & Regional Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

This letter is in response to your June letter requesting comments on the Title 29 Municipal Government Code Revision authorized under Senate Concurrent Resolution No. 66. As indicated by our prior correspondence, we are greatly interested in this area and wish to submit the following comments to be used in the Title 29 revision project.

RECOGNITION OF TRADITIONAL GOVERNMENTS

Local government in rural Alaska is extremely complex. This complexity is primarily due to the vast number of board, commissions, municipal corporations, ANCSA Native Village corporations, town site trusts, recognized entities for municipal trust lands, IRA councils, traditional councils, etc. For sometime TCC has been in favor of local government simplification. The problems of local government should not be addressed through the creation of new boards, commissions, corporate bodies, or new forms of municipal government. Rather, rural local government should be reorganized to utilize existing bodies and enhance those bodies. The introduction of new and novel forms of government may only lead to confusion as rural residents attempt to deal with their local governmental matters.

In connection with this policy of local government simplification, we believe it is important to fulfill the constitutional guarantee that the legislature shall provide for performance of services that it deems necessary or advisible in the unorganized borough and allow for maximum local participation and responsibility. This policy is substantially analogous to the federal policy of self-determination.

To meet these two basic policies, we feel it is necessary that the state of Alaska recognize the traditional governments which currently operate in Alaska. Such recognition will do several things. First, it will allow for the coordination of the funds currently available to local communities from sources other than the state, i.e., BIA, HUD, various CETA programs, etc.

To some degree this issue has already been addressed in the recognition of traditional governments for revenue sharing purposes. We feel, however, that more cooperation is needed between the state and these traditional governmental forms to fully realize maximum local participation and responsibility. To implement this, we favor such legislation as S.B. 565 introduced last session.

By extending such recognition to existing village and community organizations, we believe that rural government will be substantially enhanced. The recognition of such existing bodies will obviate the necessity for the specialized advisory committees, specialized service areas and boards and substantially contribute to local government simplification in the currently unorganized areas of rural Alaska. In addition, such recognition will fulfill the constitutional guarantee of maximum local participation and responsibility.

DECENTRALIZATION OF STATE SERVICES

It is sometimes difficult even for Alaskans to fully comprehend the geographical immenseness of Alaska. An appreciation of the sheer size of Alaska cannot be achieved through casual reference to a map. A full appreciation of Alaska's geographical size can only be appreciated by traversing this great land through conventional transportation systems. To the rural resident, this means being dependent on urban based state service personnel located at various sites throughout the state. Seldom is it possible for the rural resident to contact a state agency locally or even make a single phone call to a single urban government office to solve any problem. The urban Alaskan faces a similar problem in having to rely on state personnel based in other urban centers.

In both the rural and urban contexts, the root problem is the economy of scale. It is simply not economically feasible to establish free standing state agencies at the local level. The administrative cost to establish such programs would be enormous, but the need for decentralized state services is evident. State services should be available in the areas of need. State services should be available at a local level in all localities of the state to the extent that this is feasible. This problem can only be solved through the cooperation of local and state governments to provide maximum local services. This cooperation can be achieved by allowing the local governments to contract for the providing of state services. Basically, this will allow the merger of local and state program administration and allow a maximum amount of direct state financing directed toward program operations. Additionally, it is perceived that such cooperation would make the operation of state programs more responsive to local needs and desires.

It should be remembered, however, that the legislature under this theory will retain ultimate policy decision-making authority. It is only the administration of state and local programs which will be affected. Additionally, it should be recognized that not all state programs can be effectively decentralized, nor is it desirable that all state programs be decentralized. Rather, it is important that those state programs which are technically capable of being decentralized and for which there is a stated need and desire for local program operation shbuld be decentralized through contracting.

LOCAL GOVERNMENT CONSORTIUMS

During the last legislature, several bills were produced out of the interim work of the Senate and House Community and Regional Affairs Joint Local Government Study of 1979. These bills recognized the need for coordinated regional planning.

Last February, TCC submitted comments on this legislation. At that time, we stated that existing local governments should be used as much as possible and that regional concerns can best be addressed through consortiums of existing governments.

Consortiums are advisable for a number of reasons. First, they would be entirely voluntary. The committee hearings fairly indicated strong opposition to "mandatory" regional organization. Second, consortiums could easily coordinate existing programs allowing for current program and plan continuity. Third, a consortium would not create a new independent regional entity and, thus, it would be possible to avoid the type of intergovernmental conflicts which characteristically exist between boroughs and included cities. Finally, the consortium would be governed by a flexible agreement between communities. Such agreements could be flexible enough to address unique regional variations found within each area. In addition, a community's participation would be voluntary, and, therefore, presumably supported by the local community.

The arrangements which we propose are currently authorized under Article X, §13 of the Alaska Constitution which allows local governments to enter into compacts for the joint administration of functions and powers. What is needed is clarification of the permissible scope and impact of these agreements, and new legislation which would allow such consortiums to jointly exercise authority outside of their existing local boundaries.

Conceivably, these consortiums would do three things. First, they would provide for coordinated administration of local governments. By splitting costs and sharing staff, the consortiums could provide a higher quality of service at a reduced cost, where the fragmented governments that now exist cannot operate. Second, the consortiums could address regional concerns, provide a forum for expressing those concerns, and advise state agencies on regional needs and desires.

Third, they would jointly exercise those powers which they agree to jointly exercise outside their current respective boundaries, or within existing boundaries, upon consent of the respective municipal governments.

## STATE SUPPORT OF LOCAL AUTHORITY

There are a number of disincentives to a rural municipal government which wishes to exercise its municipal authority. For example, a rural community which passes an ordinance, may not be able to enforce it. If a city attempts to enforce its ordinances, it is subject to substantial liability under current tort law. Where a civil plaintiff or criminal defendant often have free legal assistance available, a city has severely limited funding available to enforce its ordinances or defend against civil complaints. If a city looses a civil suit, the resulting judgment could bankrupt the city or substantially incumber future revenues. In this atmosphere, it is impossible to expect a responsible city official to fully exercise the local government functions.

It is important that the state assist rural municipal government if it is to succeed. Many of the problems can be addressed in Title 29 itself. For example, municipal liability can be reduced to acceptable levels by enactment of a rule raising the standard of municipal tort liability for only those official acts involving "wanton and willful" conduct rather than mere negligence alone. Municipal ordinances and regulations can be assimilated into state law to allow state prosecution of local violations. Such assimilation could be dependent upon compliance with a model municipal code enacted by regulation or dependent on approval of the attorney general's office or Department of Community and Regional Affairs. Communities enacting nonapproved regulations and ordinances, however, should still be able to enforce them in the conventional manner.

Initially, such a system seems expensive to implement. It should be noted, however, that the state is expanding its criminal justice presence in rural Alaska. The proposed Bush Justice Corrections Plan would provide the basic infrastructure required by the above model. In light of these developments, the above model is a minor addition to the planned infrastructure.

## IMPLEMENTATION OF LOCAL INPUT

Often local governments and state agencies are not coordinated. Most notably, state land disposals have often conflicted with local land use/development plans. State law generally favors local control or at least local input in the organized areas of the state. In the unorganized areas of the state, however, the state agencies seem to dominate. This exists in spite of the constitutional promise of maximized local participation. We, therefore, propose that some mechanism be inserted into law to provide for fuller local participation.

Three alternatives exist. First, an administrative restraint may be placed on agencies' actions. Specifiically, a community or consortium must agree to agency actions/plans affecting the community or consortium. In the absence of such consent, the agency would have to show, in a locally neutral administrative hearing, that the best interest of the state requires such agency action/plan.

A second alternative would be a planning restraint on the agencies. The communities or consortiums would produce regional plans with which the agencies must comply. Without compliance, the agencies would have to get a waiver from the community or consortium or proceed through a local neutral hearing.

Third, a political mechanism could be established. State law could require agencies to have local plans/actions approved by a local hearing officer at a local hearing. This would allow affected communities and consortiums an opportunity to provide input and hopefully influence agency actions in their areas.

We hope that you find the above comments useful, and that these concerns find their way into the planned Title 29 revisions. We will be glad to respond to any questions regarding the above proposals and plan to augment these comments as needed.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. Williams

William C. "Spud" Williams
President

WCW/4877m
113a11

Official Business

House of Representatives

Committee on

Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

June 12, 1980

TO: Mr. Billy Barrier
FROM: Marjorie Gorsuch
RE: FCCSHB947

Being aware that you will be involved in the revision of Title 29, as per the requirements of CSSCR66 which directs the Alaska Legislative Council to review the Municipal Government statutes, I want to call your attention to an area of law, enacted by the Eleventh Legislature as FCCSHB947, which you will want to address during the course of your revision. In the haste of the last days of legislative activity, the following omissions went unnoticed when the Free Conference version of the bill was adopted.

Section 9 AS 29.23.025 (e) outlines the procedures to be followed if a reapportionment ordinance has not been approved by the voters after the assembly has determined that reapportionment is necessary. The law does not address what happens to the order--is it voted on by the people? Can the order be appealed? Is administrative or judicial review provided for?

In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.

Both the draftsman, Jack Chenoweth, and Ginny Chitwood of the Municipal League which will be involved in the revision of Title 29 are familiar with the problems in the Free Conference law and would be able to answer any questions.

**Elsie O'Brien (Houston city clerk) to Arliss Sturgulewski**

**(1) AS 29.28.190, recall provisions --**

**Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain**

**(2) AS 29.63.090 -- service areas within boroughs**

**The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.**

General observation with respect to Title 29 -- would like greater information within the text of the ~~statute~~ volume. (This is probably not possible because of the strict format relating to what may be annotated. However, perhaps CRA Department should receive an amount so that each year, for small cities, a loose-leaf form of Title 29 may be prepared or updated which carries changes in law, applicable commentary, case decisions, AG opinion texts, etc. supplied by the Dept on a quarterly basis. -- The cities could reimburse for the service, or for a portion of it.)

8/7 JC

P.O. Box 163
ST. MARY'S, ALASKA 99658

July 29, 1980

Department of Community and Regional Affairs
Pouch B
Juneau, Alaska 99811

Re: Recommendations for changes in Title 29
To Title 29 Policy Committee

Gentlemen:

At the request of Mayor Paukan I am submitting the following comments on some of the provisions of Title 29 that the City would like to see changed. The provisions I have commented upon are those that have proved somewhat troublesome during my duration as City Manager. There are no doubt many other provisions that require change.

29.23.570 VACANCIES: This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570

29.23.070 and 29.43.040 PLANNING, PLATTING AND ZONING The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

29.48.190 BUDGET AND CAPITAL PROGRAM Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except though lengthy procedures to amend the budget. The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the orignial appropriation.

29.48.220 POST AUDIT The audit requirement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million

29.48.260 MUNICIPAL PROPERTIES I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's. First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak english from participating in auctions. The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

I can see no reason for subjecting leases of City land to the same requirements that attach to sales of city land. This unduly restricts the City's ability to make land available for new businesses.

It is not clear whether the exception developed in subsection (e) is free from the requirements of prior appraisal and public auction or sealed bid.

29.68.010 LOCAL BOUNDARY COMMISSION The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative session has begun. The delay in time between the decision of the Local Boundary Comm'n. and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

I am delighted to see the efforts to review Title 29. I hope it produces some beneficial results. I trust these comments will prove helpful.

Sincerely,

CITY OF ST. MARY'S

Timothy E. Troll
City Manager

RECEIVED
AUG - 4 1980
DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

**AREAS OF AS 29 (MUNICIPAL CODE) REQUIRING ATTENTION**

**DICTATED 7/29/80 BUT NOT READ**

**BY GERALD L. SHARP**

---

**The use of the word election throughout the code should be examined with the eye to eliminating all those references to "general" election where it was meant to refer to a municipal election. Where a state general election was meant, the word "state" should be added.**

AS 29.08.010, 29.13.010 and 100, and 29.78.010(1)(2)(8)

A careful reading of the code indicates that a unified unit of home rule local government is not a municipality. Under these sections, it is not a home rule municipality. If this was the intent, it should be clarified in the definitions. Along this same line, all sections which apply to home rule boroughs and home rule cities should be reviewed to determine whether they should also apply to unified units.

AS 29.08.020

An interpretive guide should be provided for the court so that it does not seize upon this section to revive Dillon's Rule.

AS 29.13.100

The effect of the phrase "acting otherwise than as provided" should be examined to determine whether this phrase means that a home rule municipality may do neither more nor less than is prescribed for home rule municipalities. See the Whitson case.

AS 29.18.130

We should probably address REAA's under this section.

AS 29.18.140(a)(b)

This section implies that a newly incorporated city or borough may succeed a home rule or previously incorporated general law city or borough. Was this meant?

AS 29.[illegible].180

Organizational grants under this section appear to be inadequate.

AS 29.18.330

The resident training and hire preference should be examined for constitutionality.

AS 29.23.060(a)

This section implies that there may be no special meetings if any member is not notified.

AS 29.23.060(d)

Some consideration should be given to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

AS 29.23.070

This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.080

This section should be checked to determine whether it tracts with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.040 et. seq.

The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualifications of officers as these relate to the mayor, council, and assembly memebers should be uniform as between a city and a borough.

AS 29.23.210

Does this require four votes on a procedural motion? This language should parallel the similar provisions for

boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions.

AS 29.23.310

Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)

Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360

My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

AS 29.23.370

I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps, there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to serve two different masters, the legislative body, and the chief administrator.

AS 29.23.395 through .401

This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470

I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480

I suggest that the adoption of an ordinance at the very next meeting after the repeal of a manager plan is expecting

too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540

The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school boards budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. (Sour grapes on my part, perhaps.) Also, it appears that this section would permit a person working in the grants section of the Department of Community and Regional Affairs to serve on an assembly or a council.

AS 29.28.015

I question why the mayor in a manager type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030

It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the state of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.080(a)

This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.110

This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

**This section should be clarified to indicate whether a re-elected official may be recalled within six months within of his second election.**

AS 29.28.140

**This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting. They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.**

AS 29.28.150

Some thought should be given to clarifying this section to require that the name of each elected official appear on a separate petition and not be on the same petition with any other elected official. The statement of the grounds should also be limited to 200 words.

AS 29.28.160

Either the clerk or the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170

I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60. If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be given an additional ten days for their sloppiness or inadequate performance.

AS 29.28.200(c)

If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name

[illegible] recall ballot. [illegible] appointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?

AS 29.28.210

If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?

AS 29.28.250

What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS 29.33.010

Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in its Lafayette decision.

AS 29.33.050

While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read "and shall establish, maintain, and operate."

AS 29.33.080(e)

Consideration should also be given here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

AS 29.33.085(b)

The requirement that the commission present new recommendations on a comprehensive plan every two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it does not appear that there is any

pursuant to a comprehensive plan which has not been reviewed for more than two years. Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.110(b)(1)

I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works. The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)

It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance," or "variances from the terms of the zoning ordinance," or "requests....".

AS 29.33.120

It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)

I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150

It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

**I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.**

AS 29.33.150(b) and AS 29.33.160(c)

**These sections need to be revised out of the code.**

AS 29.33.190

**This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.**

AS 29.33.200

This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

AS 29.33.240

I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vest in a municipality upon vacation.

AS 29.41.010

Perhaps the idea of third class boroughs should be re-examined.

AS 29.48.010

I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I

should be a catch-all grant clause. Also, [illegible] should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.030

This may be the appropriate section to deal with the Lafayette antitrust problems. Under subsection (b), someone to check to determine whether the reference to the Alaska Transportation Commission makes sense in the light of SB 577 (sorry, I do not have the bill with me as I dictate this).

AS 29.48.033

Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

AS 29.48.050

I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.070, .080, and .090

The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly be adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)

Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110

AS 29 48.110 should be changed to make it clear that a

municipality may establish more than a [illegible] district.

AS 29.48.160(b)

If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.190(b)

This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and be for a capital improvement.

AS 29.48.200

The fine limitation and the imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

AS 29.48.210

This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide basis.

AS 29.48.250

Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260

I believe the exemption which is set forth in (d) should be expanded to incompass any land which the municipality disposes of.

AS 29.48.270(b)(c)

These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

AS 29.48.310, 320, and 330

Although these three sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights Card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.010

Again the problem of how this is to apply to unified units of government; also, this section should be changed to permit the use of areawide revenues on a non-areawide basis.

AS 29.53.020(a)(1)

Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

AS 29.53.020(a)(3)

A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps, hospital, which are used in this section. Also, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt; for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.030

This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

**AS 29.53.060**

**Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.**

**AS 29.53.135**

**This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to the exempt use.**

AS 29.53.150

A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

AS 29.53.180

This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.415 and .440

Something needs to be added to these sections to take care of the problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.73.020

This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.

**29.08**

**Although an attempt has been made in this Chapter to classify the various kinds of Alaskan municipalities, more recent amendments to Title 29 and unification of several cities and boroughs have resulted in confusion over definitions of "cities", "boroughs", and "municipalities". It is not clear, for instance, whether the unified Municipality of Anchorage is a city, a borough, or unified municipality or all three forms of government within existing provisions of AS 29.**

29.13.100

**The Code should contain a uniform system for designating statutes that expressly apply to home rule municipalities and all such statutes should be consistently cross referenced.**

29.23.050

The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

29.23.060(d)

Circumstances, other than financial interests, which allow a member to abstain should be better defined.

29.23.080

The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

29.23.130(B)

Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

29.23.150 and AS 29.23.470

Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

29.23.170

This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto. For instance, if the mayor vetos a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

The three year residency requirement here is probably invalid.

29.23.210

As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

29.23.250

Another probably invalid three year residency requirement.

29.23.270

This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

29.23.555

This section has been superceded by AS 39.50.

29.28.070(b)

Reference to "last general election" in this subsection is unclear; considerable confusion has existed in the past over whether the term refers to the last state or municipal election.

29.28.130 et seq

Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

29.33.070--245

Serious thought should be given to the purpose of the planning, platting and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

29.33.190

This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which has not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53 .310 allows persons holding security interest in illegally subdivided lands

29.33.070

It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

29.33

The current language of this chapter, as it incorporates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restrictive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

29.33.250

Presumably the transfer required is one from all cities exercising the power rather than from a city.

29.33 and 29.38

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities)?

29.48.030(b) AS 29.48.035(b) and (c)

These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code.

Moreover, AS 29.48.030 and .35, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very lease confusing and perhaps unnecessary.

Reference to powers granted to second class boroughs to construct and maintain Local Service Roads and Trails under AS 19.30.251 should be made in this section.

Reference to the power granted to local governments to regulate use of public streets, alleys and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

29.48.030(a)(12)

The term transportation "system" used in this section should be defined.

29.48.260

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of lanc offered for sale and the date upon which such valuations must be based. Moreover,

29.58.135

The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

29.53

Should be amended to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years. An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

29.63.090

The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

8.60.050-100

Regulation of junk yards in this section should be cross-referenced to those sections of Title 29. relating to areawide planning, platting and zoning powers.

9.25.110-120

It is unclear whether public records statutes apply at all to municipal government. If it is the intention of the Legislature to apply the public records laws of AS 9.25.110-120 to cities and boroughs, then those sections should be amended accordingly with an appropriate cross references to Title 29.

**SUGGESTED CHANGES TO TITLE 29**

**From Elsie O'Brien (Houston City Clerk)**

1. **AS 29.28.190, recall provisions:**
   **Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.**

2. **AS 29.63.090, service areas within boroughs:**
   **The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.**

3. General observation: would like greater information within the text of the volume. (This may not be possible because of the strict format relating to what may be annotated. However, perhaps CRA should receive an amount so that each year for small cities a loose-leaf form of Title 29 may be prepared to update which carries changes in law, applicable commentary, case decisions, AG opinions, etc., supplied by the Dept. on a quarterly basis.)

From Senator Robert H. Ziegler, Sr.

1. I don't much like AS 29.53.080. What privately contracting parties sell or pay for property need not necessarily reflect f.m.v. Alaskan assessors are supposed to assess at 100% of true value. Ergo, if they can examine and inspect properties, why can't they appraise without involving the records of the buyer/seller? (I've lost this argument before!)

From Jack Chenoweth (Staff Counsel, Legislative Affairs)

1. Give some thought to inclusion of a provision somewhere by which a state officer -- governor, CRA commissioner or what have you -- enjoys authority to appoint municipal voters to fill elected city or borough offices when the number of incumbent members of city council council or borough assembly drops below the number required by law or charter to produce a quorum. For example, if the 5 members of the Juneau assembly are recalled, it may be that the four remaining cannot function as an assembly even to the point of filling a vacancy or calling for an election to fill the vacancy. Other quirks in charter provisions could operate to preclude councils or assemblies from operating if there are "mass" resignations or wholesale removals.

1. Section 9 AS 29.23.025 (e) outlines the procedures to be followed if a reapportionment ordinance has not been approved by the voters after the assembly has determined that reapportionment is necessary. The law does not address what happens to the order--is it voted on by the people? Can the order be appealed? Is administrative or judicial review provided for?

2. In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.

From Clara M. Eccles (Anchorage)

1. I'm interested in SB 154 "Extending property tax exemption to include disabled veterans of any age." (Note: SB 154 did not pass last regular session.)

From Bruce Aronson (Ombudsman's Office)

1. AS 29.28.130 is unclear as to whether an official may be subject to recall within 6 months of being re-elected. It would seem that the original intent of this section was to protect rookies rather than encumbants. Recommendation: all officials may be recalled after 6 months have been served in office. The 6 month grace period would not apply if a person is re-elected to the same office.

2. The grounds for recall listed in AS 29.28.140 are too narrow in scope. Since the grounds stated in recall petitions need not be proven, people are forced to name one of the three listed grounds even when the real reason behind the petition bears little relation to it.

3. AS 29.28.150 should be changed so that it is clear that a recall petition can seek to recall only one named official. A separate petition should be filed for each offical sought to be recalled. A petition should be required to contain the mailing address of each person who signs it.

4. AS 29.28.180 should be changed so that a new petition may not be filed sooner than 6 months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

5. There has been a fear that once a sufficient petition has been submitted and accepted, members of the council could resign and be re-appointed to the council. The statutes should preclude this possibility.

6. The statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition, not on the state election.

7. It is unclear whether a person recalled is removed from his office at once after the election has been certified, without any transition period. Some sort of transition period should be provided by statute to allow a government to continue to operate when a majority has been recalled from office.

8. Eliminate third class boroughs. There is no need for them now that REAAs have been established. If a borough is organized, it should assume minimal responsibilities, such as land use planning.

9. There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what types of enforcement services a city must provide. This will never be done voluntarily on a local level because the state currently provides free police services. A statute should identify the types of local problems which the state troopers will not pursue, such as dog control.

10. There is a problem with local control of service areas. Community councils are getting direct support form the state and this creates mini-municipalities within the municipality which sets up the service area. The resulting overlapping jurisdiction causes confusion as to policy and citizens cannot determine who to deal with regarding particular problems. The councils should be advisory only by statute and money from the state ought to be appropriated for the city, not the council.

11. Statutes should be clarified and strengthened regarding the annexation process. Cities ought not to be able to annex territory without providing services to the annexed area and people living outside cities who are receiving services ought to help pay for them.

From Palmer McCarter (C & RA)

1. Clarify whether "health and hospital power" is one or two separate local powers.

2. Adopt uniform definitions of "municipality," "borough," and use the terms consistently throughout the title.

3. Clarify the use of the terms "general" and "regular" election. Use the term "general" election to refer to state, not local elections.

**The following items as pertain to Title 29 were included in the preliminary draft of the Alaska Municipal League 1981 policy statement as agreed upon by the AML Legislative Committee at their meeting in Palmer, August 21 & 22, 1980.**

**Final action on the 1981 policy statement will be taken by the delegates of the Alaska Municipal League conference when it convenes its business meeting in Fairbanks on November 15, 1980.**

PART I - TAXATION AND FINANCE

E. Funding the Newly Organized Municipalities.

1. The League requests the enactment of legislation to provide adequate block grants to assist in the formation of new municipalities.

F. Funding the Study and Formation of New Municipalities

1. The League requests the enactment of legislation to provide adequate block grants to assist in the implementation of newly organized municipalities.

PART II - EDUCATION

B. Assembly/Council-School Board Relationships

1. The League supports legislation to clarify assembly/council-school board relationships and opposes legislation which would diminish assembly/council authority in education matters.

PART IV - LAND USE

A. Local Options

1. The League feels strongly that laws pertaining to the powers of local planning and zoning must allow for the greatest flexibility at the local level.

E. Coastal Management

1. The League supports continued and maximum local control in the development and management of the coastal policies, coastal planning and implementation of coastal policies.

2. The League supports the concept of "extra-territorial" planning by municipalities in the unorganized borough with statutory provisions to permit the Alaska Coastal Policy Council to adopt said "extra-territorial" planning as part of the Alaska Coastal Management Program until such time as a resource district plan is adopted.

3. The League urges the state agencies to abide by a municipality's interpretation of coastal management standards from the time of conceptual approval by the municipality until fiscal approval by the Legislature.

**F. Subdivisions**

**1. Subdivision of land is a major factor in community development, creating patterns which have long lasting effects. Although present legislation clearly recognizes the need for regulation of subdivision, means of enforcement are inadequate. The League supports legislation which would require proof of approval by local authorities prior to the filing of an instrument affecting the boundaries of land and prior to any judicial partition of real property.**

**2. The League supports legislation which would require legal access to all state land disposals; and that, except for state subdivisions in remote areas or for dispersed entry, local subdivision improvement requirements be honored by the state by either installing such improvements or by acquiescing in the formation of service areas and local improvement districts containing such property and honoring the obligation to pay LID assessments on such property while it is in state ownership.**

3. The League supports the concept of an Enterprise Fund as a means for the state to provide required improvements in state land disposals.

PART V - TRANSPORTATION, DOCKS AND PORTS

11. Port Authorities: Insufficient mechanisms exist under Alaska law to create joint port authorities, free port of entries and trade zones. Therefore, the League supports legislation to expand the powers of home rule and general law municipalities to create, finance and operate port facilities and ancillary authorities to enhance commerce within the State of Alaska.

PART VII - MUNICIPAL ELECTIONS

A. Majority Elections

1. The League strongly supports legislation which would permit a municipality, with voter ratification, to opt out of the 40% plurality requirement for election to office and which would clarify the 40% rule for municipalities that continue to use it.

G. Qualifications for Elective Office

1. The League supports legislation that would include provisions in Title 29 for municipalities to set qualifications for all elected municipal officials and to delete that section in Title 14 relating to municipal school board member qualifications.

2. The League supports legislation that would amend Title 29 to include reference to the requirements of AS 15.13 and AS 39.50 pertaining to qualifications of candidates.

H. Title 29 Revisions

1. The League supports legislation which would clarify AS 29.28.070(b) to specify that signature requirements for petitions be based upon the last regular election held just preceeding the date of first circulation of the petition.

**2. The League supports legislation amending AS 29.28.070 to provide that the number of signatures required to initiate a petition for referendum, initiative or recall be 30% of the number of voters voting in the last regular election regardless of population of the municipality.**

**3. The League supports revision of the reapportionment provisions of Title 29 for clarification, simplification, flexibility and autonomy at the local level.**

PART VIII - LOCAL GOVERNMENT POWERS

A. Local Autonomy

5. The League supports the community council concept and also supports legislation which would require that the local governing body be the management unit for local community councils. The local governing body should be both the requester and receiver of state funds that will be used to fund community councils.

C. Third Class Borough

1. The League supports elimination of language from Alaska Statutes which would allow for the future creation of third class boroughs. Any existing third class borough would be allowed to continue in existence until such time as it reclassifies. The League believes that a third class borough, as currently defined in statute, does not meet standards for a general purpose local government.



**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Judith Slajer, Borough Manager*

FROM: Kathryn Carssow, Planning Director

DATE: August 14, 1980

RE: A.S. 29.63.090, Service Area

As we discussed, Judi pointed out a problem in the following excerpt from A.S. 29.63.090:

> ...the exercise of the powers must be approved by a majority of the qualified voters residing within the service area...

This doesn't correspond with A.S. 29.63.015, outlining procedures for special assessments, where the borough notifies the legal owner of record of real property of the proposed assessment, and where, if the bearers of 50% of the assessment protest, the process stops. These two sections are too interdependent for such a discrepancy.

The wording under service areas is unclear. Who has the right to vote: the renter residing on the property in the proposed service area or the absent property owner, who will bear the assessment? I'd guess the legislature envisioned the property owner residing on the lot; your point about the absentee land owner living in Florida is well taken. Moving owners onto their property in trailers long enough to hold an election is equally absurd. More research is needed to find clear and equable wording, but as a start I suggest the following for discussion:

> ...the exercise of powers must be approved by a majority of the qualified voters <u>who are legal owners of real property</u> within the service area...

*(Judi: Please note your comments.)

Russ - I feel that making this just real property owners is very limiting - would approach the problem from a petition standpoint - i.e., if there is a number of residents that has problems also

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
P. O. BOX 7200
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

July 31, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 N. Franklin Street
Juneau, Alaska 99801

Re: Title 29 Review

Dear Ginny:

In furtherance of our telephone conference this date, please find enclosed herewith a preliminary list of matters the Ketchikan Gateway Borough and staff would appreciate being considered regarding the proposed Title 29 review. As I also mentioned, we would expect further submissions by staff as soon as possible as their concerns are developed.

If we can submit any further information regarding these points, please do not hesitate to so advise.

Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

cc: Borough Manager
City Manager

Amend to include "harbors" as type of facility municipality may own or operate outside its boundaries.

Comments: The City of Ketchikan currently leases from State and operates several boat harbors outside the boundaries of the City.

2. AS 29.53.135 - Board of Equalization:

Amend to clarify authority of assembly to appoint a board composed of not less than three (3) persons who may be (a) members of the assembly, (b) private individuals with certain experience, or (c) combination of (a) and (b). [See attorney Tesche memorandum, page 3]

3. Interest Rate:

The legal rate of interest now provided for in various tax enforcement provisions is eight (8%) percent.[1] Consideration should be given as to whether this rate should be increased. Also, interest rate on special assessments [AS 29.60.060(a)] is linked to the interest on real property taxes.

4. AS 40.15.030; AS 40.15.050 - Dedication of Streets, Alleys and Thoroughfares:

Add language to specifically provide that although second class borough may, as the platting authority, require, as a condition of approval of a subdivision of property, the dedication of rights-of-way and easements, and the installation of roads, sewers, and other utilities and improvements, and the dedication of such rights-of-way and improvements to the public, that the borough does not by such action become liable or responsible for any maintainance, operation, or inspection thereof, or for injuries to any person using the improvements (i.e., child drowns in drainage culvert not covered, cleaned, inspected, or maintained).

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[1] See: AS 29.53.180(a)(1), (a)(2), and (c)
AS 29.53.375
AS 29.53.390
AS 29.53.415(d) (sales tax)

Comments: Since a second class borough does not have road or other maintenance powers, but via the planning commission is the agency that requires and approves, incident to its platting authority, the design, construction and installation of subdivision improvements, which by AS 40.15.030 - AS 40.15.050 are "deemed to have been dedicated to public use," a question regarding ownership and duty to inspect and repair the facilities arises (See 9.65.070 - [immunity applies only "when the municipality is neither the owner nor lessee of the property involved"]). State law has addressed certain aspects of the matter in AS 38.08.090.

7. Implementation of Grants:

Amend AS 37.05.315 [HB 578] to require the State Department of Community and Regional Affairs to receive, administer, and implement any State grants which a municipality does not have the power to administer and implement (such as those appropriated by Ch. 50 SLA 80 as is now the procedure regarding grants to unincorporated communities where there is no incorporated entity qualified to receive the grant (AS 37.05.315(h)(3)). Also amend AS 37.05.315(c) to not impose covenant requirements on municipality with no power to operate and maintain the facility.

6. AS 29.33 - Planning, Platting and Zoning:

(a) AS 29.33.085 - Comprehensive Plan: Amend section to require comprehensive plan review every five (5) years rather than every two (2) years.

Comments: See paragraph (1) of Planning Director's memorandum dated July 22, 1980.

(b) AS 29.33.090 - Zoning: Expand on enabling language to assure borough is not restricted in forms of zoning permitted.

Comments: See paragraph (2) of Planning Director's memorandum dated July 22, 1980.

(c) AS 29.33.150 - Platting Jurisdiction and Power: Amend subsection (b) to delete the following language in brackets and adds the underlined language to clarify the responsibility of State to comply with design and other requirements and only exempts State from actual construction requirements:

"(b) The regulations adopted under (a) of this section apply to subdivision plat of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board, except that the platting board [may not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat] must approve the subdivision plat if the plat meets all local platting regulations other than those requiring the construction of roads or capital improvements on state land included in the subdivision plat. Subdivision plats of undeveloped state land for disposal shall be accompanied by engineering plans for all improvements required by local regulations applicable to the subdivision of private land."

Comments: See paragraph (3) of Planning Director's memorandum dated July 22, 1980.

(d) AS 29.33.200 - Alteration of Replat: Amend or add a new section to allow for approval and recording of plats for minor boundary adjustments without going through formal planning commission hearings where no new lots are created, and no new dedications of roads or other rights-of-way are involved.

Comments: See paragraph (4) of Planning Director's memorandum dated July 22, 1980.

(e) AS 9.55.275: Add language to recognize that a change in boundary pursuant to AS 09.55.275 may result in a substandard size lot, and that compliance with normal subdivision requirements is not required with waiver by assembly permitted.

Comments: Cities or other public agencies frequently acquire in fee narrow strips or areas for road widening, sewer, park or other facilities which are very small in size (i.e., pump station for sewer system 25 x 25 etc.) and the public agency may in fact be prohibited from acquiring excess area not actually required for the public improvement. Such acquisitions frequently result in a change of boundary within the provisions of AS 09.55.275 and planning commission approval of a preliminary plat and also a final plat, is required.

(f) State Filing of Acquisitions. Filing of a plat with the local planning authority should be required if State acquires easements or rights-of-way across platted parcels.

Comments: See paragraph (4) of Planning Director's memorandum dated July 22, 1980, addressing need for filing with the local planning authority.

(g) AS 29.33.170 - Waiver of Subdivision Requirements: Amend section to make waiver permissive and clarify access which must be found to exist before platting authority may waive plat approval and recording requirements.

Comments: See paragraph (5) of Planning Director's memorandum dated July 22, 1980.

7. AS 29.53 - Corrections, Cancellations, Refunds and Transfers of Taxes. Add sections to provide procedures for correction of tax roll, refund or cancellation of taxes after confirmation and certification of final tax roll when required to correct clerical or mathematical errors, assessment of non-existent property, errors in legal description, or other administrative problems. AS 29.53.390 does not accommodate the foregoing.

Comments: The Borough assessor advises the State assessor, with assistance and input from local assessors, will be making suggestions and proposals regarding the above.




**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901


TO: Judith Slajer, Borough Manager

FROM: Kathryn Carssow, Planning Director

DATE: July 22, 1980

RE: Title 29 Revisions

Last week, Bill, Jim, and I met to discuss improvements to Title 29; following are our recommendations --- add, (delete):

1. Section 29.33.085. Comprehensive plan. (b)...The planning commission shall undertake an overall review of the plan at least once every (two) five years.

   To do justice to the time and money invested to develop the original policies, an overall review of the comprehensive plan every two years is impossible for a small department like ours with other major projects. We prefer revision every five years to allow us time to detect and incorporate changes in economic, population, and land use trends and to undertake other major planning efforts without increasing our existing staff.

2. Section 29.33.090. Zoning. We intend to do additional research on this section. Our concern is that performance zoning may not be allowed under this section.
   AS 29.33.090 states in part "The assembly shall regulate... use of land...by districts or contract zoning." Contract zoning being a hybrid of a district (Euclidean) type zoning. Many performance systems do not employ districting as a control element. Therefore present state law may not include enabling language for other than land use controls based on traditional Euclidean zoning.

3. Section 29.33.150. Platting jurisdiction and power. (b)...the platting board (may not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat) must approve the subdivision plat if the plat meets all local platting regulations other than those requiring the construction of roads or capital improvements on state land included in the subdivision plat. Subdivision plats of undeveloped state land for disposal shall be accompanied by engineering plans for all improvements required by local regulations applicable to the subdivision of private land.

Of course we prefer to see this section deleted altogether, but clarification along these lines will be an improvement.

4. Section 29.33.200. Alteration of replat petition. See attached memo from Jim re: feasibility of shortened plat procedure.

   This section needs language to distinguish plat alterations from subdivisions.

   Also, AS 09.55.275 requires plat approval for parcels condemned for public purposes - e.g. city condemnation of the Wingren property for the sewer pump station - but AS 29.33 does not have corresponding language speaking to approval of substandard parcels for public purposes. See Attachment 2.

   See Attachment 3 for Bill's explanation of problems resulting from condemnations for state right-of-ways.

5. Section 29.33.170. Waiver in certain cases. (a) The platting authority (shall) may...

   (1) each tract or parcel of land will be located on or have (adequate access to a) developed road access to a public highway or street;...

   (3) the conveyance is not made for the purpose of, or in connection with, a present (or projected) subdivision development;

   For purposes of maintaining accurate platting records Section 29.33.170 should be deleted entirely; as a minimum, we recommend the above clarifications. The first is intended to define "adequate access." The second deletes the reference to projected development; for all practical purposes it's a meaningless criteria.

MT

KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Judith Slajer, Borough Manager

THRU: Kathryn Carssow, Planning Director

FROM: Jim Rapp, Zoning Administrator

DATE: January 15, 1980

RE: Feasibility of Shortened Plat Procedure

At the January 14, 1980 workshop on the proposed new subdivision ordinance considerable discussion centered on the possibility of shortened plat procedures for "minor" subdivisions. A minor subdivision is basically one that does not involve the creation of additional lots or new streets. An example would be, two neighbors wishing to swap a 10' wide strip of land along their common side lot line in order to correct a house siting error. Proposed Section 55.10.045 (attached) provides a mechanism for such a shortened procedure.

This proposed section, as presented to the Borough Assembly, calls for a one step approval by the Platting Board, as opposed to the usual two step approval. As originally recommended by the Planning Commission in their review of the new ordinance, this provision was made an entirely administrative responsibility. Provided the limitations of Section 55.10.045 were honored, the designated planning official would approve the plat, obtain necessary signatures (Borough Manager, Planning Commission Chairperson, etc.) and see to its recording. However, the Municipal Attorney, in reviewing the Planning Commission's recommendations, found that Alaska Statutes Title 29 and Title 40 mandated approval by the full Platting Board in all cases.

Alaska Statute 29.33.200 sets out a replat alteration procedure that states that the petition shall be filed for approval by the Platting Board. This is reinforced by Alaska Statute 40.15, Dedications and Subdivisions, which calls for platting authority action in several instances. Alaska Statute 29.33.200 is the only vehicle suggesting the application of a minor subdivision procedure and unfortunately perhaps does not accomodate the greatest possible shortening of the process.

Administrative approval of short plats is a practice widely used in other areas and has several advantages, such as reduced processing times and costs. In order to protect neighboring properties, I would suggest that public notices be sent out for short plats with a five day response limitation. If any significant problems come to light as a result, an administrative decision would be made to present the plat to the full Board. Amendments to Alaska Statute 29 would be necessary for Ketchikan to adopt such a policy. Section 55.10.045 of the revised subdivision ordinance is the most expeditious route available at present. If a change in state law is desired, I suggest the Assembly refer the matter to legal and planning staff for preparation of language addressing the necessary changes and subsequent discussion of this issue with our state legislators.

wr

Attachment 1

City is submitting this plan as a matter of form. The statute requiring the plat is AS 09.55.275, quoted here in full:

> "Replat approval. No agency of the state or municipality may acquire property located within a municipality exercising the powers conferred by AS 29.33.150 - 29.33.245 which results in a boundary change unless the agency or municipality first obtains from the municipal platting authority preliminary approval of a replat showing clearly the location of the proposed public streets, easements, rights-of-way, and other taking of private property. Final approval of replat shall be similarly obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners."

Attachment: Site Plan

TO: Kathy Carrsow, Planning Director

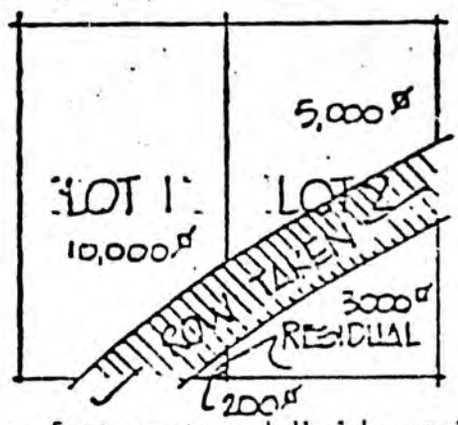
FROM: Bill Jones, Associate Planner

DATE: July 17, 1980

RE: Title 29

In reviewing Title 29 I was not able to identify any specific section which would apply to the State of Alaska "taking" land for rights-of-way without the benefit of a replat. My concern is that these defacto subdivisions often become obstacles to proper land development.

The following sketch illustrates the problem and I have included questions that "local planners" are often asked about results they were powerless to affect.




Can I use the square footage to subdivide or increase density ?

Can I put a culvert under the road and use it for a drainfield ?

Can I sell it to someone else ?

Just what can I do with it ?

SCOMM

#23:11

| NAME | SENT TO: | DATE: |
|---|---|---|
| Revised Index | Handed out Policy Mtg | 29 Sept 80 |
| Ltr - City Unalaska | " " " " | " |
| Ltr - City of Nome | " " " " | " |
| Draft Bill Fm State Assessor | " " " " | " |
| Revision Sugg - Stanley | " " " " | " |
| Minutes Policy Mtg | Policy, Tech, Ex-Off & others | 30 Oct 80 |
| Index | [redacted] Technical Group | 06 Oct |
| Presentations | | |
| Ltr - City of Nome | | |
| Ltr - City of Unalaska | | |
| Draft bill (St. Assessor) | | |
| Rev. Sugg Stanley | | |
| Reservation cards | Policy group | 07 Oct |
| & Notice of Mtg | Tech & Ex-Off | 08 Oct |
| Summary of Sugg | Policy, Tech, & Ex-Off | 08 Oct |
| Notice of Mtg | All others | 08 Oct 80 |
| AG's opinions | Mailed to Policy Grp, Tech Comm & Ex-Officio | 17 [redacted] Oct 80 |
| Summary of Comments C. Demming Cowles | Handed out w/ text to Tech Grp at mtg [redacted] Oct | 20 [redacted] Oct |
| | Mailed to Policy Group w/ Text [redacted] Oct | 22 [redacted] Oct |
| Notice of AFN Mtg | Mailed to All | 16 Oct |
| Packet w/ Stephanie Scott Comments & Assessor Recomm. | Mailed to ALL 22 Oct | 22 Oct |

| NAME | SENT TO: | DATE: |
|---|---|---|
| Packet #1: | NOTE: Glenn Svendsen | |
| Resolution #39 | has since gotten copies | 17 Sep |
| Article : | | |
| Summary AG's opns | | |
| Proposed agenda | | |
| Ltr. City St. Mary's | | |
| Ltr. Teschke Sugg | | |
| Ltr. Sharp Sugg | Policy Group | |
| Total 29 | | |
| '80 Bills Packet | | |
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| Minutes of Mtg | Wkg Grp. Policy Grp | 11 Sep |
| w/Attachments | Ex Officio, Svendsen & others | |
| | | |
| Packet #3 | Policy Group | |
| Draft bill: St. Assessor | Wkg Group | |
| w/ ltr FBX Boro, Assessor | Ex. O Group | |
| Ket. Boro | Glenn Svendsen | |
| Memo C&RA (Dye) | | |
| Ltr. City of Valdez | | |
| Memo. Dept Env. Con | | |
| | | |
| Ket. Boro Ltr | Wkg Grp (mailed w/ | 16 Sep 80 |
| for Revenue Coll. | index (Ken) & sugg. summ. | |
| | carried to policy mtg | |
| | 29 & 30 Sep. Svendsen. | |
| | mailed 17 Sep | |
| Agenda Sugg | wkg grp & Ex. Off | 23 Sep 80 |

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

October 22, 1980

Stephanie K. Scott
Administrative Secretary
Haines Borough
P.O. Box H
Haines, Alaska 99827

Dear Ms. Scott:

Thank you for your letter. I have provided copies of the material you sent to all members of the Title 29 Advisory Policy Group.

For your information the Superior Court opinion City of Kodiak v. Kodiak Island Borough was never appealed. Unfortunately, I am not aware of any additional case law construing the statutory provision which limits the authority to form service areas. I will forward any additional information I receive on the subject to you. You have suggested that AS 29.63.090(d) be rewritten to provide more flexibility to municipal governments in creating service areas. Since that section is essentially a restatement of language contained in the state constitution, I doubt that rewritting the statute would accomplish your purpose.

Please send me any other suggestions which you may have regarding proposed changes to the Municipal Code and I will gladly forward them on to the Policy Group. Our next meeting is scheduled to be held in Fairbanks on November 10th and 11th. I hope to see you there.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Title 29 Policy Advisory Group

HAINES BOROUGH
P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

Tam Cook
Title 29 Revision Committee
Legislative Affairs
Legal Division
Pouch Y
Juneau, Alaska 99811

Dear Tam:

At this late date I am submitting the transcipt of my comments at the September meeting. As attachments you will find the various letters and attorneys' opinions I refer to.

There is an item I would like to draw to the technical committee's attention regarding service areas. AS 29.63.090 (d) states that :

> A new service area may not be established if, consistent with the purposes of article X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

In 1979 there was a superior court opinion in the City of Kodiak vs. Kodiak Island Borough which clarified this statute. Basically, the opinion was that annexation would provide for more services than the service area residents desire and that additional taxing jurisdictions are not created since the taxing authority for the service district remains the the Borough.

Even if the statute is not re-written to provide a little more latitude in the creation of service districts, perhaps the decision could be referenced in a foot note. However, I do not know if the decision was appealed. If you have any more recent information, or access to information, I would appreciate a lead.

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

October 17, 1980

**HAINES BOROUGH**
P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

October 17, 1980

David Dye, Planner III
Department of Community
and Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear David:

I am enclosing a copy of the superior court opinion in City of Kodiak vs. Kodiak Island Borough which clarifies 29.63.090(d). Perhaps your department has more recent data on this decision. Was it appealed? If the decision stands perhaps it would be wise to recommend to the Title 29 Technical Committee that it re-write 29.63.090(d) to give a bit more latitude to the creation of service districts, or that it at least provide in a foot note for reference to the decision.

Let me know if there is any opinion in your department regarding the above suggested revision to 29.63.090(d).

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

xc: Tam Cook, Title 29 Revision Committee

APR 25 1979

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

CITY OF KODIAK,

Plaintiff,

vs.

KODIAK ISLAND BOROUGH and BETTY WALLIN, Mayor of KODIAK ISLAND BOROUGH,

Defendants.

RECEIVED
APR 27 1979
Alaska Office
Keane, Harper, Pearlman
and Copeland

Case No. 3KO-78-120 Civ

MEMORANDUM OF DECISION

The "Complaint for Declaratory Judgment and Injunction" filed by plaintiff City of Kodiak prays for equitable relief, including an injunction prohibiting the Kodiak Island Borough from operationg Service District No. 1. Plaintiff further seeks a declaration that the Borough's establishment of Service District No. 1 was illegal. This action is based upon plaintiff's contention that the Borough's establishment of the Service District is contrary to Article X, Section 5 of the Alaska Constitution and AS 29.63.090(d) since the City of Kodiak, which lies contiguous to the Service District, has the legal capability to tax and provide municipal services of sewer, sewage treatment, water and roads. Further, plaintiffs assert that the Service District is unlawful under Article X, Section 1 of the Alaska Constitution as it creates another taxing entity.

On February 7, 1979 this court heard oral argument on plaintiff, City of Kodiak's Motion for Summary Judgment and defendant, Kodiak Island Borough's Cross-Motion for Partial Judgment on the Pleadings. After reviewing the pleadings, the memoranda submitted, and the arguments of counsel; and being fully advised, the court enters this, its Memorandum of Decision.

**A BOROUGH IS NOT PROHIBITED AS A MATTER OF LAW FROM STABLISHING A SERVICE DISTRICT SIMPLY BECAUSE IT CAN BE ANNEXED Y A CITY THAT CAN PROVIDE THE SERVICE.**

Plaintiff's Complaint and Motion for Summary Judgment re premised upon the following contentions:

> The establishment of the Service District in unlawful under AS 29.63.090(d) and unconstitutional under Section 5, Article X, Alaska Constitution in that the roads, sewer and water service function and power can be provided by the City of Kodiak through annexation to the City, without any necessity for the creation of the Service District. Complaint, paragraph 15, p. 3.[1]

Thus, as a basis for its Complaint and Motion for Summary Judgment, the plaintiff is maintaining that, as a matter of law, the existence of the City of Kodiak with the legal capacity to provide sewer, water and road services prohibits the Borough from forming a service district to provide such services.

Plaintiff's construction of Section 5, Article X and AS 29.63.090(d) as literal and absolute directives to this court would have the consequence of prohibiting any new service area from ever being established anywhere in Alaska, as every borough in Alaska contains at least one city which, in a literal

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[1] Section 5, Article X, Alaska Constitution provides in pertinent part:

> "Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, a new service can be provided by an existing service area, by incorporation as a city, or annexation to a city."

AS 29.63.090(d) provides in pertinent part:

> (d) A new service area may not be established if, consistent with the purposes of Article X of the State Constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

the borough were annexed to it. Plaintiff's construction would enable cities to force annexation upon areas which do not want to be annexed and which only need and desire a limited number of services that could be provided more effectively and economically by a service district.

Even if a purely rural borough with no existing cities were established, it is difficult to imagine an area where the need for services would arise in which the population was not large enough to provide the legal basis for a second class city. This, under plaintiff's construction, would activate the statutory prohibition against establishment of a service district where the service "can be provided . . . by incorporation as a city". Such a legalistic interpretation of Alaska's constitutional and statutory provisions could not have been intended, and no court should find the law to be so literal in its requirements. Certainly the language of both the constitutional and statutory provisions to be considered in this case is ambiguous and is, of necessity, subject to construction as to the intention of the framers. [2]

A. Constitutional Framers' Intent

(1) Drafting of Section 5 of Article X of the Constitution.

The first public draft of Section 5, Article X of the Alaska Constitution, referred to as Proposal No. 6, was never considered and voted upon by the constitutional convention. Instead, the Local Government Committee which drafted the proposal simply introduced it to the convention and then recalled it prior to debate or vote.

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[2] In addition to other ambiguous language contained in the pertinent constitutional and statutory provisions, the words "can be provided by . . ." necessitates construction and ascertainment of the framers' intent. For example, it is unclear as to what is meant by those words, how it is to be determined whether the requirement is satisfied, and who is to make that determination. The words "consistent with the purposes of Article X" also are in need of judicial construction.

new or additional services can be provided better by a new service area, by annexation to a city, by an existing service area, or by incorporation as a new city. Section 5, Article X must be construed to have the same meaning.

(2) Framers' Intent as Revealed in Constitutional Minutes

The Constitutional Minutes are most helpful in understanding the framers' intent as to the meaning of Section 5, Article X.

In particular, the testimony of Delegate Taylor is enlightning. The following is an extremely relevant portion of Mr. Taylor's testimony:

> "Now there is no forced annexation in this matter as I can see it, so there is a wide choice. They can be either a service district or those functions can be performed by an already existing service area. They can incorporate as a city or they can be annexed to a city. It is up to the body in which they are represented. It is the American way of doing things that the body decides, that it be for the best interests of this area. The body can decide that it would be possibly to the financial betterment of the people in that area if they did incorporate another service district or if they incorporated as a city. So, I think it should be left in here so that the body, the assembly, could meet and consider all factors and recommend as to whether they could organize as a service district or whether they could secure the same service from an adjacent service district or whether they could incorporate as a city or whether they could be annexed to a city that is already incorporated. It is a wide latitude that they are given and I think that in an assembly in which they are represented and are a part of that body, I think they would receive proper consideration. [emphasis added]." pp. 2716-17, Constitutional Minutes.

The consensus behind the views expressed by Delegate Taylor is confirmed by testimony of other delegates which can be found at pages 2712 - 17 of the Constitutional Minutes.

Clearly, the Constitutional Minutes reflect that the framers intended that cities were not to be permitted to prevent the borough's establishment of a service district by forcing or threatening annexation.

Proposal No. 6/a[3] was the first draft actually considered and voted upon by the Constitutional Convention. Proposal No. 6/a was the subject of extensive debate at the Convention (see e.g. pages 2610-2730 of Constitutional Minutes). It was this proposal that was voted upon by the Convention, adopted and enrolled.

Proposal No. 6/a as adopted was sent to the Style and Drafting Committee. Under the applicable Constitution Convention Rules, the Style and Drafting Committee had no authority to make substantive changes to Proposal No. 6/a. See Rule 16c of the Permanent Rules, Constitutional Convention of Alaska.[4] The Style and Drafting Committee authored the final version of Section 5, Article X and delivered it to the convention for consideration. At no time during the Convention's consideration of the Style and Drafting Committee's draft was it either stated or suggested that a substantive change had been made to the provisions of Proposal No. 6/a as adopted by the Convention. Thus, under the rules applicable to the Convention, Section 5, Article X was to have a substantively equivalent meaning to original Proposal No. 6/a. Proposal No. 6/a expressly provided that "the judgment of the

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[3]Proposal No. 6/a reads in pertinent part as follows:

> "Section 6. Service areas to provide special services within portions of an organized borough may be established altered or abolished by the assembly, subject to the provisions of law. The assembly may authorize levying such taxes, charges or assessments within any service area as may be necessary to finance the activities. No new service area shall be created when, in the judgment of the assembly, the objectives of Section 1 of this article would be better served by giving a new function to an existing service area, incorporation of the area as a city, or annexation of the area to a city. (emphasis added)

[4]Rule 16(c) provides in pertinent part:

> "The committee on Style and Drafting . . . shall have the authority to rephrase or to regroup proposed language or sections of the proposed constitution but shall have no authority to change the sense or purpose of any proposal referred to it."

**THE SERVICE DISTRICT DOES NOT CREATE A DUPLICATION OF TAX-LEVYING JURISDICTIONS IN VIOLATION OF ARTICLE X, SECTION 1 OF THE ALASKA CONSTITUTION.**

Paragraph 17 of plaintiff's Complaint asserts that the Service District is unlawful under Article X, Section 1 of the Alaska Constitution as it creates another taxing entity. This contention is without merit because the establishment of new service areas by the Borough does not create new tax-levying jurisdictions.

Under both the relevant constitutional and statutory provisions,[5] the tax-levying authority for new service districts is retained and exercised solely by the Borough. No new local government unit has been established with authority to exercise local government power at the policy level. Even where administrative functions are delegated by the Borough to a service district, the Borough nevertheless has full control over those functions.

The Constitutional Minutes reflect that the concern of the Delegates was to avoid a multiplicity of independent tax-levying jurisdictions, such as would have been the case had such entities as school districts been given tax-levying authority independent of cities and boroughs.[6] The delegates foreclosed

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[5]Article X, Section 5 provides in part:

> "The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance special services. [emphasis added]."

AS 29.63.090(b) provides:

> The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services. [emphasis added]

[6]See, e.g., comments of Delegate Taylor, Constitutional Minutes pp. 2699-2700.
Also see Constitutional Minutes, p. 2630.

the problem by granting local tax-levying authority to only two bodies, cities and boroughs (See Alaska Constitution Article X, Section 2), and by permitting the establishment of service districts only under the control and auspices of boroughs. See Article X, Section 5 and AS 29.63.090. The fact that the framers of the Alaska Constitution authorized the establishment of service districts rebuts the suggestion that they viewed the creation of such districts as the creation of new tax-levying jurisdictions.

CONCLUSION

Since plaintiff's interpretation of the relevant constitutional and statutory provisions is incorrect, not only must its Motion for Summary Judgment fail, but also its Complaint must be dismissed because of the failure of plaintiff to state a viable cause of action against defendants.

IT IS ORDERED that defendant's Motion for Partial Judgment on the Pleadings is granted and plaintiff's Complaint is dismissed with prejudice.

DATED at Anchorage, Alaska this 19th day of April 1979.

J. JUSTIN RIPLEY
SUPERIOR COURT JUDGE

I certify that I mailed copies of the foregoing document to Mr. Donald M. Johnson and Mr. James Crane at their address of record on this 20th day of April 1979.

Scarlett O. Watts
Scarlett O. Watts

HAINES BOROUGH
P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

TRANSCRIPT OF COMMENTS MADE BY

STEPHANIE K. SCOTT, HAINES BOROUGH,

SEPTEMBER 29, TITLE 29 REVISION

COMMITTEE, ANCHORAGE, ALASKA

**STEPHANIE SCOTT, Haines Borough: I am taking you from the government with the most responsibilities to the least responsibilities. The Haines Borough is a third class borough. I am here today to say that we want to participate in your discussions and decisions on the revisions of Title 29, specifically as it applies to the third class borough. We felt somewhat overlooked when the Senate-House C.R.A. interim committee,formed last year,developed House Bill 354 which eliminated the third class borough,never did enter into a discussion with the residents of the Haines Borough. We have a good record in terms of our consideration of different forms of government. We rejected a first class borough proposal in 1964; we rejected a second class borough proposal in 1967 and again in May of 1968; the third class borough was accepted August 20 of 1968. Recently in 1980 we rejected an advisory issue to consider a unified City-borough government. We have a first class city of about 2.6 square miles within the Haines Borough, which encompasses about 2200 square miles.**

A letter recently came to our attention written by a deputy commissioner of Community and Regional Affairs which suggested circumscribing the portion of Title 29 that applies to the general powers of all municipalities. Her concern is that the general powers ought to perhaps only adhere to service districts in the Haines Borough. I believe you have probably received such a recommendation from Community and Regional Affairs.

SENATOR ARLISS STURGULEWSKI, Chairwoman, Title 29 Revision Committee: I don't recall a copy of that letter coming to the committee.

SCOTT: The letter we received was written to the City of Haines on September 4, 1980 and it says: "More specifically we have recommended that section 29.41.010 be re-written to include or exclude all or part of the provisions of Chapter 48 (powers applicable to all municipalities) with particular attention to 29.48.010 and 29.48.260." Our concern is that we believe that portion of the statutes that details powers general to all municipalities provides for the limited scope of various municipalities by saying that these powers are "subject to other provisions of law." In the third class borough we have the two area-wide powers of education and taxation assessment and collection. We have various attorneys' opinions, attorneys hired by the Haines Borough, and one 1977, Jan. 6 opinion from Assistant Attorney General

Roger Pegues, that those general powers apply to a third class borough insofar as they are exercised in relation to our two area-wide powers of tax assessment and collection and education. That really should take care of the controversy. I will make those attorney's opinions available to you.

STURGULEWSKI: Correct me if I am wrong: One issue then will be the clarification of the powers of the third class borough.

SCOTT: Yes. I would like to read a little more from the letter we received: "As an example of the uncertainty of these sections as they apply to the third class borough we cite the last sentence of paragraph (a) of Section 29.41.010 which states that: "Area wide exercise of powers other than education and tax assessments and collection is not authorized"." The question she is posing is: "Are third class boroughs prohibited except on a service area basis from acquiring, using and disposing of real property; the power to sue and be sued; or the power to expend funds for the good of the municipality?" She states: "The literal application of section 29.41.010 would seem to limit the exercise of these and other general municipal powers, to service areas created especially for the purpose, but we are not sure." In other words, she is saying that we need service areas in order to sue or be sued. I would contend that that's not the case. It's really quite clear that the statutes say we can enter into suits and buy and sell land insofar as it applies to the two functions of taxation and education. I would like to point out that in a second class borough the only additional area-wide power granted by the statutes is planning, platting and zoning. Every other power has to be voted by the citizens, although it can be adopted area-wide and we cannot adopt any other powers on an area-wide basis. So the same limited interpretation would have to apply to second class boroughs. I think such an interpretation would be unworkable. There are also footnotes in the statutes behind the section on the general powers which state that the intention is that the powers be liberally construed. The liberal understanding of those powers has been the fact.

There are a couple of places that the statutes "have their legs crossed" in terms of the third class borough. They are technical and I think that you should take them to your technical committee. I will get these to you in writing. One is 29.41.020 which says that the school board may provide for

weighted voting, but in the chapter on the assembly (29.23.021-c) it states that the assembly may not provide for weighted voting. Since in a third class borough the assembly is the school board it is inconsistent for one body to have weighted voting and one body to be denied weighted voting. Probably when weighted voting for the assembly was eliminated, the elimination of weighted voting for the school board was overlooked. So please note the conflict between 29.41.020 and 29.23.021(c).

The other technical revision is also in 29.41.020 which says that the borough executive is the presiding officer of the school board. That is confusing because elsewhere in the statutes it defines the presiding officer as someone elected from the body of the assembly and you can't have a borough executive who is elected from the assembly. This could be rectified by saying that the borough executive is president of the school board. Eliminate the reference of a presiding officer with respect to the third class borough. The object of the third class borough is to create the simplest form of government and we don't need a separate borough executive, a presiding officer and a president of the school board. They are all the same person.

I have been asked by the Borough Chairman to convey two recommendations: One is that we do support the recommendation from the Division of Community Planning in the Department of CRA to rewrite 29.48.260(e) to relieve the procedural requirements for the lease or sale of land to a beneficial new industry, which result from the court decision in Libbly vs. the City of Dillingham. This is important to us right now because like everybody else we are involved in Municipal Entitlements and disposals and we are looking at our own disposal ordinances. Getting the economy together in Haines is of primary importance and it may help us to be able to negotiate a lease to beneficial industry.

Chapter 53 concerns us. It has to do with taxation. We would like to be able, in some way, to provide for the optional exemption of inventory from personal property tax. We don't have any specific ideas on how to do this; but the Haines Borough would like to be able to put that exemption before its citizens if it were permitted by the Statutes. Presently there is no way to provide for the consideration of that option.

**STURGULEWSKI: What is the status of exemption of inventory under personal property tax for other boroughs?**

**SCOTT: If you are a home rule municipality you can exempt it, but if you are a general law municipality you must tax inventory unless you exempted it prior to 1972. The definition of personal property includes inventory. Perhaps you could provide for the exemption through definition.**

**Other than that I wanted to let you know that by October 26 a teleconference system will be operative in Haines and that there are lots of people in Haines interested in our form of government. We would really like to be heard on the decisions, particularly if you are going to take a strong look at the recommendation from the Deputy Commissioner from the Department of Community and Regional Affairs and particularly if you are going to change the general powers of municipalities. We would like to be involved and we don't want to be surprised with a bill that provided for the elimination of our form of government without having a good chance to talk about it before it comes before the legislation. Other than that I will be here for two days listening and learning and available for questions.**

STURGULEWSKI: We appreciate the fact that you're here. We are glad to know that you do have teleconference capability. I know that we talked to a number of people from your area when the third class was up. There was a pretty early decision made that that particular legislation (HB 584) was not going to pass or there would certainly have been a public hearing in your community. I think there is some concern on the part of certain divisions in the State that the third class borough has not always been a happy thing for people to live with and we are looking at some other areas that are looking at it. I think that if we are going to keep it we need to look at it very carefully.

SCOTT: I think that it deserves to be pointed out that the third class borough can plan, platt and zone on a service area basis. In order to do that there first has to be an area-wide vote to grant the third class borough the power to adopt service areas for planning, platting and zoning. And

then of course the service areas have to vote on that power. We had a vote on that and it was voted down. Another thing to bear in mind is that the Haines Borough, as a third class borough, is a very large borough, but its population is confined to a very small area so it would not be impossible to develop a service area that would affect just the populated area and handle planning on that basis. I know that that is the problem with the third class borough as far as the state is concerned. I think that you have to talk to the people who live in a third class borough to find out what kind of a problem they feel they have, if they feel they have a problem. Then if there is still an overriding concern that it is a problem from the state level, it's the state's responsibility to come in and tell the people, or teach them, what the problem is. In other words, there may be people in the Haines Borough who feel that they don't have a problem.

RUSSELL W. WALKER, Attorney, City of Ketchikan and Ketchikan Gateway Borough: I would appreciate it if you could give this information to Tam Cook. I am interested in seeing what you are driving at.

STURGULEWSKI: We really appreciate you're being here. We know that it is a major effort to send someone. We will see that we use your teleconference equipment when it comes on line.

SCOTT: Thank you.

(907) 465-4750

September 4, 1980

The Honorable Mayor Jon Halliwill
City of Haines
P.O. Box 576
Haines, Alaska 99827

Dear Mayor Halliwill:

I apologize for the delay in responding to your query concerning the powers of the third class borough to acquire and dispose of land conveyed to it by the State. I had my staff contact your city administrator, Vern McCorkel, the Attorney General's Office and review appropriate sections of Title 29 to better ascertain the nature of your concerns.

It is my understanding that, although you only expressed interest in the land disposal issue, your underlying concerns are of a broader nature. They stem from the fact that the City of Haines is a first class city with full planning, platting and zoning powers located within a third class borough with only the limited powers of education and taxation. The fundamental issue, then, is not just whether a third class borough can acquire State land and dispose of it but whether the implied powers of Chapter 48 "Powers applicable to all municipalities" are applicable to a third class borough or not. These general powers address such functions as disposal of municipal property, the ability to establish departments, pay salaries, enter into agreements and to sue or be sued, among others.

We informally approached the Attorney General's Office about the possibility of receiving a timely response to your questions regarding the third class borough's authority to acquire and dispose of municipally owned property. The response we received was that they prefer to handle factual situations and not hypothetical ones. There was also some question whether this particular issue was of statewide concern as is necessary to warrant an Attorney General's opinion.

The feeling of my staff was that even if the land disposal questions were independently addressed by Attorney General's opinion, the other concerns and questions relating to the authorized general powers of the third class borough would still not be satisfied.

To effectively deal with the basic concerns as you and your city administrator have described them, the Department has suggested, in accor-

dance with Senate Concurrent Resolution 66, that Title 29, the Municipal Government Code, be revised to clarify the general powers of the third class borough. More specifically, we have recommended that Section 29.41.010 be rewritten to include or exclude all or part of the provisions of Chapter 48 (powers applicable to all municipalities) with particular attention to Sections 29.48.010 and 29.48.260. As an example of the uncertainty of these sections as they apply to the third class borough we cite the last sentence of paragraph (a) of Section 29.41.010 which states that: "Area wide exercise of powers other than education and tax assessments and collection is not authorized". Paragraph (b) states that a third class borough may, under certain circumstances, exercise any power exercised by a second class borough but only on a service area basis. Are third class boroughs prohibited, except on a service area basis, from: acquiring, using, and disposing of real property; the power to sue and be sued; or the power to expend funds for the good of the municipality? The literal application of Section 29.41.010 would seem to limit the exercise of these and other general municipal powers to service areas created especially for the purpose but we are not sure.

I feel that a legislative approach (through revision of Title 29) could provide a comprehensive solution to your concerns. The Municipal League is also actively involved in the Title 29 revisions (along with the Rural Alaska Community Action Program, Inc.) and may be an appropriate avenue for the City to express its concerns regarding this matter.

Attached for your information is an interpretation by Departmental staff of appropriate sections of Title 29 as they would apply to the ability of the third class borough to acquire and dispose of land. However, I would caution you to consult your municipal attorney prior to acting on the basis of any of these interpretations.

I appreciate your request for assistance and hope that I have adequately addressed your concerns.

Sincerely,

M
Marie Matsuno
Deputy Commissioner

Attachment

GF: City of Haines

bcc: Palmer McCarter
Richard Spitler

MM:RS:td

File: Land Management
Powers of a Third Class Bor

TO: Honorable Lee McAnerney
Commissioner
Department of Community
& Regional Affairs

DATE : January 6, 1977

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Powers of Third
Class Borough
Our File No. J-66-227-77

By: Rodger W. Pegues
Assistant Attorney General

This responds to your request for an opinion on this subject of December 29, 1976. Pursuant to your request, we have reviewed our informal opinion of August 8, 1968, on this subject and AS 29.41.

We agree with your views on the matter. The third class borough's sole function is to provide education. It is empowered to levy and collect taxes, to borrow money and to establish service areas to that end. It has no other function. It would in inconsistent with AS 29.41 for a third class borough to exercise a power of a first or second class borough which is not in furtherance of its assigned function and prescribed powers. Thus, in order to collect taxes, a third class borough obviously must possess the power to file tax liens and foreclose on them. To operate a school system, it must possess the power to acquire and manage property and enter into contracts. This is what the last sentence of AS 29.41.010(a) means.

The third class borough is but an up-dated version of the pre-statehood independent or incorporated school districts. Indeed, AS 29.41.020, which constitutes the assembly the school board as well, is conclusive on this point. It is irrefutable evidence of the legislature's intent that the third class borough has no other function.

The opinion on this subject of August 8, 1968, is in error on these points and is overruled.

RWP:cdm

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April 9, 1979

The Honorable Martin Tengs
Chairman
Haines Borough Assembly
Box H
Haines, Alaska 99827

Re: Opinion Respecting Authority of Lobbying Expenditures by Third Class Borough

Dear Mr. Tengs:

Your letter of April 2, 1979 inquires into the authority of the Haines Borough, as a borough of the third class, to expend funds for purposes which may be generally described as "lobbying" for specifically enumerated purposes. The answer, in short, is a qualified "no".

This opinion is limited to the factual particulars recited in your letter. Further, it is not intended to address the issue of the Borough's liability for unlawful appropriation of funds, nor a taxpayer's remedy for same, nor intended to prescribe the relationship between the City-Borough.

The powers of third class boroughs are enunciated in Alaska Statute Section 29.41.010. A copy of the statute is attached for your quick reference. Subsections (a) and (b) are particularly relevant. Subsection (a) is basically a carry-over from the 1972 Revised Municipal Code. The 1972 statute prescribed in AS 29.41.010(a) that:

> "A third class borough shall exercise the area-wide powers of education and tax assessment and collection in the manner provided for second class boroughs. Provisions of law relative to first and second class organized boroughs apply with respect to third class boroughs only to the extent they are consistent with this chapter."

**The intent of the 1972 legislation which basically reoganized and reclassified the system of boroughs and municipality classification was addressed in legislative notes accompanying the 1972 amendment. The June 17, 1972 Senate Journal Supplement No. 3 contained in relevant part the following language of interpretative assistance:**

> **"Third class borough powers are unchanged. Acquisition of powers in the borough area outside cities is intended, as under present law, to be governed by provisions of law applying to second class boroughs."**

Stopping at that juncture in 1972 to analyze those powers, a third class borough was limited to powers to (1) education and (2) tax assessment and collection (presumably limited to the exclusive purpose of education). Subsections (b) and (c) of the 1972 legislation on AS 29.41.010 are irrelevant to our inquiry, however, the statutes are sufficiently clear in permitting third class boroughs to assume additional powers if appropriate procedures are followed. Those procedures were prescribed in AS 29.33.250 which recites that "first and second class boroughs acquire additional area-wide municipal powers by transfer from a city or by holding an area-wide election on the question, except as provided otherwise in AS 29.48.030 and AS 29.48.035(b)." (emphasis added). Accordingly, even under the 1972 legislation there existed a grant of statutory authority for third class boroughs to assume powers in addition to education and taxation conditions upon area-wide election as to the specific functions for which the borough sought authority.

That proposition was further clarified with subsequent legislation amending the 1972 version of AS 29.41.010. Amendments to that section occurred in 1974, 1975, and 1977. They are embodied in the attached photocopy of the relevant statute and you will observe that it is broken into four subsections. Succinctly stated, subsection (a) prohibits a third class borough from exercising powers other than education and taxation. Subsection (b) does not qualify (a) so much

as create an exception to it, specifically reciting the methods by which a third class borough may assume additional powers.

Taking a step back to examine the various legislative provisions in perspective, it may be succinctly stated that the third class Haines Borough may exercise only the area-wide powers of education and tax assessment; additional powers of more limited scope under AS 29.41.010(b) may be assumed by following election procedures. Additionally, it is important to examine the specific purpose of the so-called "lobbying" effort. Lobbying per se would not qualify as a general administrative function. Instead, the specific purpose or purposes toward which the effort is directed must be analyzed. Your letter recites that the purposes for which expenditures are intended include legislation toward a federally-funded eagle study in the Chilkat Valley, expenses associated with information and registering opposition to the Udall Bill, and part of the cost associated with keeping the Assembly informed as to Washington, D.C. developments on D-2 legislation. In my opinion, those functions fall quite easily into the land use planning category, which is a component or subpart of the planning, platting and zoning power. Accordingly, unless the Haines Borough has opted to exercise planning and zoning powers pursuant to AS 29.41.010(b) and followed the procedures prescribed therein, an appropriation of funds for the purposes recited in your letter will be subject to successful challenge.

The contents of your letter does not disclose and I am unfamiliar with the present circumstances in Haines as to whether or not the Borough voters in a general or special election have opted to provide for planning, platting and zoning. The answer to your question pivots on that factual determination. Going further, there is one additional aspect to the planning function which requires elaboration. Assuming that there has been an election in compliance with AS 29.41.010(b), there exists the question of the appropriateness of the expenditure from a common or general fund source. Under AS 29.41.010 as it existed in 1972 a third class

borough could assume additional area-wide municipal powers under AS 29.33.250, assuming the Senate Journal notes which serve as the official legislative history are to be accorded veracity. But the powers referred to in AS 29.33.250 are area-wide. The new legislation seems to impose a limitation. AS 29.41.010 prescribes in the last sentence of subsection (a) that "Area-wide exercise of powers other than education and tax assessment and collection is not authorized." That language constitutes a specific limitation which gains even further support in the second sentence of subsection (b) which prescribes that "Powers assumed by a third class borough under this section may be exercised only within service areas." At that point, one would logically inquire as to whether or not the Haines Borough may presently make such an appropriation under its planning, platting and zoning function which applies to all of the borough area outside the City of Haines. I think not; the statutes apparently contemplate separate or individualized services areas rather than permitting a "unified" service area comprised of all of the borough territory outside a city. AS 29.63.090 seems to be dispositive. It provides in relevant part that

> "(a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an area-wide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an area-wide basis or in the borough area outside cities... "

Subsection (b) of AS 29.63.090 which pertains to service areas prescribes that the assembly is authorized to levy taxes in the service areas to finance the special services.

In conclusion, the Assembly's appropriation of moneys for the purposes prescribed in your letter of April

2, 1979 will appear to be within prescribed statutory authority only if the Haines Borough has conducted an election to permit planning, platting and zoning, and further, that said function be implemented and taxed on a service area basis as contrasted with an area-wide basis.

Very truly yours,

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

By: L.B. Jacobson
L.B. Jacobson

LBJ:ss

Enclosure

HAINES BOROUGH
P.O. BOX H
HAINES, ALASKA 99827

17

February 15, 1979

MEMORANDUM
TO: Haines Borough Chairman and Assemblypersons
FROM: Borough Attorney
SUBJECT: Lobbying expenditures by the Borough

The question has been asked recently and now again about the Haines Borough's authority to expend monies for lobbying purposes.

The Haines Borough is a member, I believe, of both the Alaska Schoolboard Association and Alaska Municipal League, two well known lobbying organizations, that have represented Alaska cities and boroughs for many years before the executive and legislative branches concerning many tax, educational and other issues of vital nature to the Haines Borough. Expenditure of Borough monies for these memberships is legal, in my opinion, since lobbying by the two entities involves substantially the issues of taxes and education, the two powers that the Borough can presently expend Borough funds for.

The City of Haines is requesting the Borough to appropriate lobbying funds in conjunction with City funds for retaining a law firm to represent the governments in Washington on the issue of HR-39. Whether this is a legal expenditure of funds for the Borough is a question that should be addressed prior to the Boroggh meeting next Tuesday. As a member of Lynn Canal Conservation, Inc. I do not feel I should give an opinion, but suggest that the Borough ask another attorney for his opinion on the question.

RCF

# HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827

**Memorandum to:** Haines Borough Assembly Members
**From:** Administrative Secretary
**Subject:** Conversation with Bill Pfitchard, Department of Community and Regional Affairs re lobbying and the Third Class Borough

January 24, 1979

Telephone conversation wtih Bill Pritchard, Community and Regional Affairs 465-4707

Mr. Pritchard stated that the Borough could undertake to lobby if:

(1) funds were used which were not specifically designated for education. Federal Revenue Sharing funds, and Payment-in-lieu of taxes might be used.

(2) a special account was set up for this particular expenditure.

Mr. Pritchard reasoned that lobbying was not a Borough wide power and that therefore, to lobby was not misusing the two area wide powers of taxation and education, although lobbying against the eagle study as designated in H.B. 39, Special Studies subsection, would have area-wide effect.

Mr. Pritchard compared the ability of the Borough to lobby to the ability of the Borough to sue and to defend itself in court . Mr. Pritchard did not seem to think that the nature of the lobbying effort had to have a pecessary relationship to taxation or education. Mr. Pritchard added that he was of the opinion that running a public library was beyond the province of a third class borough.

In closing, Mr. Pritchard stated that he would talk to some other individuals in the office and that he would get back to the Borough if he was able to turn up any more relevant advice and/or information. Mr. Pritchard allowed that there is no definite legal opinion on the precise powers of a third class borough and that one way to obtain legal opinion is to go ahead and lobby, and then go to court if the Borough is taken to task for misuse of its powers.

xc: Dan Bockhorst, City Administrator
Merrill Palmer

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

323 E. 4TH AVENUE
ANCHORAGE, ALASKA 99501

March 10, 1980

Stephanie K. Scott
Administrative Secretary
Haines Borough
P.O. Box H
Haines, Alaska 99827

Dear Stephanie:

Your February 4, 1980, letter raised two questions regarding the ability of a third class borough to dispose of land:

1. It appears that a third class borough does have the authority to dispose of land, and to subdivide it pursuant to the disposal. AS 29.48.010(9), in the Chapter titled "Powers Applicable to All Municipalities", establishes the general power "to acquire, manage, control, use and dispose of real and personal property for the purpose authorized under this title...". If Municipal land were sold to provide revenue for educational purposes, it would appear to be within the authority of any municipality. This is further supported by the footnotes in Title 29 that cites court cases which establish a broad, liberal construction of powers to municipalities. The platting, planning, and zoning powers, are powers to regulate land subdivision; though your borough could not regulate the subdivision of land by use of the police power, it certainly would not prohibit your borough from subdividing land.

2. The answer to your second question is answered by the above response: There appears to be no problem expending funds from the sale of land for a valid purpose, such as education. The 1979 amendment to AS 29.48.010(9) is permissive only, and creates no prohibition or limitation on a municipality. A municipality would not be prevented from expending moneys otherwise that is allowed under the amendment.

These answers to your questions relating to land disposal are staff opinions only, I would strongly suggest that you ask your borough attorney to give you further advice.

It the land disposals within your borough raise other problems or questions, do not hesitate to contact me.

Sincerely,

George K. Hollett

for Theodore G. Smith
Director

XC: City of Haines 8/26/80

10J18LH

# MEMORANDUM

Date: October 16, 1980
To: Russell W. Walker, Title 29 rewrite committee
From: Michael W. Worley, President, Alaska Ass'n of Assessing Officers
Subject: Title 29 rewrite; Chapter 53

On October 14, certain members of AAAO met in Juneau to discuss recommended revisions to chapter 53 of title 29. Those present were:

| | | |
|---|---|---|
| Bob Howe | from: | Juneau |
| Zeno Walther | from: | Juneau |
| Don Thomas | from: | Kenai |
| Dave Braden | from: | Fairbanks |
| Karl McManus | from: | Fairbanks |
| John Arney | from: | Haines |
| Steve VanSant | from: | State Assessor's Office |
| Chuck Foster | from: | Mat Su |
| Mike Worley | from: | Ketchikan |

Enclosed are the recommendations which evolved from that meeting.

On behalf of AAAO, I request your committee consider these suggestions and I encourage you to incorporate them in your final draft of the title 29 rewrite to be presented to the Alaska Municipal League.

enc:

cc: Glenn Mckee
Dave Braden
Robert Howe
Steve VanSant
John W. Arney
Don Thomas
Edward Haney
Charles Hopson

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

## Article 1. Municipal Property Tax.

**Sec. 29.53.010. General property tax. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter. (§ 2 ch 118 SLA 1972)**

Taxation of personal property of resident located outside city. — See Town of Fairbanks v. Independent Meat Mkt., 4 Alaska 147 (1910).

The North Slope Borough is a viable legal entity with powers to tax as provided to boroughs by this section. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-256 and C.A. Nos. 73-294 to 73-306 (1973).

**Sec. 29.53.020. Required exemptions. (a) The following property is exempt from general taxation:**

**(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;**

**(2) household furniture of the head of a family or a householder ~~not exceeding $500 in value~~;**

**(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;**

**(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;**

**(5) money on deposit;**

**(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.**

**(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:**

**(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;**

---

**(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;**

**(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;**

**(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.**

**(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or educational groups ~~for classroom space~~.**

**(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.**

29.53.020.(a)(2)
Delete: "...not exceeding $500 in value;"
(see also 29.53.025(b)(2)(A)

4 Groups, a lot

29.53.020.(c)
Delete: "...for classroom space.
Insert: "If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space."

& classroom space

[illegible] by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 — 44.62.570.

(d) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

29.53.020.(f)
Following the words "No exemption may be granted . . .".
Insert: "under (e) of this section."

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under § 25(a) of this chapter.

(h) Except as provided in (g) of this section, nothing in (e)—(f) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in § 25 of this chapter.

(am §§ 1, 2 ch 60 SLA 1973; am § 1 ch 65 SLA 1975; am § 1 ch 191 SLA 1976; am § 1 ch 217 SLA 1976; am §§ 1, 2 ch 229 SLA 1976; am § 1 ch 97 SLA 1977)

(i) In (e)—(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes. (§ 2 ch 118 SLA 1972)

History of section. — See City of Anchorage v. Cnugach Elec. Ass'n, 17 Alaska 481, 282 F.2d 412 (9th Cir. 1960).

This section was enacted pursuant to Alaska Const., art. IX, § 6. Harmon v. North Par. Union Conference Ass'n of Seventh Day Adventists, Sup. Ct. Op. No. 581 (File No. 1030), 462 P.2d 422 (1969).

Intent of constitutional convention. —The constitutional convention intended that only so much of the property used for religious purposes as was being used to produce income should be taxable, that such other parts should be exempt, and that a proration between taxable and nontaxable parts should be made. 1962 Op. Att'y Gen., No. 15.

Purpose.—The purpose of this section is to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment is largely irrelevant. McKee v. Evans, Sup. Ct. Op. No. 743 (File No. 1382), 490 P.2d 1224 (1971).

[illegible] — The 1975 amendment deleted "where gross annual income from use does not exceed $10,000" preceding "is exempt" in the first sentence of subsection (e), deleted the language beginning "whenever" from the end of the present second sentence of that subsection, and deleted the language following "exemption allowed under this section" from the end of the fourth sentence of subsection (f).

The 1975 amendment, effective May 16, 1975, in subsection (f) deleted the former second sentence into the present second and third sentences by substituting "The claimant" for "and" at the beginning of the present third sentence, added the language beginning "but during the same year" to the end of the present second sentence, and added the present fifth sentence.

The first 1976 amendment, effective January 1, 1977, in subsection (b), substituted "a taxing power" for "the power" in paragraph (1) and inserted "religious administrative offices" in paragraph (2).

The second 1976 amendment, in subsection (e), deleted "After January 1, 1977" from the beginning of the first sentence, added the language beginning "up to and including an assessed value limit" to the end of that sentence, and added the former second sentence.

The third 1976 amendment, effective June 28, 1976, added the second sentence of subsection (g), added "Except as provided in (g) of this section," to the beginning of subsection (h), and deleted the former second sentence of subsection (h), which read "However, under (e) — (i) of this section only the amount of revenue lost to the municipality by reason of the exemption authorized in those provisions may be reimbursed to the municipality by the state."

The 1977 amendment, effective June 18, 1977, and retroactive to January 1, 1977, in subsection (e), deleted "up to and including an assessed value level determined no later than January 15 of each year by the commissioner of the Department of Community and Regional Affairs" from the end of the first sentence and deleted the former second sentence, which read "The assessed value level determined shall equate also to a beginning distribution of private real property values in the state."

As the rest of the section was not affected by the amendments, it is not set out.

Editor's note. — Section 1, ch. 12, SLA 1972, provides: "Notwithstanding the provisions of AS 29.53.025(2), for the 1972 assessment year the filing date for application for the exemptions granted under AS 29.53.025(a) is extended to March 15, 1973."

Strict construction.

The courts must narrowly construe statutes granting tax exemptions. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1259 (File No. 2445), 568 P.2d 467 (1976).

Burden of showing eligibility for exemption. — A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1259 (File No. 2445), 568 P.2d 467 (1976).

Exclusive use for nonprofit religious, etc., purposes must be shown. In order to qualify for an exemption, the taxpayer must show not benefits, but exclusive use for nonprofit religious, charitable, cemetery, hospital or educational purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1259 (File No. 2445), 568 P.2d 467 (1976).

When the property in question is used even in part by nonexempt parties for their private business purposes, there can be no exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1259 (File No. 2445), 568 P.2d 467 (1976).

Actual use rather than owner's use should be analyzed in determining eligibility for an exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1259 (File No. 2445), 568 P.2d 467 (1976).

Office space rented to doctors engaged in private practice. — Office space in a building partially used exclusively for nonprofit hospital purposes, rented to doctors engaged in the private practice of medicine by a nonprofit charitable and religious corporation, was not exempt from taxation. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1259 (File No. 2445), 568 P.2d 467 (1976).

While the use of office space by doctor-tenants in conducting their private practices does provide incidental benefits to the adjacent hospital, the office space is not used exclusively for hospital purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1259 (File No. 2445), 568 P.2d 467 (1976).

**Sec. 29.53.025. Optional exemptions and exclusions.** (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $3 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over $100 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

29.53.025(b)(2)(A)
Delete all.

Rosie!
Call Bruegles
+ Cates scripts
check all
Hundall flamingo
-so! want to just
delete out options.

~~Sec. 29.53.030. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is [illegible] for each [illegible]. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.~~ (§ 2 ch 118 SLA 1972)

29.53.030.
~~Delete all.~~

Add: "Exempt." (Retain all Rest!)

Sec. 29.53.035. Farm or agricultural lands. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight per cent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 per cent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section. (§ 2 ch 118 SLA 1972; am § 1 ch 90 SLA 1974; am § 3 ch 229 SLA 1976; am § 1 ch 66 SLA 1978)

Effect of amendments. — The 1974 amendment made such changes in subsections (a), (b), and (c) as to make a detailed comparison impracticable and added subsections (d) and (e).

The 1976 amendment, effective June 21, 1976, and retroactive to January 1, 1975, in subsection (a), substituted "uses incompatible with farm use" for "other than farm use purposes," "a use incompatible with farm use" for "nonfarm use" and "eight per cent" for "five per cent" in the third sentence, inserted "at the current mill levy" in that sentence, and added "for the preceding seven years" at the end of the fourth sentence.

The 1978 amendment substituted "May 15" for "February 1" in the first sentence of subsection (b).

Sec. 29.53.050. Tax limitations. (a) No municipality may levy and use for any purpose in excess of three per cent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area in whole or in part attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58. (§ 2 ch 118 SLA 1972; am § 4 ch 1 FSSLA 1973; am § 5 ch 159 SLA 1975)

29.53.050.(b)
Delete the two references to "$1000".
Insert "$1500" in place of each

Ivan ($1500)

Ver Dorsey Early
Is required By Some other statutes.

STEVE VANSON
465-4730

29.53.045 (New)

Effect of amendments. — The 1973 amendment, effective January 1, 1974, added subsection (b).

The 1975 amendment, effective June 26, 1975, in subsection (b) inserted "(1)," "upon values which," and "exceed" in both the first and second sentences, deleted "either (1)" preceding "$1,000" in those sentences, and added the fourth sentence.

Editor's note. — Section 6, ch. 159, SLA 1975, contains a severability clause.

"Limitation on taxing power relates to use of revenue for ordinary municipal purposes.—The provisions of this section limiting the taxing power of the town to three per cent of the assessed valuation upon all property relate to the use of revenues for ordinary municipal purposes. Lund v. Town of Petersburg, 293 F. 905 (9th Cir. 1923).

Sec. 29.53.055. No limitation on taxes to pay bonds. The limitations provided for in § 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default. (§ 2 ch 118 SLA 1972; am § 5 ch 1 FSSLA 1973; am § 6 ch 94 SLA 1977)

Effect of amendments. — The 1973 amendment, effective January 1, 1974, substituted "limitations provided for in §§ 45 or 50 of this chapter do" for "limitation provided for in § 45 of this chapter does" in the first sentence.

The 1977 amendment, effective June 3, 1977, and retroactive to January 1, 1976, added "regardless of whether the bonds are in default or in danger of default" to the end of the section.

This section, literally read, does not render AS 29.53.045 and 29.53.050 meaningless. This section applies only to debt financing. The limitations of AS 29.53.045 and 29.53.050 apply to operating revenues. Merely because they do not also curb taxes to pay for bonds does not render them nullities. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (Dec. Nos. 3441, 3542, 3650, 3651 P.2d 834 (1978)

[illegible] legislative history of this section. — For North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. [illegible] (File Nos. 2068, 2512, 2620), 585 P.2d [illegible] (1978).

Chapter 84, SLA 1977, relating to both state and local taxation does not violate Alaska Const., art. II, § 13, which requires every bill to be confined to one subject. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1758 (File Nos. 2068, 2512, 2620), 585 P.2d 534 (1978).

Authority to pay for municipal bonds. — This section and AS 29.28.100(a) authorize taxes to pay for municipal bonds, independent of the limitations of AS 29.53.045 or 29.53.050, and regardless of whether the bonds are in default or default is pending. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1758 (File Nos. 2068, 2512, 2620), 585 P.2d 534 (1978).

Alaska Supply Statutes assume taxation of AS 43.56 property. — The last sentence of this section adds to exemptions and limitations imposed by AS 29.53.045 and by the language which authorizes taxation of AS 43.56 property. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1758 (File Nos. 2068, 2512, 2620), 585 P.2d 534 (1978).

The second sentence of this section does not create independent authorizing language. "[A]ssessors . . . may be treated," but may not be construed as a grant to tax AS 43.56 property independent of the authority of AS 29.53.045(a) (as distinct from the limitations) because AS 43.56.010 and 43.56.010(d) provide that municipalities may tax AS 43.56 property only under AS 29.53.045. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1758 (File Nos. 2068, 2512, 2620), 585 P.2d 534 (1978).

**Sec. 29.53.060. Full and true value.** (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and §§ 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

29.53.060.(a)
Following the words "The assessor shall...",
Delete the word "...assess..."
Insert the word "...value..."

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly. (§ 2 ch 118 SLA 1972)

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.
(am § 45 ch 53 SLA 1973; am § 1 ch 46 SLA 1974)

**Effect of amendments.** — The 1973 amendment deleted "of a municipality" following "assessor" in the first sentence of subsection (a).

The 1974 amendment added subsection (c).

As the rest of the section was not affected by the amendments, it is not set out.

**Editor's note.** — The enactment in the main pamphlet, reading "This section applies only to the tax year during which a disaster takes place," was incorrectly located under this section. It appears in AS 29.53.160.

**Legislative committee report.** — For report on ch. 53, SLA 1973 (CSHB 582), see 1973 House Journal, pp. 784, 884.

Sup. Ct. Op. No. 536 (File No. 1214), 473 P.2d 630 (1970).

The borough assessor had the power to grant earthquake decrements. Noblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 536 (File No. 1214), 473 P.2d 630 (1970).

Property was not entitled to an earthquake decrement for tax assessment purposes where there was an absence of evidence indicating that its market value was reduced. Noblit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 536 (File No. 1214), 473 P.2d 630 (1970).

Valuation of boats and vessels on the basis of registered or certified tonnage rather than full and true value does not limit the application of the full and true value as to boats and vessels. 1962 Op. Att'y Gen., No. 16.

Determining portion of property devoted to purposes of organization. — Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 372 (Sept., 1970).

Sec. 29.53.110. Assessment notice. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing. (§ 2 ch 118 SLA 1972)

Mandatory provisions of section not complied with. — Mandatory provisions of AS 29.53.110 and this section relating to assessment procedures were not complied with by the North Slope Borough. Such non-compliance is in violation of the rights of plaintiffs to due process in the levy of tax against them. Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Sec. 29.53.120. Corrections. (a) A person receiving an assessment notice shall advise the assessor of errors or omissions in the assessment of his property. The assessor may correct errors or omissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board. (§ 2 ch 118 SLA 1972)

Sec. 29.53.130. Appeal. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city. (§ 2 ch 118 SLA 1972)

Taxpayer may contest valuation. — Under this section a taxpayer may contest valuation before a board of trustees meeting as a board of equalization. Yakutat & S. Ry. v. City of Yakutat, 16 Alaska 16, 227 F.2d 9 (9th Cir. 1955).

Determining portion of property devoted to purposes of organization. — Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1978).

Applied in Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

Quoted in Whaggenbar v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2-461, 534 P.2d 941 (1975).

Sec. 29.53.135. Board of equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, or it may delegate this authority to a board appointed by it for that purpose. The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business. The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance adopt rules for the membership and conduct of the board. (§ 2 ch 118 SLA 1972)

29.53.110.(a)
Delete: "...and the dates when the board of equalization will sit..."

Borough assembly as administrative body. — When the borough assembly functions as a board of equalization or adjustment, it acts as an administrative, not a legislative, body. 1965 Op. Att'y Gen., No. 2.

When the borough assembly sits as an administrative body, whether as a board of equalization or adjustment, the weighted vote may not be used. 1965 Op. Att'y Gen., No. 2.

Board of equalization is administrative agency within meaning of Appellate Rule 45. — See Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 20e6), 534 P.2d 541 (1975).

**Sec. 29.53.140. Hearing.** (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed or proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1.

(f) An appellant may appeal to the superior court for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial. (§ 2 ch 118 SLA 1972)

29.53.140.(c)
Following the words: "... valid written appeal timely filed...",
Delete the word "...or..."
Insert the word "...and..."

Change to "AND"

Except as to Supplementary Assessments.

Scope of review. — The superior court will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. The superior court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of evaluation. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970); Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 753 (1961).

When valuation or assessment violates due process.—The valuation and assessment of property for taxes does not contravene the due process clause of the 14th amendment unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer's property rights. Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 753 (1961).

Broad reading of subsection (c) held unconstitutional. — A broad reading of subsection (c) to implicitly permit the jury to set the valuation of property by finding that the valuation set by the assessor is "excessive" or "improper" is violative of the doctrine of separation of powers, while a more limited reading of subsection (c) is constitutionally permissible. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 20e6), 534 P.2d 541 (1975).

Subsection (f) delegates to a jury the power previously held exclusively by the borough assembly. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 20e6), 534 P.2d 541 (1975).

There is no constitutional right to a trial by jury to determine proper tax assessments. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 20e6), 534 P.2d 541 (1975).

Proceedings to levy and collect taxes are

** Delete of PROVIDE NO JURY TRIAL — ~~[illegible]~~ "Substantial Evid. Rule" only.

PROVIDE

[illegible] Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 541 (1975).

Rights conferred by subsection (f) are not procedural within the meaning of Appellate Rule 45. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 541 (1975).

Thus, powers reserved by Alaska Const., art. IV, §§ 1 and 15 not encroached on. — The right to jury review of municipal tax assessments does not encroach upon the judicial power reserved to the courts by Alaska Const., art. IV, §§ 1 and 15. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 541 (1975).

Subsection (f) does not violate the constitutional principle of separation of powers. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 541 (1975).

Proceeding on appeal is not new proceeding. — Subsection (f) speaks of an "appeal to the superior court" and gives no indication that this proceeding, even though authorized as de novo and by jury, constitutes a new proceeding. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 541 (1975).

Though review resembles original proceeding. — De novo jury trial does expand judicial review beyond the limited scope associated with a classic appeal; and because under subsection (f) the jury may disregard some of the findings of a board [illegible] proceeding. [illegible] original proceeding. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 541 (1975).

No right to fresh assessment of taxes on appeal. — Subsection (f) creates a taxpayer's right to have the judgment of a jury substituted for that of the borough assembly sitting as its own board of equalization. The right, however, is not to a fresh assessment of taxes of the property. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 541 (1975).

Subsection (f) does not purport to authorize judicial formulation of general tax policies. It asks the courts to conform, with the aid of a jury, only the traditionally judicial task in tax cases of determining in particular instances whether policy to be followed in the assessment of taxes has been accurately applied. Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 541 (1975).

Contention that board cannot be administrative agency because its decisions are subject to judicial review under subsection (f) held without merit. — See Winegardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2066), 534 P.2d 541 (1975).

Cited in Arco Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-326 and C.A. Nos. 73-294 to 73-304 (1973).

Per. State assessor, He needs final figures of Rev. Sharing an other matters By oct. 1 - See remit get Supplemental Rules in

**Sec. 29.53.150. Supplementary assessment rolls.** The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. (§ 2 ch 118 SLA 1972)

29.53.150.
Add the following sentence to this section:
"Any supplementary roll must be finalized and certified on or before September 1 of the assessment year."

Erroneous omissions from assessment roll do not invalidate all taxes. —The omission of property from an assessment roll, through error of judgment or of law, will not invalidate all taxes, thus practically putting an end to the operations of government. Valentine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929).

**Sec. 29.53.160. Tax adjustments on property affected by a natural disaster.** (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law. (§ 2 ch 118 SLA 1972)

29.53.155.
Insert new section:

Sec.29.53.155. Manifest errors Manifest errors discovered in the assessment or tax roll may be corrected ~~by the assessor~~ and an adjustment made to the roll subsequent to its certification.

* needs clarification on the tax collector

Editor's note. — This section is based on former AS 29.10.397.

This section applies only to the tax year during which a disaster takes place. Hobbit v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 686 (File No. 1214), 473 P.2d 689 (1970).

Sec. 29.53.350. Redemption period; publication of redemption period expiration notice. The redemption period ends one year after the date of judgment of foreclosure, but if the property is sold for less than the amount of the judgment, the redemption period ends one year after the date of confirmation of the sale. At least [illegible] before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $10,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality. (§ 2 ch 118 SLA 1972; am §§ 2, 3 ch 48 SLA 1977)

29.53.350.(a)
Following the words: "...has been taken and, if the assessed value of the property is more than..."
Delete: "...$10,000..."
Insert: "...$100,000..."

Effect of amendment. — The 1977 amendment designated the provisions of this section as subsection (a) and in that subsection, substituted "At least" for "Not earlier than" at the beginning of the first sentence, substituted the language beginning "which a judgment of foreclosure has been taken and" for "whom a judgment of foreclosure has been taken" at the end of the fifth sentence, and inserted "and to the holder of a mortgage or recorded lien" in the seventh sentence. The amendment also added subsection (b).

Sec. 29.53.360. Deed to borough or city. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

(b) Conveyance gives the borough or the city clear title except for prior recorded liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

(d) No deed is invalid for irregularities, omissions or defects, unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner is forever barred. (§ 2 ch 118 SLA 1972)

Upon foreclosure, municipality receives new title to property, free from encumbrances. — The general rule in Alaska and the great majority of jurisdictions is that when a municipality forecloses on property for failure to pay taxes, it receives a new title to the property free from all encumbrances. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 508 P.2d 1306 (1973).

And a buyer of the property at a subsequent tax sale receives a new, independent title and not that of the former owner. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 508 P.2d 1306 (1973).

As a general rule the purchaser of property at a tax sale receives a new title free from all encumbrances. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 508 P.2d 1306 (1973).

Unless the buyer is the owner. — An owner of property may not perfect his own title to property by failing to pay his taxes and either directly or indirectly repurchasing the property at a tax sale. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), and P.2d 1306 (1973).

It is the general rule that when the owner of record redeems or repurchases his property, his purchase merely operates as a payment of the taxes and he receives the same title he held before the municipality's foreclosure. He cannot evade the purpose of the exemption by allowing the property to be sold to a third person and then buying from him, or by any other arrangement which would defeat or adversely affect the operation of the rule. Jefferson v. Metropolitan Mtg. & Sec. Co., Sup. Ct. Op. No. 849 (File No. 1438), 508 P.2d 1306 (1973).

[illegible] Jameson v. Wests.

**Sec. 29.53.[illegible]. Proceeds of tax sale.** (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under § 350(a) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred. (§ 2 ch 118 SLA 1972; am § 7 ch 48 SLA 1977)

**Sec. 29.53.285. Payment of taxes upon public utilization.** If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

**Sec. 29.53.390. Refund of taxes.** (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given ~~against the borough, the borough shall refund the amount of the taxes to the taxpayer~~ with interest at eight per cent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred. (§ 2 ch 118 SLA 1972)

29.53.390.(a)
Following the words: "If judgment for recovery is given...",
Delete: "...against the borough, the borough shall refund the amount of the taxes to the taxpayer...".
Insert: "...or if in the absence of suit, the borough assembly determines that judgment for the recovery of the taxes would be obtained if legal proceedings were brought, the amount of the taxes shall be refunded to the taxpayer...".

## Article 3. City Property Tax.

**Sec. 29.53.400. Power of levy.** Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in § 170(a) of this chapter and is subject to §§ 10—25, 50—55 and 310—350 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city. (§ 2 ch 118 SLA 1972; am § 5 ch 147 SLA 1972)

Effect of amendment. — The 1972 amendment, effective September 10, 1972, in the second sentence, inserted "shall be levied in the manner provided for borough levies in § 170(a) of this chapter and," inserted "10—25," and inserted "55."

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SUMMARY OF COMMENTS BY
C. DEMING COWLES, DEPUTY COMMISSIONER
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
September 26, 1980

**The Department of Environmental Conservation performs some functions which might be handled by local communities. Local governments, being closer to the people and environment affected, might serve its citizens far better than the State can in some instances, a fact recognized by the Legislature in the 1980 session.**

ACTIVITIES

The following activities are suitable for local assumption:

1. On-lot Inspections

(The material for this review was taken from Alex Viteri's "Draft Investigation of the State of Alaska Department of Environmental Conservation's On-site Certification Program and Suggested Recommendations," July 1980.)

"The need for the on-site certification program is two-fold. First, it is used as a means of ensuring that the proposed house loan matches the fair market value. Major lending institutions place this responsibility on local banks and mortgage companies which process the loan application. Without an on-site certification program, local banks and mortgage companies would not be able to process loans for houses with on-site water or sewer systems in a manner which would be satisfactory to the lending institutions.

Secondly, the on-site certification program is used as a means of ensuring that the home buyer is protected from health hazards encountered with faulty on-site water and/or sewer systems and the cost associated with their repair. Nationwide, the responsibility for on-site certification is traditionally accepted by either State or local government health authorities. It is presumed that this is because of the health authorities' familiarity with the subject matter and its interrelationship with their goals.

The State of Alaska has recently authorized the Alaska Housing Finance Corporation to bond up to five hundred million dollars for the financing of house loan mortgages. By performing the on-site program, the Department is ensuring that the health, safety, and welfare of the people of the State and their overall economic well-being is protected, in keeping with AS 46.03.010. It is also protecting the financial credibility of the State of Alaska."

2. Subdivision Review

This activity entails the review of subdivision plans for adequate sanitary waste disposal and accompanying field inspections. Adequate subdivision plan review must be done by a competent engineer; however, most communities with an existing public works department might be able to utilize existing staff as long as State standards and guidelines are explicitly stated and followed.

3. Environmental Sanitation

This program includes all activities listed in Appendix I. Most states retain only 2-3 sanitarians on the public or environmental health staff. Their main function is to provide technical assistance and guidance to local or county health jurisdictions. Anchorage is the only municipality in Alaska which has assumed all environmental sanitation activities. Others, notably Ketchikan and Fairbanks, have assumed responsibility only for hospitals.

4. Small Oil Spills

This would involve the containment and cleanup of small spills which frequently occur around canneries, tank farm fueling sites and boat harbors. According to Andy Spear, who recently drafted a paper entitled "Local Involvement in Oil Spill Response:""With the right training and equipment, the chronic small spill can be contained and cleaned up by local personnel, reducing the damage to the local environment and reducing the overall costs to federal and state governments. Coupled with local ordinances, local involvement in spill response could substantially reduce the total number of spill incidents."

5. Surface Oiling and Oily Waste Burn Permits

The oily gravels, earth and cleanup materials from an oil spill have to be disposed of somehow. While the potential for air pollution is the main deterrent to open burning of oily wastes, in some cases open burning might be preferable to other alternatives. If a municipality assumes part of the Small Oil Spill Program, it is reasonable to consider allowing similar control over the wastes generated by cleanup. However, since a high level of expertise is necessary to make judgements regarding oily wastes, probably only the larger communities would be capable of this function. Likewise, technical expertise is also required to make the correct decision whether to allow waste oil to be used on local roads as a dust suppressant. Note: If waste oil is declared a hazardous waste, the subject will be moot.

6. Litter Control

The intent here is for local jurisdictions to assume control over litter receptacles, youth litter programs, and litter in general. Communities, of course, often sponsor spring cleanup campaigns and several include litter prohibition in a general ordinance. But few, if any, have a comprehensive, functional program similar to that envisioned in the Litter Control and Resource Recovery Act, which is designed to specifically to combat litter. Since the Department is considering instituting its program only in areas outside organized municipalities, the latter may be faced with no program at all or with devising some systematic control effort to match that in the rural areas.

7. Vehicular Emissions

This responsibility pertains only to Anchorage and Fairbanks. Deterioration of air quality due to carbon monoxide emissions has not occurred in other parts of the State and is not of concern. The primary method of reducing CO emissions is through an Inspection and Maintenance (I/M) Program, and through

transportation planning and strategies. Both municipalities are lead agencies in these control efforts, but at least 2 full-time DEC positions are currently devoted to transportation planning and auto emissions control in the two cities.

## ASSISTANCE

The Department recognizes that, although the State now may be wealthier due to oil revenues, the financial situation in most municipalities remains as dismal as in earlier years. Local governments everywhere are feeling a powerful fiscal crunch and Alaskan communities, even with higher revenue sharing are no different.

Ginny Chitwood of the Alaska Municipal League has stated that, when the question of subdivision review came up over a year ago, the concern was raised that most local communities didn't have the sophistication to the do the job, couldn't afford to do it right, and, if they did it right, could go bankrupt. She also stated that, if DEC did adopt minimum standards for the functions it wanted to see municipalities assume, the larger municipalities might be willing to assume responsibility.

We want to assure local communities that, if they assume the above functions and State staff is no longer needed to perform them, State positions will be indeed be cut, with financial transfers as a method of assistance promoted on all levels.

In the meantime, the following are already available:

### 1. Grants

Two types of grants, both legislative, might be available. One is a direct grant to a community, usually for a specific community for a specific project. The second is a general legislative or Congressional grant authorization included in a law. The Litter Control and Resource Recovery Act is an example of such a grant. The State agency in this case basically passes through the money to the municipality. The only grants that DEC can make immediately available are those for litter control, which probably will not be over $90,000 for this fiscal year.

### 2. Revenue Sharing

The revenue sharing formula and the qualified uses was drastically changed by the 1980 Legislature. Previously qualified uses were listed and quantified and, based on them, communities submitted their requests. Now a community receives an automatic $25,000, but, beyond that, receives funding based on its own incentive to tax itself. Except for health and transportation-related activities, no activities are listed by type. Therefore, given this flexibility, a community can request funding for programs which were previously not covered by revenue sharing.

3. Technical Assistance

The primary assistance which we can give to communities assuming these activities and programs is a consistent set of standards and guidelines for implementation coupled with regularly scheduled workshops and courses for instruction for local staff.

**MEMORANDUM** October 16, 1980

**SUBJECT:** A.F.N. Meeting

**TO:** Policy Advisory Group
Technical Committee
Title 29 Revision

**FROM:** Tamara Brandt Cook
Legislative Counsel

The Alaska Federation of Natives, Incorporated is holding its Fourteenth Annual Convention at the Sheraton Hotel in Anchorage on October 23, 24, and 25, 1980. In connection with this convention, an affiliated meeting dealing with the work being done by the Title 29 Revision Committee will be held on Friday, October 24th at 1:00 P.M.

You are invited to attend and to participate in the affiliated meeting which will focus on the concerns of smaller rural communities. Senator Arliss Sturgulewski will be there and I hope some of you are able to attend.

TBC:ljb

cc: Frank Ferguson, President, A.F.N.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Note:

Included are copies of recently distributed formal opinions of the Attorney General. These opinions are not included in the "Summary of Attorney General Memos and Opinions Concerning Title 29" which was previously sent to you.

Tamara Brandt Cook

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

420 'L' Street, Suite 100
Anchorage, Alaska 99501

May 6, 1980

Mr. Michael J. Walleri
Village Government Specialist
Tanana Chiefs Conference, Inc.
Doyon Building
First & Hall Streets
Fairbanks, Alaska 99701

Re: S.1181; Native Village
of Tanacross Proposal
Our File: A66-417-80

Dear Mr. Walleri:

I am sorry it has not been possible to respond substantively to your letter of April 4, 1980 to our Juneau office until today but my East Coast travel on state business lasted several days longer than I had originally intended, and I did not return to the office until April 28. I have received from you a copy of S.1181 which I understand is pending, together with other proposed amendments regarding Title 18 of the United States Code. It is my further understanding, based upon conversations with senatorial offices in Washington, that no action is expected on S.1181 during 1980, but that it may advance sometime after the first of the year. Your letters indicate that you do not feel the passage of S.1181 is necessary in order for the State to consider the proposed agreement with Tanacross for law enforcement, which was the subject of your April 4 letter.

CSLH

Your letter of April 4 specifically requests participation by the State in discussions on the following subjects:

1. A mutual understanding of the definition of Indian country which reflects the federal law on the subject;

2. A cross-deputization agreement respecting tribal and state officials, including magistrates, constabulary and prosecutors;

3. An agreement respecting the regulatory authority of the State in Native villages, including planning, platting, zoning, taxing and other home-rule regulatory authority; and

4. Duration of such agreements.

I have discussed these matters with Wilson Condon, Deputy Alaska Attorney General and assure you that representatives of the Attorney General's Office, including Debra Vogt and Tom Koester of our Juneau office, as well as myself, would

welcome the opportunity to discuss with you the topics you have mentioned, as well as others. However, in fairness I feel that you should be apprised of the State's legal position regarding these matters at the outset, so that you may have the opportunity to analyze whether the approach you have suggested, or some alternative approach, might be legally possible while at the same time meeting the needs of the people of Tanacross. The purpose of the remainder of this letter is to outline for you, in summary fashion, the position of the State regarding the points you have raised.

1. "Indian country". It is the State's position that, with the possible exception of the Metlakatla Indian Reservation on Annette Island, Alaska is not, nor has it ever been, "Indian country" as that term is used in 18 U.S.C. 1162 and 28 U.S.C. § 1360(b). Your assertion that the State is free, even in the absence of the enactment of S.1181, to enter into agreements such as you have proposed with Tanacross or other villages "since Alaska is a mandatory P.L. 83-280 state" has no direct bearing on your concerns because only the "Indian country", if any, within Alaska falls within the ambit of P.L. 83-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360). Further, because in our view only the Metlakatla Reservation may possibly be defined as "Indian country", the obligation (or indeed the authority) of the State to enter into the type of agreement you have suggested

regarding lands not within the Metlakatla Reservation does not exist. It has long been recognized as a matter of federal law that Alaska, as a territory or as a state, was not "Indian country" as that term has been defined in statute and court decisions. U.S. v. Seveloff, Fed. Case No. 16,252 (D. Ct. Ore. 1872) stated in part as follows,

> Under these circumstances, I conclude that the Territory of Alaska is not a part of "the Indian country," so declared by law, whatever it may be in fact, . . . I am inclined to the opinion that if Congress had intended this or any other provision of the Intercourse Act to be enforced in Alaska, it would, in accordance with its common practice, have so declared in the Act of July 27, 1868. ***p. 1024.

With the exception of subsequent specific statutory prohibitions against the introduction of spiritous liquor within the Territory of Alaska, Alaska did not later become "Indian country" by act of Congress or otherwise. In Re Carr, 5 Fed. Case No. 2,432 (D. Ct. Ore. 1875); 14 Op. A.G. 327 (1873); 16 Op. A.G. 141 (1878); Waters v. Campbell, 29 Fed. Case No. 17,264 (Ct. App. Ore. 1876); U.S. v. Williams, 2 Fed. 61 (Cir. Ct. Ore. 1880); U.S. v. Stephens, 12 Fed. 52 (Cir. Ct. Ore. 1882); U.S. v. Kie, Fed. Case No. 15,528A, 15,528B (D. Ct. Ak. 1885); Aff'd., Kie v. U.S., 27 Fed. 351 (Cir. Ct. Ore. 1886); In Re Sah Quah, 31 Fed. 327 (D. Ct.)

Ak. 1886). This consistent view of the non-existence of "Indian country" in Alaska is summarized by the eminent Indian law commentator Felix Cohen, in his Handbook of Federal Indian Law (1948), as follows:

> A license to trade is not required in Alaska. The Act of June 30, 1834, was not extended ex proprio vigore to the Territory upon its cession to the United States.
>
> The court, in United States v. Seveloff, in 1872, decided that this new possession was not Indian country, as defined and limited by the Trade and Intercourse Act. After this decision, on March 3, 1873, Congress extended to Alaska the provisions of Sections 21 and 22 of this statute relating principally to the interdiction of liquor traffic. The presumption seems clear that by singling out, mentioning, and extending two sections only, the intention of Congress was to withhold or exclude from the Territory all other sections of the Act. Apparently Alaska was intended to be considered "Indian country," in connection with Indian trade only to the extent of that specifically prohibited traffic. p. 350.

More recently, the Superior Court for the State of Alaska, Third Judicial District, specifically found in the case of Paug-Vik, Inc., Ltd. vs. LeResche, et al., (No. 77-17158) that,

> 25 U.S.C. § 177 of the Indian Non-intercourse Act has never applied in Alaska, and Alaska has never become "Indian country"; Kie v. United States, 27 F. 351; 31 F. 327 (D. Ore. 1886); Supp. Brief of State re: 28 U.S.C. § 1360(b), May 25, 1978). Specifically, with the exception of certain reservations not relevant to this proceeding, the federal government has never closed Alaska to travel and settlement by any ethnic group. Decision, p. 16 (Sept. 12, 1979).

On the basis of this consistent and long-standing legal interpretation of the term "Indian country" as it might otherwise be applied to Alaska, it is the state's view that with the exception of Metlakatla, Alaska is not "Indian country" and thus is not a "mandatory P.L. 83-280 state", with that single exception. Thus the state is not required to recognize law enforcement, regulatory, or other police-power authority claimed by other native villages unless those villages are in fact incorporated as municipalities under state law, pursuant to Title 29 of the Alaska Statutes. Similarly, the concept of "tribal" officials is foreign to the law in Alaska, since there were no designated or recognized "tribes" or discrete jurisdictional territories within the state (again, with the exception of Metlakatla), and passage of the Alaska Native Claims Settlement Act (as will be set forth more fully below) specifically "closed the door" on the concept of any subsequent grant of "tribal"

status to native regions or to villages receiving benefits under that act. Thus, to the extent that S. 1181 defines an "Indian tribe" as an "organized group or community exercising powers of self-government . . . including any Alaska Native villages included in the Alaska Native Claims Settlement Act . . . ", such a reference is both factually and legally erroneous, and cannot elevate the status of Alaska villages or village corporations to "tribal" status. The apparently well-meaning but incorrect reference to ANCSA Native villages as "tribes" will be the subject of continuing state communication to appropriate congressional committees so long as such language remains in the bill (though certainly the limitation of the scope of the entire bill to "Indian country" only should remove Alaska, with the exception of Metlakatla, from coverage by the bill).

2. The Alaska Native Claims Settlement Act. It is our view, and one which we believe is widely shared, that the Alaska Native Claims Settlement Act of 1971 represents the most "assimilationist" effort yet achieved by the United States in the settlement of aboriginal claims of indiginous native peoples, and the integration of those peoples and the property granted them by way of settlement into the mainstream of economic and governmental relations within a state.

Whether this approach was, in retrospect, beneficial or detrimental is not the question; what is important is the relationship of the state to the United States and to Alaska's Natives, their corporations, and the lands conveyed to those corporations under the act. ANCSA is explicit in its avoidance of the creation of a "reservation system" in Alaska, through its adoption of a plan conveying 44 million acres of federal lands in fee to Native village and regional corporations, without the trusteeship of the Secretary of the Interior as was the case when reservations were created in the lower 48 states. The land conveyed to Alaska Native corporations was to be held and managed as any private corporation might own and manage its lands, and the relationship of that corporation to the State of Alaska was to be the same as that of any other private corporation.

For example, Section 2 of ANCSA states in part as follows:

> Congress finds and declares that --
>
> * * *
>
> (b) The settlement should be accomplished rapidly, with certainty, in conformity with real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and

> property, without establishing any permanent racially defined institution, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States government and the State of Alaska;
>
> * * *
>
> [Emphasis supplied]

In our view, the recognition by the State of Alaska of the "Native village of Tanacross" as a local government with police-power jurisdiction over lands conveyed to the village corporation of Tanacross (and to other lands?) would in fact perpetuate "racially-defined institutions, rights, privileges, and obligations." Your statement that the incorporation of Tanacross as a municipality under State law would "fail to fully represent the predominantly Native character of the community" appears to confirm the intent to seek state recognition of a "racially-defined institution." By seeking an agreement with the State which defines the "regulatory authority of the Native village", including law enforcement, planning, zoning, and taxing, the possibility of "adding to the categories of property and institutions enjoying special tax privileges" is clearly raised. The inability of the state to enter into an agreement with a village "tribe",

where no such "tribe" has been recognized in law, whose claimed existence is antithetical to the purposes and implementation of ANCSA, poses a substantial barrier to state involvement in the manner you have suggested.

The Alaska Native Claims Settlement Act is replete with clear indications that Congress intended (or required) that Native villages incorporate as profit or non-profit corporations under the laws of the State of Alaska (Sections 3(j), 8(a)-(c)), that Native groups do the same (Section 14(h)(2), and that de facto Native villages be, or become, municipalities pursuant to the laws of the State of Alaska (Section 14(c)). Land conveyed to Native corporations was to enjoy a 20-year immunity from state and local real property taxation only; it was not to be forever immune as "Indian country" might otherwise be. Section 21(d). Nothing in ANCSA attributes powers of self-government over lands conveyed by ANCSA to unincorporated villages, or to IRA village councils. While the future utility, if any, of IRA village councils was not finally decided by ANCSA, it is the state's position that such councils, if they attempt to assert local police-power jurisdiction as a "tribe" or a local government entity, are acting contrary to law and to the express purposes of ANCSA.

In the state's view the role of IRA Councils cannot, after ANCSA, include the function of local self-government within a defined geographic area or over non-Natives, or as a recognized, lawful alternative to incorporation as a municipality under the laws of the State of Alaska. Therefore, the state is simply without authority to enter into "tribal" or "village council" agreements respecting law enforcement, land-use planning, taxation, and other "home-rule regulatory authority" as you have suggested in your letter, unless the state is negotiating with a unit of local government organized under the laws of the state.

I sincerely hope that this expression of the state's position on these matters does not in any way indicate that the state is not interested in or willing to work with Tanacross or any other village to solve recognized land-use planning, law enforcement, or similar matters. The state most certainly is interested in finding the best way, within its lawful powers, to meet such challenges, for both its rural and urban citizens, without regard to ethnic background. However, the state cannot meet these challenges by ceding its police power jurisdiction or authority to entities which

are not now recognized under state or federal law, whose expressed desires are contrary to the purposes and implementation of the Alaska Native Claims Settlement Act, and whose functions in Alaska since 1971 are dubious and speculative at best.

Members of the Attorney General's Office would certainly be willing to meet with you and those whom you represent at your convenience regarding this or any other matter which you might wish to discuss, including alternative means which are within the state's authority, to reach many of the same goals which you have expressed in your letter. Thank you for this opportunity to discuss these matters with you.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Thomas E. Meacham
Assistant Attorney General

cc: Wilson Condon
Deputy Attorney General
AGO - Juneau

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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JUNEAU, ALASKA 99811

(907) 465-3634

May 12, 1980

Fran Ulmer
Don Gilman
Co-chairpersons, Coastal
Policy Council
Pouch AP
Juneau, Alaska 99811

Re: Local Zoning Authority Over
State Oil and Gas Development
Our File No.: J-66-536-80

Dear Ms. Ulmer and Mr. Gilman:

You have asked in your letter of March 4, 1980 1/ for an opinion on the following questions:

1. Can home rule and other municipalities adopt coastal management plans which impose restrictions upon state or federal lessees engaged in exploration, development and production of hydrocarbons and minerals?

2. If so, can local government administer its plans through a permitting system?

The answer to both questions is a qualified yes.

This opinion will first address the permissible limits of municipal regulation of state and federal lessees and then discuss the validity of a permitting system.

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1/ The issuance of this opinion was delayed for 30 days in order to accommodate the request of both the North Slope Borough and Sohio B.P. for time in which to submit their views in writing.

## I. Regulation of Oil and Gas Activities Conducted Pursuant to State Leases.

Home rule municipalities have broad constitutional authority to "exercise all legislative powers not prohibited by law or charter." Alaska Constitution, Article X, section 11. This authority is to be liberally construed. Alaska Constitution, Article X, section 1. The contours of this constitutional limitation have been addressed in a line of decisions of the Alaska Supreme Court. 2/ Those cases stand for the proposition that mere inconsistency with a state statute is not sufficient to invalidate a municipal ordinance as unconstitutional. In Jefferson v. State, 527 P.2d 37 (Alaska 1974), the court explained:

> The test we derive from Alaska's Constitutional provisions is one of prohibition, rather than traditional tests such as statewide versus local concerns. A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited

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2/ See, e.g., Wright v. Municipality of Anchorage, 590 P.2d 425 (Alaska 1979); City of Kodiak v. Jackson, 584 P.2d 1130 (Alaska 1978); DeHusson v. City of Anchorage, 583 P.2d 791 (Alaska 1978); Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978); Cremer v. Anchorage, 575 P.2d 306 (Alaska 1978); Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976); State v. City of Petersburg, 538 P.2d 263 (Alaska 1975); Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970).

> to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantial effect if the other is to be accorded the weight of law.

527 P.2d at 43 (footnotes omitted). 3/ Jefferson plainly rejects a quantitive standard of conflict, which would look only to the actual terms of allegedly conflicting statutes and ordinances, in favor of a qualitative standard, which examines the impact of each upon the other's operation and purposes.

This approach was recently affirmed in Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978), which held that constitutional conflict exists "only where an ordinance substantially interferes with the effective functioning of a state statute or regulation or its underlying purpose." 584 P.2d at 1122. The exercise of local regulatory authority over hydrocarbon and mineral exploration and development must therefore be measured against all existing state statutes and regulations concerning that use. 4/ Where an express or implied prohibition is found, under Jefferson, or a substantial interference is found, under Liberati, the local ordinance must fall. If, on the other hand, there exists

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3/ Accord, DeHusson v. City of Anchorage, 583 P.2d 791 (Alaska 1978); Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976).

4/ There is no prohibition against this regulation in the North Slope Borough charter. Each municipal charter will have to be examined for any prohibiting language.

neither prohibition, express or implied, nor a substantial interference, the local government ordinance may stand.

The first statute which must be scrutinized for a potential conflict with municipal oil and gas regulation is the Alaska Coastal Management Act (the act), AS 46.40.-010-.210, and its implementing regulations. It is this act which is the foundation for the enactment of local coastal management plans which, when approved by the Coastal Policy Council (Council) become part of the Alaska Coastal Management Program (ACMP). AS 46.40.010(c)(1). 5/ The act expressly prohibits council approval of a local coastal management plan which "arbitrarily restricts or excludes a use of state concern." AS 46.40.060(a). "Uses of state concern" include:

> (A) Use of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;
>
> (B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource

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5/ A recent Attorney General Opinion concluded that State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980) has rendered void the legislative approval requirements for amendments to the ACMP, including local district programs, contained in AS 46.40.080. Op. Atty. Gen. April 29, 1980.

district;

(C) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

(D) facilities serving statewide or interregional transportation and communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.20 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20. (am § 3 ch 129 SLA 1978.)

AS 46.40.210(6). 6/

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6/ This section of the Alaska Coastal Management Act sets out priorites for consideration in each local plan but it does not establish a hierarchy among these priorities. If, for instance, a particular coastal management plan embraces a geographical area rich in fishery resources but is also proposed as the site of a coastal dependant energy facility likely to present issues of more than local significance, there is created a tension between two uses of state concern having equal stature.

The notion that Congress sought through the federal Coastal Zone Management Act, 16 U.S.C. § 1451 et seq. (CZMA) to require the states to give preference to energy facilities has been emphatically discarded in the recent Ninth Circuit decision in American Petroleum Institute v. Knecht, 609 F.2d 1307 (9th Cir. 1979). There, in a per curiam opinion, the court of appeals rejected a claim by the appellants that it was the intent of congress to induce the states to adopt coastal management plans which would include "explicit commitments" to energy facilities. Rather, the court concluded that the federal requirement that "adequate consideration" be

However, AS 46.40.070(c) provides that the council "shall approve a restriction or exclusion of state concern" if it finds that it is based upon (1) consultation with, and consideration of the views of, state, federal and regional agencies, (2) the availability of reasonable alternative sites, and (3) a showing that the proposed use of state concern is incompatible with the proposed site. Assuming that a municipality can demonstrate that any given restriction is not arbitrary by satisfaction of these three criteria, its local coastal program may properly restrict a use of state concern. To return to the example previously offered, 7/ a municipality exercising jurisdiction over an area for coastal management purposes may decide that preservation of a rich fishery is of paramount concern in its coastal management plan. In order to protect the fishery, the municipality adopts a coastal management plan which limits oil and gas exploration and development activities pursuant to a state lease. Under the Coastal Management Act, the council must

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6/ (continued)

given to energy facilities of national interest, 16 U.S.C. section 1455(c)(8), was designed to achieve "equitable balance", involving "consideration of the (federal) act's broader finding of a national interest in the . . . beneficial use, protection and development of the coastal zone . . . including the requirement of subsection 302(g) of the Act that "high priority" be given to the protection of natural systems." Id. at 1314. The ACMP, in tacit recognition of that principle requires adequate consideration of, rather than unilateral commitment to, any given use of state concern.

7/ See n. 6

approve such a plan, even though it restricts a use of state concern, as long as that restriction is not arbitrary. In order to demonstrate the reasonableness of the restriction, the municipality must show that it considered the views of appropriate federal, state and local agencies on the matter, that there are reasonably available alternative sites for exploration and development activities, and that the lease activities are incompatible with the maintenance of the fishery. This restriction is neither impliedly or expressly prohibited by the act, nor does it substantially interfere with the act. The act not only contemplates, but mandates, approval of such a local district program. AS 46.40.070(c).

To summarize, a municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c).

A similar analysis applies with reference to the Alaska Lands Act, AS 38.05.005-.370, which, inter alia, provides for the leasing of state lands for mineral extraction and concomitant uses, such as pipeline rights-of-way.

**The leasing of lands in the coastal zone for exploration and development of oil and gas resources must, as with other state agencies actions, be accomplished in a manner which is harmonious with the ACMP.**

**State agencies may not authorize a use or activity in the coastal zone unless "the agency finds that the use or activity is consistent with the applicable district program and the standards [of the ACMP]." 6 AAC 80.010(b).** 8/ Indeed, the legislative directive of the Alaska Lands Act to lease lands only after a finding that the "interests of the state will best be served," 9/ AS 38.05.35(a)(14), compliments the balancing of demands on coastal resources which is a linchpin of the ACMP. See AS 46.40.020. Statutes relating to the same subject matter should be read together as a whole in order that a total scheme emerges which preserves the integrity of each. This is particularly true where both can be harmonized to further a specific legislative policy: balanced use of natur-

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8/ Once land is leased and exploration for oil and gas commences, each lessee must secure a permit to drill any well. 11 AAC 22.005. The grant of such a permit is state agency action with the meaning of 6 AAC 80.010(b) and must therefore be conditioned upon compliance with the ACMP.

9/ AS 38.05.180(a) provides in pertinent part:

> (2) It is in the best interests of the state to encourage an assessment of its oil and gas resources and to allow the maximum flexibility

(continued)

al resources. Hafling v. Inland Boatmen's Union of Pacific, 585 P.2d 870, 878-79 (Alaska 1978).

Any local coastal management plan approved by the council is by definition based upon a balancing of all demands on land and water in the coastal zone. Therefore, properly drawn coastal management plan would not be in conflict with the Alaska Lands Act.

Finally, for the reasons stated above, the Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the ACMP. Conservation of these valuable resources is one of the objectives of the ACMP ("the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles", AS 46.40.020(3)), to be

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9/ (continued)

in the methods of issuing leases to:

> (a) recognize the many varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;
>
> (B) minimize the adverse impact of exploration, development, production, and transport activity.

balanced with other objectives of the act. As long as a local coastal plan achieves this balancing in a reasonable manner, no implied or express prohibition or substantial interference will exist between a local coastal management plan and the Oil and Gas Conservation Act.

To sum up, a local coastal management plan which does not arbitarily or unreasonably restrict or exclude oil and gas exploration and development is a constitutionally permissible exercise of municipal authority. The test for reasonableness of any restriction or exclusion is set forth in AS 46.40.070(c). If a local plan survives scrutiny under that test, it must be approved by the coastal policy council. Approved plans become part of the ACMP, AS 46.40.010(c)(1), and have equal dignity with other state statutes which will read in harmony with it. State, Dept. of Highways, v. Green, 586 P.2d 595 (Alaska 1978); Hafling v. Inland Boatmen's Union of Pacific, supra.

There is a very large caveat which accompanies this analysis. The state constitution mandates "the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people." Alaska Const., art. VIII, § 2. The determination of what constitutes this maximum benefit necessarily involves questions of basic policy formulation for the state. Swindel v. Kelly, 499 P.2d 291 (Alaska 1972); Kelly v. Zamarello, 486 P.2d 906

(Alaska 1971); Pan American Petroleum Corp. v. Shell Oil Co., 455 P.2d 12 (Alaska 1969). Reading AS 46.40.070(b) as vesting local officals with complete control over the basic policy formulation would probably render the act unconstitutional. Accordingly, it may not be read as authorizing a local permit system which would have the effect of overruling the state's basic policy formulation as to what use of its resources will provide the maximum benefit for all of the state's people.

B. Regulation of Oil and Gas Activities Conducted Pursuant to Federal Leases in the Coastal Zone.

The question of municipal authority to regulate exploration and development of oil and gas by federal lessees requires a somewhat different analysis. On-shore lands which are subject solely to the discretion of the federal government are excluded from the coastal zone as defined, section 304(1) of the federal act. 10/ In spite of the fact that the regulations implementing the federal act suggest that certain impacts from activities conducted on excluded federal lands may be regulated as part of a local

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10/ Sec. 304 reads:

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes

(continued)

coastal management program, 11/ municipal regulation of federal lessees may be prohibited under the recent opinion in Ventura County v. Gulf Oil, 601 F.2d 1080 (9th Cir. 1979) summarily aff'd _____ U.S. _____, 48 USLW 3622 (April 1, 1980). There, the court of appeals concluded that in light of extensive federal regulation of the field, federal lessees could not be required to obtain a local zoning permit in order to drill a well.

The leases in question were granted under the Mineral Lands Leasing Act of 1920 which the court found to pre-empt local regulation "standing as an obstacle to the

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10/ (continued)

islands transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

11/ 15 CFR section 923.33(c) states:

> (c) Comment. The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that significantly affect coastal zone areas, uses or resources within the purview of a State's management program.

accomplishment and execution of the full purposes and objectives of Congress." 607 F. 2d at 1086. 12/ Apparently, the facts of that case did not call into question the effect of the federal CZMA, and, on that basis, it appears to be distinguishable.

Exploration, development and production plans for off-shore federal lands leased under the Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. Section 1331 et seq., are treated differently. They require state consistency determinations under the federal CZMA, section 307(c)(3)(B). That is, all federal license and permit activities described in detail in OCS plans and which affect the coastal zone must be conducted in a manner which is consistent with the Alaska Coastal Management program. See, 15 CFR 930.70. (The consistency determination is made by the Division of Policy, Development and Planning, within the Office of the Governor.)

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12/ The State of Alaska joined in an amicus brief in the Supreme Court urging reversal of the Ninth Circuit's decision, protesting that "the decision below radically curtails traditional state power to secure the public interest, just at the time when burgeoning private development of public land resources is giving new urgency to that long established state and local role." Brief Amicus Curiae of the Western Governor's Policy Office (WESTPO) at 3.

It would therefore appear that reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the ACMP, would be enforceable against off-shore federal lessees. The doctrine of federal pre-emption, derived from the supremacy clause of the United State Constitution, Article VI, clause 2, would not apply to state regulation of OCS activities in the coastal zone. This appears from both the language of section 307(c)(3) of the federal CZMA and the legislative history of that act. 13/

In conclusion, municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal pre-emption may prohibit local coastal zone ordinances from affecting any measure

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13/ The senate committee report in support of the federal act expressly states that Congress did not intend to pre-empt state authority:

> There is no attempt to diminish state authority through federal pre-emption. The intent of this legislation is to enhance state authority by encouraging and assisting the states to assure planning and regulatory powers over their coastal zones.

S. Rep. No. 753, 92nd Cong., 2d Sess., reprinted in [1972] U.S. Code Cong. & Adm. News 4776.

of control. In the case of the latter, local coastal management programs which are approved by the council and thus part of the ACMP will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the CZMA. Of course, under the federal act, the Secretary of Commerce has the authority to override a state consistency determination on the basis of national security or a finding that the proposed activity is consistent with the federal act, section 307(c)(3)(B)(iii). A local permit system which seriously interfered with oil or gas production might be overridden.

II

A lease confers a property interest 14/ the diminution of which warrants protection under constitutional requirements of due process and equal protection, Nichols v. Eckert, 504 P.2d 1359 (Alaska 1973). A local district program which reasonably restricts oil and gas development may be administered through a permitting system as long as that system is itself reasonably drawn to achieve its legitimate ends. Kelly v. Zamarello, 486 P.2d 906 (Alaska

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14/ See, e.g., Union Oil Co. v. Morton, 512 F.2d 743 (9th Cir. 1975).

1974). The plan must be sufficiently specific to give notice of what it prohibits or conditions upon a permit, Herscher v. State, Dept. of Commerce 568 P.2d 996 (Alaska 1977), and sufficiently definite so that it does not confer unbridled discretion upon its administrator, Brown v. Municipality of Anchorage, 584 P.2d 35 (Alaska 1978). Any classification system established in the plan must be reasonable and not arbitrary: that is, it must rest upon some ground of difference which has a fair and substantial relationship to the object of the plan so that all applicants for permits who are similarly situated will be treated alike. Herscher v. State, supra.

In short, any permitting system to be valid must comport with fundamental constitutional requirements of due process and equal protection. In the absence of any existing plan to test against these principles, it can only be said that such scrutiny must await the submission of a specific permitting plan to the council.

AVRUM M. GROSS
ATTORNEY GENERAL

By: Madeleine R. Levy
Madeleine R. Levy
Assistant Attorney General

MRL/jb

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

420 "L" STREET, SUITE 100
ANCHORAGE, ALASKA 99501

May 21, 1980

The Honorable Ted Stevens
United States Senate
260 Russell Building
Washington, D.C. 20510

Re: State of Alaska's Objection
to Provisions of S. 1181
(Tribal-State Compact Bill)

Dear Senator Stevens:

On behalf of the Attorney General for the State of Alaska, I wish to register the strong objection of the State to certain provisions of S. 1181, which I have today learned is on the Senate's unanimous consent calendar. For the reasons which I will outline in this letter, we strongly urge that you seek to have this bill removed from the unanimous consent calendar and held over until the objections stated in this letter have been resolved.

The State of Alaska is certainly not opposed to the laudable objectives set forth in S. 1181 regarding jurisdictional agreements between states and Indian tribes. However, the state opposes the inclusion of Alaska Native vilaeges in the statutory definition of an "Indian tribe",

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and the implicit assumption in the bill that these village "tribes" are situated in "Indian country" within the State of Alaska. These concerns have been previously expressed by the state regarding pending congressional legislation, as the attachment to this letter demonstrates. I will briefly outline the state's position in the remainder of this letter.

With the exception of the Metlakatla Indian Reservation on Annette Island, Alaska has never been "Indian country", as that term is defined in 18 U.S.C. § 1151 (regarding criminal jurisdiction) or 28 U.S.C. § 1360 (with regard to civil actions). Thus, on its face, S. 1181, which is limited to agreements regarding civil or criminal jurisdiction over Indians "within Indian country" (Section 101 of the bill), would apply in Alaska only to the Metlakatla Indian Reservation on Annette Island. References to "Alaska Native villages" in the definition of an "Indian tribe" in Section 3(a) of the bill would achieve no legal purpose, because the Metalakatla Indian community was specifically excluded from coverage of the Alaska Native Claims Settlement Act by Section 19(a) of that Act (43 U.S.C. § 1618(a)); thus it is not an "Alaska Native village" mentioned in Section 3(c) of ANCSA (43 U.S.C. § 1602(c)) and defined therein as a "Native village". Therefore, on its face the bill's applicability only to "Indian country" and the definition of an "Indian tribe" as

including "Alaska Native villages" creates an inherent inconsistency, since the only "Indian country" in Alaska is not one of the Alaska Native villages defined in Section 3(c) of ANCSA or listed in Section 11 or 16 of ANCSA.

This inconsistency in the bill if allowed to remain, might in the future be interpreted as an instance of legislative misinformation or oversight, in which case the inconsistency might optimistically be termed "harmless". However, since judicial or administrative interpretations of congressional action as being mistaken or misinformed are strongly disfavored, it is the state's concern that, if S. 1181 remains in its present proposed form, unwarranted interpretations may be made that Congress, by this bill, has broadened the definition of "Indian country" with respect to Alaska, or has elevated Alaska Native villages named in ANCSA to "tribal" status, or both. Such interpretations, the state feels, are diametrically opposed to the purposes and structure of the Alaska Native Claims Settlement Act, and would thwart its successful implementation.

The Alaska Native Claims Settlement Act ("ANCSA") represents a congressional approach to the final settlement of Native claims of aboriginal title which is strikingly different from settlements (by treaty, allotments, reservations, etc.) in the remainder of the United States. Section 2(b) of ANCSA (43 U.S.C. § 1601(b)) states:

> Congress finds and declares that --
>
> * * *
>
> (b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States government and the State of Alaska;

[Emphasis supplied]. Thus ANCSA specifically rejected the usual approach of creating "permanent racially-defined institutions, rights, privileges, or obligations," and furthermore rejected the implication of "creating a reservation system or lengthy wardship or trusteeship." The remainder of ANCSA consistently implements this congressional declaration of policy. For example, existing executive order or statutory reservations in Alaska, with the sole exception of the Metlakatla community, were specifically revoked by Section 19(a) of ANCSA (43 U.S.C. § 1618(a)), and the village corporations for the villages located within these former reservations were given the option of either obtaining title in fee to the former reservation lands, or selecting lands withdrawn under the formula applicable to all other Native village selections under Section 11(a) of ANCSA (43 U.S.C. § 1610).

Section 3(c) of ANSCA (43 U.S.C. § 1602(c)), defines a "Native village" for purposes of ANCSA as follows:

> "Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in Sections 11 and 16 of this Act, or which meets the requirements of this Act, in which the Secretary determines was, on the 1970 census enumeration date . . . composed of twenty-five or more Natives;

ANCSA did not establish any "Native village" as a recognized "tribe, band, nation, or other group formally organized as such. Nor did ANCSA establish or attribute any powers of self-government to those Native villages defined in ANCSA and listed in Sections 11 and 16 (43 U.S.C. §§ 1610, 1615). The only criteria required to fit within the definition of "Native village" in ANCSA were that there be 25 or more persons, that they in fact be identifiable as a distinct group, and that they be Natives.

Certainly, some of the Native villages listed in Sections 11 and 16 of ANCSA had organized, prior to ANCSA, as IRA village councils under the Indian Reorganization Act (Wheeler-Howard Act, 25 U.S.C. § 473a). Such organization, if it had occurred, had no relationship to the later passage of ANCSA, and any councils so organized do not owe their identity to the definition of a "Native village" in Section 3 of ANCSA or their listing in Sections 11 or 16 of that

Act. If such councils do in fact possess powers of self-government today, they would fit within the definition of an "Indian tribe" in S. 1181 without regard to ANCSA.

The majority of the villages listed in Sections 11 and 16 of ANCSA did not possess any IRA council structure prior to ANCSA, and none has been created since (nor, the state would argue, could it lawfully be created after ANCSA). Even with regard to the villages which possessed some type of recognized IRA council prior to ANCSA, they did not possess tribal court and law enforcement powers, nor, after the revocation of reservations by Section 19 of ANCSA, do any remaining IRA village councils have defined jurisdictional boundaries or any "Indian country".

ANCSA left unclear what role, if any, former village IRA councils would have after implementation of the land and monetary grants made by the Settlement Act. It is clear, however, that no "Indian reservations" were created by ANCSA. The land conveyed to Native corporations is conveyed in fee, with no continuing trust responsibility or oversight by the United States. The Act does not restrict the village corporations' ability to sell that land, and it may be conveyed to third parties immediately upon its receipt from the United States. The land conveyed to Native village corporations will become fully taxable by state and local governments 20 years after the enactment of ANCSA.

Section 21(d) of ANCSA (43 U.S.C. § 1620(d)). In order to receive land and monetary benefits under ANCSA, each "Native village", as defined in Section 3(c) of ANCSA, was required to incorporate as a "Village corporation" pursuant to Section 3(j) of ANCSA (43 U.S.C. § 1602(j)). Each of the Native villages listed in the Act has in fact incorporated as a profit-making corporation under the laws of the State of Alaska. This status under state law does not carry with it any inherent powers of community self-government, such as taxation, law-enforcement, fish and game management, or other police powers attributable to representative government at the local or municipal level. In short, the Native village corporations receiving land and monetary benefits under ANCSA are private, profit-making corporations, and are neither recognized units of municipal government under state law, nor sovereign "tribes" or "nations" under federal law.

Therefore, the state strongly urges that the definition of "Indian tribe" set forth in Section 3(a) of S. 1181 be amended to delete the phrase "including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688-689)." If so amended, the bill will still apply to the single recognized Indian community in Alaska (Metlakatla) which is located

within "Indian country" and which has retained statutorily-recognized powers of self-government after enactment of ANCSA. It will also include any other Indian community (if indeed there are any) similarly situated. As amended, it would exclude those Alaska Native villages which, after passage of ANCSA, do not have recognized powers of self-government and are not located within "Indian country", and would avoid any implicit elevation of these villages and their village corporations to the status of 'Indian tribes", a result certainly disfavored by ANCSA.

For your information, I am enclosing a copy of a letter written by our office to Representative Don Young on September 12, 1978 discussing the implications of S. 2502, then pending in the House, with regard to the same subjects I have discussed in this letter. If I may be of further asssistance to you, please contact me at your convenience. My telephone number in Anchorage is (907) 276-3550. Thank you for your assistance in this matter.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:

Thomas E. Meacham
Assistant Attorney General

cc: Senator Gravel
Representative Young
Governor Hammond

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / FOURTH FLOOR - STATE CAPITOL

September 12, 1978

Honorable Donald E. Young
House of Representatives
1210 Longworth House Office Bldg.
Washington, D.C. 20515

Re: S. 2502 defining Alaska Native Villages as tribes.

Dear Representative Young:

I am writing to express the state's concern with a phrase in the definition section of S. 2502, "A bill to authorize States and Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country". I have discussed this concern with Lynn Ager of your staff several times over the last two weeks.

On its face, this bill appears to have little effect on Alaska since we have only one true "tribe" and very little "Indian country" in the state (i.e. Metlakatla). The bill is apparently offered primarily as a solution to recent problems concerning jurisdiction over management of fish and game on reservations in such states as Washington and Montana and in response to recent court decisions which have very little impact on Alaska.

Nonetheless, § 3(a) of the most recent committee print (dated July 24, 1978) contains the following definition:

> Sec. 3. For purposes of this Act:
> (a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community exercising powers of self-government which is recognized as eligible for services provided by the United States to Indians because of their status as Indians, [including any Alaska Native villages included in the Alaska Native Claims Settlement Act] (85 Stat. 688,697). (Emphasis added.)

This definition is nearly identical to the definition of

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the recent Indian Child Welfare Act of 1978, Pub. L. 95-1386. The appropriateness of those definitions is, of course, not at issue now. The state's present concern is that defining Indian tribes to include Alaska Native villages included in the Settlement Act, in this bill, is entirely inappropriate.

This bill is directed at tribes which have their own civil, criminal and regulatory laws as well as their own tribal court (Sec. 101 (a)(1)-(3)). The bill would authorize compacts between such tribes and states respecting jurisdiction and governmental operations in Indian country. The only such tribe in Alaska, is the Metlakatla Indian Community which occupies the only Indian country in the state.

Therefore, the state urges that every effort be made to delete the last phrase in the definition which refers to Settlement Act villages. Ironically, that phrase would seem to exclude the Metlakatla Indians, the only tribe in Alaska which could actually properly enter into a compact with the State of the type envisioned by the bill.

Even though the bill would not require the state to enter compacts with other village entities, the retention of the objectionable phrase in the definition would only serve to further confuse the status of the approximately 210 Alaska Native village corporations and the approxmiately 155 village councils (including approximately 90 "traditional" councils and approximately 65 "IRA" councils, under the Indian Reorganization Act, 48 Stat. 985). According to our Department of Community and Regional Affairs and the Tribal Operations Division of the Bureau of Indian Affairs Office in Juneau, Metlakatla is the only IRA council with a charter authorizing any true law making and enforcement powers. All the other councils essentially function only as providers of social services and administrators or conduits for welfare oriented programs and funds. Likewise, village corporations under the Settlement clearly have no "powers of self government".

The definition of "Indian tribe" in the bill, as written, would have serious implications for the implementation of the Settlement Act, and for the creation and subsequent authority of municipal governments under Alaska law in each of the villages eligible for benefits under that Act. In its broadest context, the bill would raise serious questions regarding the ability of the State of Alaska to exercise all of its tax and police powers, including law enforcement, fish and wildlife management, water and resource allocation, property and income taxation, licensing, and other functions inherent in the division of governmental power between the federal and state governments. This

[illegible] by virtue of 28 U.S.C. § 1360, et seq.

The bill, with the objectionable inclusion of Alaska Native villages, appears dangerously close to a de facto amendment of the Settlement Act to vest Alaska village corporations and/or councils with implicit federally established powers of self-government and federally "imposed immunity from the full range of inherent state government powers which apply uninformily to all other citizens, corporations, municipalities and communities. Indeed, a logical, though admittedly extreme, extension of the bill as written would be the establishment of 40 million acres of "Indian country" in Alaska.

We urge you to help prevent all these undesirably implications and confusion by making every effort to amend the bill by simply deleting the last phrase in Section 3(a). This minor change, while solving the state's problems with the bill, would not affect the accomplishment of its intent and purpose on reservations in the rest of the country and on Annette Island. It seems that curative action is easiest and most appropriate now, before the bill reaches the house floor.

Please contact me in Juneau (465-3684) or Douglas Riggs in Washington D.C. (624-5858) if we can provide any further information or assistance on this bill.

Thank you for your help and cooperation.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Peter B. Froehlich
Peter B. Froehlich
Assistant Attorney General

cc: Senator Gravel
Senator Stevens
Governor Hammond

PBF:ams

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

**NOTICE OF MEETING**
**October 6, 1980**

**A Policy Advisory Group as been appointed to oversee the revision of the Municipal Code, Title 29 of the Alaska Statutes. The Policy Advisory Group is composed of thirteen members. Of these, nine public members represent a broad range of local officials interested in Title 29. The public and legislative members of the Title 29 Policy Advisory Group are:**

Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
Ron Larson, Mayor, Matanuska Susitna Borough
Jim Kohler, Manager, City of Yakutat
Gene Moore, Manager, City of Kotzebue
Donna Sherby, Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough
Representative Charles H. Parr, Fairbanks
Representative Margaret A. Branson, Kenai Peninsula
Senator Bob Mulcahy, Kodiak
Senator Arliss Sturgulewski, Anchorage

The third meeting of the Policy Advisory Group is scheduled for 10 and 11 November 1980. The meeting will begin at 9:00 a.m. in the Chena Room of the Traveler's Inn, Fairbanks, Alaska. The proposed agenda for this meeting is:

November 10th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:
   a. Report by Palmer McCarter on material prepared for newsletters.
   b. Report by Bob Lohr or Phil Smith on special problems of rural communities.
   c. Presentation of proposed drafts by the Technical Committee.
   d. Other old business.

4. New Business:
   a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
   b. Presentation of proposed items for consideration by Ex-Officio members.
   c. Presentation of proposed items for consideration by the Technical Revision Committee.
   d. Other new business.

November 11th:

1. Introduction of guests and members of the public attending.
2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.
3. Other new business.
4. Setting of future meeting dates for the Policy Advisory Committee.

It is the intention of the Policy Advisory Group to undertake a thorough review of Title 29. To make this possible, the Policy Group requests that any questions about Title 29 be forwarded to them. Comments on Title 29 may be sent to:

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

As the review of Title 29 must be completed before the next legislative session, it is important that any suggestions for revision be mailed as soon as possible. It is hoped that all areas of Title 29 needing revision can be identified before this meeting.

Thank you for your interest in the revision of Title 29. Again, any comments on areas of Title 29 that, in your opinion, need review will be helpful to the Policy Advisory Group.

**NOTICE OF MEETING**
**October 6, 1980**

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Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough
Representative Charles H. Parr, Fairbanks
Representative Margaret A. Branson, Kenai Peninsula
Senator Bob Mulcahy, Kodiak
Senator Arliss Sturgulewski, Anchorage

The third meeting of the Policy Advisory Group is scheduled for 10 and 11 November 1980. The meeting will begin at 9:00 a.m. in the Chena Room of the Traveler's Inn, Fairbanks, Alaska. The proposed agenda for this meeting is:

November 10th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:
   a. Report by Palmer McCarter on material prepared for newsletters.
   b. Report by Bob Lohr or Phil Smith on special problems of rural communities.
   c. Presentation of proposed drafts by the Technical Committee.
   d. Other old business.

4. New Business:

a. Presentation of proposed items for consideration by members of the Policy Advisory Group.

b. Presentation of proposed items for consideration by Ex-Officio members.

c. Presentation of proposed items for consideration by the Technical Revision Committee.

d. Other new business.

November 11th:

1. Introduction of guests and members of the public attending.
2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.
3. Other new business.
4. Setting of future meeting dates for the Policy Advisory Committee.

It is the intention of the Policy Advisory Group to undertake a thorough review of Title 29. To make this possible, the Policy Group requests that any questions about Title 29 be forwarded to them. Comments on Title 29 may be sent to:

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

As the review of Title 29 must be completed before the next legislative session, it is important that any suggestions for revision be mailed as soon as possible. It is hoped that all areas of Title 29 needing revision can be identified before this meeting.

Thank you for your interest in the revision of Title 29. Again, any comments on areas of Title 29 that, in your opinion, need review will be helpful to the Policy Advisory Group.

**NOTICE OF MEETING**
**October 6, 1980**

**A Policy Advisory Group as been appointed to oversee the revision of the Municipal Code, Title 29 of the Alaska Statutes. The Policy Advisory Group is composed of thirteen members. Of these, nine public members represent a broad range of local officials interested in Title 29. The public and legislative members of the Title 29 Policy Advisory Group are:**

**Ted Berns, Attorney, Municipality of Anchorage**
**Terry Cook, City Council, Alakanuk**
**Marilyn Dimmick, Assembly, Kenai Peninsula Borough**
**Ron Larson, Mayor, Matanuska Susitna Borough**
**Jim Kohler, Manager, City of Yakutat**
**Gene Moore, Manager, City of Kotzebue**
**Donna Sherby, Clerk, City of Cordova**
**Jonathan Solomon, Mayor, City of Fort Yukon**
**Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough**
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PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Suggestions
received by
Leg. Affairs

9/17/80

9/17/80
JES:jes

**SUGGESTED REVISIONS - TITLE 29**

**Sec. 29.28.140. Grounds (for recall)**

**This section differs from AS 15.45.510 which provides grounds for recall of State officials; there could be an argument made for consistency between the two:**

| Municipal grounds for recall<br>AS 29.28.140 | State grounds for recall<br>AS 15.45.510 |
|---|---|
| 1) misconduct in office | 1) lack of fitness |
| 2) incompetence | 2) incompetence |
| 3) failure to perform prescribed duties | 3) neglect of duties |
| | 4) corruption |

Sec. 29.28.150. Petition (for recall)

Should be rewritten to include a requirement of the name and office of the person (singular) to be recalled and a clarification that if more than one official is considered for recall a petition for each individual must be circulated.

Sec. 29.28.190. Submission (of recall petition)

The present wording is too vague with the use of the word "immediately" and should specify a specific time frame, i.e. 10 days

Sec. 29.48.035 (14). Regulatory powers (of municipalities)

"building, housing and related codes, which may be provided by cities within cities. . ." needs rewording (cities within its own boundaries?)

Sec. 29.48.037. Extraterritorial jurisdiction (of municipalities)

(b) states that a city can protect its watersheds and enforce such protection outside its boundaries ONLY upon the approval, by ordinance, of the municipality where the watersheds are located. This poses a problem when a city tries to exercise the protection of its water supply which lies outside the city limits but within the organized borough and where the borough is not actively involved in any such protection but refuses to allow the city to exercise such. If a borough has, in effect, veto power over the city's action in this regard, the borough government should be required to be actively involved in the exercise of such protected activity itself.

AS 29.33.070(b)

If a first class or home city is located more than 25 miles from the boundary of the borough seat, the planning, platting and zoning responsibilities within the city may be exercised by the city after a city ordinance providing for the exercise thereof is approved by a majority of the electors within the city voting on the question at a regular or special election.

or by Council ordinance

9/19/82

AS 29.48.050(d)

For purposes of AS 29.48.050 - .070 a public utility which is not regulated as to rates and services by the Alaska Public Utilities Commission shall not be considered as regulated by AS 42.05.

CITY OF UNALASKA
P.O. BOX 89
UNALASKA, ALASKA 99685
581-1251
"Capital of the Aleutians"




September 22, 1980

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Ms. Cook:

There are two aspects of Title 29 revision which I wish to comment upon.

First, I urge consideration be given to the American Law Institute's (1975) Model Land Development Code which represents a major improvement over the Hoover-era model upon which the present provisions of Title 29 governing the conduct of local planning are based. I particularly urge that the Code's recommendations concerning the division of responsibility between State and local planning responsibilities be considered.

Second, there are other statutes which can be interpreted to impose duties upon general purpose units of local government which are not specifically tied to Title 29. I have in mind, in particular, Chapter 35 of Title 46, the Alaska Coastal Management Program. This program and any similar program enacted in the attempt to attain consistency should be accompanied by a definitive tie to Title 29 which establishes an affirmative obligation on the part of local governments to exercise their substantive powers if this is the intent of the Legislature. Otherwise, Title 29 should indicate that it is the complete statement of the substantive duties and powers of municipalities.

Sincerely,

CITY OF UNALASKA PLANNING DEPARTMENT

/s/ Richard Careaga

Richard Careaga, AICP
Director

CITY OF NOME

P.O. BOX 281 - NOME, ALASKA 99762
TELEPHONE (907) 443-5242

September 22, 1980

Tamara Brandt Cook
Div. of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

Dear Ms. Cook:

RE: TITLE 29 Review

I have had one general problem with Title 29. As City Manager in Dillingham, Kodiak and now Nome, it seems obvious that Title 29 has been organized and written for governments who have an attorney that interprets each provision.

Many times one refers to Title 29 and needs an attorneys interpretation to understand what it means. This is not practical in a smaller city because of the cost and the amount of time it takes to get an opinion.

More specifically, I am referring to references to boroughs that apply to first class cities. This is very confusing because it's hard to understand when borough statutes apply. First class cities should be set out specifically to end the confusion.

There are a number of specific problems I'd like to bring to the Policy Advisory Groups attention.

29.28.040. Majority elections. The 40 per cent runoff election should be thoroughly considered if allowed to remain in the Statutes.

Article 3. Recall. These provisions should also be researched and grounds 29.28.140 should be made more clear.

Chapter 33. Areawide Borough Powers & Duties. 29.33.010 Scope. From this point on, Boroughs are given too much power. To be more specific, the fact that a borough plans for a city is a disaster in my experience. How can a city possibly exist as a city and not have control over its destiny? In Kodiak, while I was the manager, the Borough continually attempted to manage the City through its planning powers. This caused creation of service areas (another issue) and confusion where the City was to extend its services. City planning must be a responsibility of the government that

**is going to implement the projects planned for. In the case of Kodiak, I personally had to attend each planning commission and assembly meeting to make certain the City's interests were considered. Since the City Council had no real influence over the assembly or the planning commission, it became an unbelievable political struggle that wound up in Court. In this case, the City's taxpayers footed the bill for both attorneys since the majority of the tax base was inside the City.**

**The conflict with the Borough and the City regarding Borough powers adjacent to a City is a similar issue. In the case of Kodiak, the Borough wanted to establish a water, sewer and road service area that would utilize the City's water and sewer system and possibly contract for road service. This was their attempt to stop the City from annexing an area immediately adjacent to the City that needed to do something about those services. The competing aspects of this caused undue hardship and strains on the political as well as the social systems on the island. As far as I was concerned, the whole problem was the result of Chapter 38. Borough Powers and Duties in the Area Outside Cities. This chapter actually allowed the establishment of another taxing entity that was going to increase the cost of services to the users in the service area. It also made it more difficult for the city to plan for use and expansion of its facilities and equipment.**

The conflicts described above are in direct conflict with Article X, Local Government of the Constitution of the State of Alaska.

> Section 1. Purpose & Construction. The purpose of this article is to provide maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions.

If the system of using Boroughs is to continue and expand into the Unorganized Borough, then the items I have mentioned, plus others will have to be straightened out.

I believe that 29.48.150. Ordinance. Procedure should be redone to clarify the number of times an ordinance should be voted upon. The question has come up a number of times.

Thank you for the opportunity to make suggestions regarding the Title 29 revisions. I am quite interested in these items as well as what others are suggesting and would like to be kept fully informed as to the Groups deliberations.

Sincerely,

Ivan L. Widom

Ivan L. Widom
City Manager

cc: Mayor & City Council

For an Act entitled: "An Act relating to senior citizen exemption from motor vehicle property tax; and providing for an effective date."

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

* Section 1. AS 29.53.020(h) is amended to read:

(h) Except as provided in (g) of this section, nothing in (e) - <u>(1)</u> [(i)] of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

(j) One motor vehicle owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax established under AS 28.10.431(b).

(k) The state shall pay a borough or city for tax revenues lost to it under (j) of this section. The payment shall be an amount equal to the tax levied under AS 28.10.431(b) for each vehicle for which a senior citizen exempt affidavit form, as prescribed by the Department of Public Safety, Division of Motor Vehicles, is submitted.

(l) The Department of Community and Regional Affairs shall adopt regulations to implement the provisions of (g), (j), and (k) of this section.

* Sec. 3. AS 29.10.411(d) is repealed.

* Sec. 4. This Act is retroactive to January 1, 1980.

Note: This replaces a suggestion already submitted to the policy group.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

| New Sec. # | Old Sec. # | Heading |
|---|---|---|
| 29.03.000 | | CHAPTER 03. THE UNORGANIZED BOROUGH |
| 29.03.010 | 29.03.010 | ESTABLISHMENT |
| 29.03.020 | 20.03.020 | SERVICE AREAS |
| 29.06.000 | | CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES |
| 29.06.010 | 29.08.010 | HOME RULE (80) |
| 29.06.020 | 29.08.020 | GENERAL LAW |
| 29.06.030 | 29.08.030 | CLASSES OF GENERAL LAW |
| 29.06.040 | 29.08.040 | RECLASSIFICATION |
| 29.06.050 | 29.08.050 | TRANSITION |
| 29.09.000 | | CHAPTER 09. INCORPORATION |
| 29.09.005 | | ARTICLE 1. REQUIREMENTS |
| 29.09.010 | 29.18.011 | INCORPORATION OF CITIES |
| 29.09.020 | 29.18.021 | LIMITATIONS ON INCORPORATION OF CITIES |
| 29.09.030 | 29.18.030 | ORGANIZED BOROUGHS |
| 29.09.035 | | ARTICLE 2. PROCEDURES |
| 29.09.060 | 29.18.050 | PETITION (80S) |
| 29.09.070 | 29.18.060 | REVIEW |
| 29.09.080 | 29.18.070 | INVESTIGATION |
| 29.09.090 | 29.18.080 | REPORT AND HEARING |
| 29.09.100 | 29.18.090 | DECISION ON MUNICIPAL INCORPORATION |
| 29.09.110 | 29.18.110 | INCORPORATION ELECTION |
| 29.09.120 | 29.18.120 | ELECTION OF INITIAL OFFICERS |
| 29.09.130 | 29.18.130 | INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS |
| 29.09.140 | 29.18.140 | TRANSITION |
| 29.09.150 | 29.18.150 | CHALLENGE OF LEGALITY |
| 29.09.155 | | ARTICLE 3. TRANSITIONAL ASSISTANCE |

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|---|---|---|
| **29.09.180** | **29.18.180** | **ORGANIZATION GRANTS** |
| **29.12.000** | | **CHAPTER 12. ALTERATION OF MUNICIPALITIES** |
| **29.12.005** | | **ARTICLE NEW. CHANGE OF MUNICIPAL NAME** |
| 29.12.010 | 29.73.050 | CHANGE OF MUNICIPAL NAME |
| 29.12.015 | | ARTICLE 2. ANNEXATION AND EXCLUSION |
| 29.12.040 | 29.68.010 | LOCAL BOUNDARY COMMISSION |
| 29.12.050 | 29.68.020 | ANNEXATION OF MILITARY RESERVATIONS |
| 29.12.055 | | ARTICLE 3. MERGER AND CONSOLDIATION |
| 29.12.080 | 29.68.030 | METHODS OF MERGER OR CONSOLDIATION |
| 29.12.090 | 29.68.040 | PETITION |
| 29.12.100 | 29.68.050 | REVIEW |
| 29.12.110 | 29.68.060 | INVESTIGATION |
| 29.12.120 | 29.68.070 | REPORT AND HEARING |
| 29.12.130 | 29.68.080 | DECISION |
| 29.12.140 | 29.68.090 | ELECTION |
| 29.12.150 | 29.68.100 | ASSETS AND LIABILITIES |
| 29.12.160 | 29.68.110 | ORDINANCES |
| 29.12.165 | | ARTICLE 4. UNIFICATION OF LOCAL GOVERNMENTS |
| 29.12.190 | 29.68.240 | UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED |
| 29.12.200 | 29.68.250 | UNIFICATION TO BE PROPOSED BY PETITION |
| 29.12.210 | 29.68.260 | PETITION REQUIREMENTS |
| 29.12.220 | 29.68.270 | REVIEW OF PETITION |
| 29.12.230 | 29.68.280 | CALL FOR CHARTER COMMISSSION NOMINATIONS |
| 29.12.240 | 29.68.290 | NOMINATION OF CHARTER COMMISSION CANDIDATES |
| 29.12.250 | 29.68.300 | QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES |
| 29.12.260 | 29.68.310 | COMPOSITION OF CHARTER COMMISSION |

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| 29.12.270 | 29.68.320 | ELECTION |
| 29.12.280 | 29.68.330 | REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION |
| 29.12.290 | 29.68.340 | CHARTER COMMISSION ORGANIZATION AND PROCEDURE |
| 29.12.300 | 29.68.350 | CHARTER PREPARATION (80) |
| 29.12.310 | 29.68.360 | PUBLIC HEARINGS |
| 29.12.320 | 29.68.370 | FILING OF PROPOSED CHARTER |
| 29.12.330 | 29.68.380 | PUBLICATION AND POSTING OF PROPOSED CHARTER |
| 29.12.340 | 29.68.390 | ELECTION ON CHARTER |
| 29.12.350 | 29.68.400 | EFFECT OF THE CHARTER AFTER RATIFICATION |
| 29.12.360 | 29.68.410 | ASSETS AND LIABILITIES |
| 29.12.370 | 29.68.420 | ORDINANCES |
| 29.12.380 | 29.68.430 | RIGHT TO STATE AND FEDERAL FUNDS PRESERVED |
| 29.12.390 | 29.68.440 | POWERS OF A UNIFIED MUNICIPALITY |
| 29.12.395 | | ARTICLE 4. DISSOLUTION |
| 29.12.420 | 29.68.500 | METHODS OF DISSOLUTION |
| 29.12.430 | 29.68.510 | PETITION |
| 29.12.440 | 29.68.520 | STANDARDS |
| 29.12.450 | 29.68.540 | REVIEW |
| 29.12.460 | 29.68.540 | INVESTIGATION |
| 29.12.470 | 29.68.550 | REPORT AND HEARING |
| 29.12.480 | 29.68.560 | DECISION |
| 29.12.490 | 29.68.570 | ELECTION |
| 29.12.500 | 29.68.580 | SUCCESSION |
| 29.15.000 | | CHAPTER 15. HOME RULE MUNICIPALITIES |
| 29.15.005 | | ARTICLE 1. CHARTERS |
| 29.15.010 | 29.13.010 | MUNICIPAL CHARTER ADOPTION (80) |

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| 29.15.030 | 29.13.030 | ELECTION |
| 29.15.040 | 29.13.040 | PREPARATION OF CHARTER |
| 29.15.050 | 29.13.050 | INITIATIVE AND REFERENDUM |
| 29.15.060 | 29.13.060 | CHARTER ELECTION |
| 29.15.070 | 29.13.070 | CHARTER ADOPTION |
| 29.15.080 | 29.13.080 | CHARTER AMENDMENT |
| 29.15.085 | | ARTICLE 2. HOME RULE LIMITATIONS |
| 29.15.110 | 29.13.100 | LIMITATION OF HOME RULE POWERS |
| 29.18.000 | | CHAPTER 18. DEVELOPMENT CITIES |
| 29.18.010 | 29.18.220 | LEGISLATIVE FINDINGS |
| 29.18.020 | 29.18.230 | DEVELOPMENT CITIES |
| 29.18.030 | 29.18.240 | INCORPORATION |
| 29.18.040 | 29.18.250 | PETITION FOR INCORPORATION |
| 29.18.050 | 29.18.260 | REVIEW |
| 29.18.060 | 29.18.270 | INVESTIGATION |
| 29.18.070 | 29.18.280 | REPORT |
| 29.18.080 | 29.18.290 | DECISION ON DEVELOPMENT CITY INCORPORATION |
| 29.18.090 | 29.18.300 | PRELIMINARY PLANNING |
| 29.18.100 | 29.18.310 | REVIEW AND REPORT |
| 29.18.110 | 29.18.320 | LIMITATION |
| 29.18.120 | 29.18.330 | LOCAL HIRE |
| 29.18.130 | 29.18.340 | DEVELOPMENT CITY COUNCIL |
| 29.18.140 | 29.18.350 | FILLING A VACANCY |
| 29.18.150 | 29.18.360 | POWERS AND DUTIES OF COUNCIL |
| 29.18.160 | 29.18.370 | POWERS AND DUTIES OF A DEVELOPMENT CITY EXECUTIVE DIRECTOR |

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| 29.18.190 | 29.18.400 | TRANSITION |
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| 29.18.230 | 29.18.450 | APPLICABILITY OF OTHER PROVISIONS OF THIS TITLE |
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| 29.21.070 | 29.18.580 | PLANNING AND ZONING AUTHORITY |
| 29.21.080 | 29.18.590 | TRANSFER OF UTILITIES TO CAPITAL CITY |
| 29.21.090 | 29.18.600 | DEFINITIONS |
| 29.21.100 | 29.18.610 | SHORT TITLE |
| 29.23.120 | 29.48.060 | PUBLIC UTILITIES RATES (80) |
| 29.24.000 | | CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES |
| 29.24.005 | | ARTICLE 1. CONFILICTS OF INTEREST, PUBLIC MEETINGS |
| 29.24.010 | 29.23.555 | CONFLICTS OF INTEREST |
| 29.24.020 | 29.23.580 | MEETINGS PUBLIC |
| 29.24.025 | | ARTICLE 2. BOROUGH ASSEMBLY |
| 29.24.050 | 29.23.010 | GENERAL POWER |

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| 29.24.060 | 29.23.021 | ASSEMBLY COMPOSITION AND APPORTIONMENT (80S) |
| 29.24.070 | 29.23.023 | COMPOSITION AND FORM OF REPRESENTATION (80) |
| 29.24.080 | 29.23.025 | ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT (80S) |
| 29.24.090 | 29.23.027 | APPORTIONMENT APPEALS (80) |
| 29.24.100 | 29.23.029 | APPORTIONMENT APPEALS (80) |
| 29.24.110 | 29.23.031 | EFFECTIVE DATE OF APPORTIONMENT (80) |
| 29.24.120 | 29.23.033 | APPLICABILITY OF APPORTIONMENT PROVISIONS (80) |
| 29.24.130 | 29.23.040 | REGULAR TERM OF OFFICE |
| 29.24.140 | 29.23.050 | QUALIFICATIONS |
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| 29.24.160 | 29.23.70 | DEPARTMENTS |
| 29.24.170 | 29.23.080 | ASSEMBLY VACANCIES |
| 29.24.175 | | ARTICLE 3. BOROUGH EXECUTIVE AND ADMINISTRATOR |
| 29.24.200 | 29.23.130 | POWER GENERALLY (80S) |
| 29.24.210 | 29.23.140 | POWERS AND DUTIES OF BOROUGH ADMINISTRATOR |
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| 29.24.230 | 29.23.160 | ASSEMBLY PARTICIPATION |
| 29.24.240 | 29.23.170 | VETO |
| 29.24.250 | 29.23.180 | FILLING A VACANCY |
| 29.24.255 | | ARTICLE 4. CITY COUNCIL |
| 29.24.280 | 29.23.200 | COMPOSITION, ELIGIBILITY, ELECTION & TERM |
| 29.24.290 | 29.23.210 | PROCEDURE (80S) |
| 29.24.300 | 29.23.220 | FILLING A VACANCY |
| 29.24.305 | | ARTICLE 5. CITY EXECUTIVE AND ADMINISTRATOR |
| 29.24.330 | 29.23.240 | MAYOR |
| 29.24.340 | 29.23.250 | ELECTION AND TERM OF MAYOR |

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**Agenda Sugge[illegible]tems**
**from the Title 29 [illegible]rking Group**
**to the Title 29 Policy Group**

1. **Are unified municipalities home rule or general law? This needs to be clarified.**

2. **We recommend that AS 29.08.050 Transition be repealed as out of date.**

3. We recommend that the statute concerning REAAs be expanded to include procedures for integrating REAAs into newly organized boroughs.

4. AS 29.18.180. Organization Grants. The dollar amounts of the organizational grants are inadequate. We recommend the amount be tripled.

5. AS 29.68.290 Nomination of charter commission candidates. Should a legislative body be authorized to make appointements to the charter commission in case of vacancies on the commission because of a failure to elect enough people?

6. AS 29.68.440. Powers of a unified municipality. What is a unified municipality?

7. Should the percentage requirements for signatures on petitions be lowered?

8. AS 29.68.500 Methods of dissolution. The section regarding the methods of dissolution are confusing, in that the two methods outlined involve substantially the same processes.

9. AS 29.13.050 Initiative and Referendum. This section should be clarified so that Home Rule municipalities are not bound by the procedures set out in the statute.

**10. We need a more precise way of dealing with inconsistencies between Home Rule and state enactments.**

**11. AS 29.13.100 Limitation of home rule powers. This "laundry list" of limitations on Home Rule needs to be reviewed. Should there be cross-referencing to the home rule provisions in other statutes?**

12. Chapter 18. Development cities. The chapter on development cities should either be reviewed and improved or deleted.

13. Chapter 23. Municipal Officers and Employees. This chapter should have provisions for dealing with the public records of municipalities. Municipalities should have a public records policy such as "except as provided by ordinance, all records shall be public."

14. Should municipalities be allowed to set residency requirements for voters? Should the three year residency requirement for elected officials which municipalities are permitted to set be lowered to one year in view of Castner v. City of Homer, specifically upholding one year requirements?

15. We feel there should be alternate methods for majority requirements of the votes of municipal assemblies.

16. AS 29.23.021 Assembly composition and apportionment. We feel there should be a greater delineation between composition and reapportionment.

17. There should be provisions for emergency situations arising when there is a lack of a quorum.

18. AS 29.48.130 (a) This should be amended to make possible budget transfers and supplemental appropriations by resolution instead ordinance.

19. What should mayoral veto powers encompass?

20. How are planning responsibilities to be divided between cities and boroughs?

21. We recommend that the sections of chapter 23 dealing with the involvement of young people in local government be repealed.



**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Marvin Yoder, Interim Borough Manager

FROM: M. Westfall, Revenue Collector

RE: Title 29 Review

DATE: September 2, 1980

I have reviewed the material relating to the review of Title 29 and approve and support those portions pertaining to chapter 53 of this title.

A few other changes which might be considered are listed below:

1. Sec. 29.53.025 the classification of boats for purposes of taxation by tonnage should be changed to more realistic amounts.

2. Sec. 29.53.060 include the words having a situs within the taxing district after the word property. Many property owners believe that property not within the taxing district on January 1 of the taxing year is free of tax. Boats and airplanes are commonly removed from the taxing district during the first month of the year to avoid taxation.

3. Sec. 29.53.320 change person to receive redemption monies from clerk to tax collector who has in his/her possession the records of assessment and taxation, applied penalties, interest & costs.



A BILL

For an Act entitled: "An act providing for determination of full and and true value by the Department of Community and Regional Affairs; and providing for an effective date."

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

* Section 1. AS 29.53 is amended by adding a new section to read:

AS 29.53.190. Determination of full and true value by Department of Community and Regional Affairs. (a) The Department of Community and Regional Affairs, in consultation with the assessor for each district, shall determine the full value of the taxable real and personal property in each district. If there is no local assessor or current local assessment for a district, then the Department of Community and Regional Affairs shall make the determination of full value from information available. In making the determination, the Department of Community and Regional Affairs shall be guided by AS 29.53.060. The determination of full value shall be made before October 1. The Department shall notify all municipalities for which a determination is done of that determination by October 1. The governing body of the borough or city which is the district may obtain judicial review of the determination by filing a motion in the superior

court of the judicial district in which the district is located within 30 days after receipt of the determination. The superior court may modify the determination of the Department of Community and Regional Affairs only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

(b) Motor vehicles subject to the motor vehicle registration tax under AS 28.10.255 shall be treated as taxable property for purposes of (a) of this section.

(c) To determine the debt-to-valuation ratio to be applied to the determination of state aid for school construction under AS 43.18.105-43.18.135, the Department of Community and Regional Affairs, in consultation with the responsible financial officer of each municipality which is a school district, shall annually determine the debt of the municipality and report the determination to the mayor of the municipality and the commissioner of the Department of Education. The determination shall be made by October 1 of each year and shall report the outstanding debt as of July 1 each year.

* Sec. 2. AS 29.88.020(d) is amended to read:

(d) The full and true assessed property value shall be determined by the department in the manner provided under AS 29.53.190 [AS 14.17.140]. When the determination of locally generated revenue includes revenue of a utility received under AS 29.88.010(c)(1)(E), the full and true assessed property value shall include the computed assessed value of the utility,

taxes made by the utility by the millage rate which would apply to the utility if the utility were subject to levy and collection of taxes under AS 29.53.

* Sec. 3. AS 14.17.140 is repealed.

* Sec. 4. This Act takes effect January 1, 1982.

A BILL

For an Act entitled: "An Act requiring disclosure on a real estate conveyance".

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

* Section 1. AS 34.15.345 is amended to read:

AS 34.15.345. Disclosure of address of record purchaser and consideration. (a) A conveyance may not be accepted for recording unless the instrument shows the mailing address of the buyer.

(b) No instrument evidencing a sale of real property shall be accepted for recording unless the face of the instrument shows the selling price paid for the transfer.

* Sec. 2. AS 34.15.350 is amended by adding a new subsection to read:

(b) "Selling price" means the consideration, in money or any other thing of value, paid, delivered or contracted to be paid or delivered, in return for the transfer of real property, including but not limited to the amount of a lien, mortgage, contract, indebtedness or other encumbrance against the property.

A BILL

For an Act entitled: "An Act relating to assessments and exemptions from property taxation; and providing for an effective date."

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

* Section 1. AS 29.53.020(h) is amended to read:

(h) Except as provided in (g) of this section, nothing in (e) - (1) [(i)] of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

(j) One motor vehicle owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax established under AS 28.10.431(b).

(k) The state shall reimburse a borough or city for tax revenues lost to it under (j) of this section.

(l) The Department of Community and Regional Affairs shall adopt regulations to implement the provisions of (g), (j), and (k) of this section.

* Sec. 3. AS 28.10.411(d) is repealed.

* Sec. 4. This Act is retroactive to January 1, 1981.

**A BILL**

**For an Act entitled: "An Act relating to determination of full and true assessed value for municipalities."**

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

*** Section 1. AS 29.88.020(e)(3) is amended to read:**

**(3) all other second class cities, by** comparision, on an individual city basis, with the most comparable cities [DETERMINING THE AVERAGE FULL AND TRUE ASSESSED PROPERTY VALUE OF ALL CITIES HAVING A POPULATION OF LESS THAN 750 PERSONS IN WHICH AN ASSESSMENT HAS BEEN COMPLETED BY A MUNICIPALITY OR] **for which a determination is [NOT] made** under (1) or (2) of this subsection. The department shall establish which cities are most comparable for purposes of the determination.

public funds aimed at economic development [illegible] burdening the public purse, or at the very least, merely transferring income burdens from one public agency (welfare) to another, rather than obtaining private means for achieving reductions in unemployment. Public investment in designated economic development projects should be directed primarily toward stimulating private investment, since the costs to society are lessened. Except for manpower training, transferring income burdens from a welfare agency to a social program budget generally results in zero benefits and non-zero costs. The net result is an additional and needless cost to society. Most of the key investment guidelines that are appropriate for publicly-supported commercial and industrial projects can be derived from this simple observation. ALNA's project appraisal criteria and process translates these guidelines into a workable and systematic format. The advantages of this appraisal process are that (1) it provides decision-makers the information needed to adequately assess differences between private and social returns to capital; (2) it provides the decision-maker with a common analytical framework so that valid comparisons among projects can be made; and (3) it provides for a common language among the actors in the economic development field. (This common language is no small matter. Decision-making will be less than adequate as long as decision-makers attribute different meanings to the words used among them).

## PROJECT APPRAISAL AS AN INSTRUMENT OF ECONOMIC DEVELOPMENT POLICY

ALNA views the project as the basic unit of analysis of commercial and industrial development. Each project should pass nine feasibility tests in a specific order. Projects failing to pass a test in the designated sequences would not proceed to the next test. For example, under the alternative sequence below, a project which is not technically feasible would not be expected to be financially feasible. A project which is not financially and economically feasible would not be expected to impact on poverty, etc. Ordering the feasibility tests in this manner achieves the following: (1) it clearly distinguishes the trade-offs between the main elements of a project; (2) it assures a project being financially and economically feasible before consideration of its poverty impact; and (3) it saves time for the analyst or the decision-maker. The nine feasibility tests for judging the worth of any project are:

### Technical Feasibility

The test of technical justification is passed if the project is physically capable of performing its intended function. The key components to technical justification are appropriate engineering design, appropriate market, appropriate management, appropriate location, and appropriate comparative advantage. A technical analysis would involve the types of analyses listed below:

fairbanks north star borough
p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761






August 5, 1980

Terry L. Earley
Stat Assessor
Dept. of Community
& Regional Affairs
Pouch B
Juneau, Ak. 99811

Re: Senate C. R. 66

Dear Terry:

During my brief tenure, two provisions of title 29 pertaining to property taxes have caught my attention.

First, concerning the Farm Use Exemption; presuming its passage was directed toward encouraging agriculture in the State, and discounting the resistance some farmers in this area exhibit by their reluctance to sign up for it, I think the income requirement should either be reduced (say to 5%) or eliminated.

Take a farmer beginning a livestock operation. Nature dictates that it will be several years before productive breeder stock can be developed, let alone producing enough progeny to sell, sufficient to meet the income requirement.

Furthermore, any new farm venture demands high initial investment for equipment, clearing of land and the aforementioned stock developement. They need an incentive to begin - not merely hope they will get relief if successful. I am prejudiced toward preferential treatment as an alternative. This is more consistent with current State agricultural use land sales, tending to establish land values in the eye of the taxpayer and creating a hard argument for and presumption of farm land value to overcome by local assessor.

Second, the Senior Citizen Exemption; and 29.53.020 (G) in particular. It is logical, and only fair, that reimbursement to the City or Borough be limited to that amount which exceeds a local exemption that was granted; but to extend it to a local exemption that if properly applied for "would have been granted" is too much. It is worse than ex post facto, it relates to something that never happened, and I fail to see any logic at all.

Possibly a third subject I would like to see addressed concerns Mobile Homes. I have experienced assessing them (twice now) and enjoyed the euphoria of not assessing them. By their very nature - mobile and subject to title ownership--they are hard to find outside of an established park and by collection time hard to catch up with, in many instances; even becoming personal property when repossessed. I realize this Borough is unique in Alaska regarding personal property, but that is not the basis for my objection to assessing them.

A much more efficient method of taxing them is to require a license (like motor vehicles) at which time a specific ownership tax is charged. That way

the tax is paid and collected at the beginning of the tax year and distributed according to the pro-ration formula of the property tax.

Although not changing existing law, I have several suggestions for additional statues which I understand have been tried before and fly in the face of popular public opinion. Nevertheless, if the legislature is sincere in wanting to improve the administration of the property tax then serious consideration should be given them.

One, a Documentary Fee on Conveyance of Real Property. Enclosed is a copy of the Colorado law for what it is worth. I do know, however, that it worked beautifully and was an inestimable aid in the appraisal process.

Two, Confidentiality of Information as well as a corresponding penalty statute for devulging same. Enclosed are copies of pertinent statutes which I am familiar with. It is difficult to obtain written confirmation of verbal information relating, in particular, to income data, and in some instances cost data, if every Tom, Dick, and Harry has access to it. The penalty statute for divulging information is an added safegaurd for the taxpayer as that puts the assessor under the gun in keeping confidential supportive data from which the final total assessment (clearly public information) may evolve.

Lastly, I am intrigued with assessing exempt property used by a non-exempt person. Terry, I refer to the Michigan statute, upheld by the Supreme Court, which allowed taxing such property. It was tried in Colorado (copy of law attached) but it was so emasculated by amendments ( (3), (4), & (5) of enclosed law) that it was in the process of being declared unconstitutional as being discriminatory-i.e., the only property not excepted was Federal owned - when I last heard about it.

Such a law would cover our railroad, airport, and University of Alaska leases as well as State and Federal lands. Just a thought.

I guess that about covers it for now.

Very truly yours,

Dave

Dave Braden
Borough Assessor

P. S. Am enclosing a copy of our new property tax limitation ordinance for your information.

DB/dg

RECEIVED
AUG 11 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

## Documentary Fee on Conveyances of Real Property

**39-13-101. LEGISLATIVE DECLARATION. (1) The general assembly declares that in enacting laws relating to the general property tax, it has provided that certain property in each county of the state shall be appraised and the actual value thereof determined by the assessor and that one of the several factors to be considered by him in determining the actual value of any property shall be "comparison with other properties of known or recognized value."**

**(2) It further declares that such comparison may be best effected if there is available to the assessor a continuing record of the consideration paid or to be paid by purchasers of real property evidenced, prior to recording, on the document conveying title to such property and recorded in the office of the county clerk and recorder in the several counties of the state in the manner provided by law and that this article is enacted to provide a means of developing such continuing record and making such record available for use primarily by assessors. (L 67)**

39-13-102. DOCUMENTARY FEE IMPOSED - AMOUNT - TO WHOM PAYABLE. (1) There is imposed and shall be paid, by every person offering for recording in the office of the county clerk and recorder any deed or instrument in writing wherein or whereby title to real property situated in this state is granted or conveyed, a fee, referred to in this article as "documentary fee," measured by the consideration paid or to be paid for such grant or conveyance, which documentary fee shall be in addition to any other fee fixed by law for the recording of such deed or instrument in writing.

(2) The amount of documentary fee payble in each case shall be as follows:

(a) When there is no consideration or when the consideration, inclusive of the amount of any lien or encumbrance against the property granted or conveyed, is five hundred dollars or less, no documentary fee shall be payable.

(b) When the consideraton, inclusive of the amount of any lien or encumbrance against the property granted or conveyed, exceeds five hundred dollars, the documentary fee payable shall be computed at the rate of one cent for each one hundred dollars, or major fraction thereof, of such consideration.

(3) All documentary fees shall be payable to and collected by the county clerk and recorder.

(4) In those cases in which real property located in two or more counties is granted or conveyed in a single transaction, each county clerk and recorder shall collect a portion of the total documentary fee referred to in subsection (2) of this section in the same ratio that the consideration fairly attributable to the part of such property located in his county bears to the total consideration. The allocation of the total consideration between counties is to be made by the person offering such deed or instrument in writing for recording. (L 68)

39-13-103. EVIDENCE OF PAYMENT OF FEE. Each county clerk and

recorder shall evidence payment of the documentary fee imposed in this article by imprinting, typing, stamping, or writing in ink on the margin or other blank portion of every document to which such fee applies the words "State Documentary Fee," the amount of documentary fee paid, and the date upon which paid, which impression or notation shall be made on such document before it is recorded. (L 68)

39-13-104. EXEMPTIONS. (1) The documentary fee imposed in this article shall not apply to:

(a) Any deed wherein the United States or any agency or instrumentality thereof or the state of Colorado or any political subdivision thereof is either the grantor or the grantee;

(b) Any deed granting or conveying title to real property in consequence of a gift of such property;

(c) Any public trustee's deed executed pursuant to the provisions of section 38-39-110, C.R.S. 1973;

(d) Any treasurer's deed executed in accordance with the provisions of article 11 of this title;

(e) Any sheriff's deed;

(f) Any instrument which confirms or corrects a deed previously recorded;

(g) Any deed granting or conveying title to cemetery lots;

(h) Any executory contract for the sale of real property of less than three years' duration under which the vendee is entitled to or does take possession thereof without acquiring title thereto, nor to any assignment or cancellation of any such contract;

(i) Any lease of real property or assignment or transfer of an interest in any such lease;

(j) Any document given to secure payment of an indetedness;

(k) Any document granting or conveying a future interest in real property;

(l) Any decree or order of a court of record determining or vesting title;

(m) Any document necessary to transfer title to property as a result of the death of an owner thereof;

(n) Any mineral deed or royalty deed;

(o) Any rights-of-way and easements.

(2) Exemption from payment of the documentary fee imposed in this article must be claimed at the time a deed or instrument is offered for recording. (L 68)

39-13-105. NO DEED RECORDED UNLESS DOCUMENTARY FEE PAID. No deed or instrument in writing to which a documentary fee applies shall be recorded until and unless the documentary fee payable thereon has been paid and evidence of its payment has been imprinted, typed, stamped, or written in ink

thereon as provided in section 39-13-103. Any county clerk and recorder who willfully and knowingly records any document to which a documentary fee applies without having first collected such fee and evidence payment thereof as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars. (L 68)

39-13-106. UNLAWFUL ACTS - PENALTY. (1) It is unlawful for any person to commit the following acts:

(a) To fail or refuse to pay the documentary fee imposed in this article when such payment is required;

(b) To willfully and knowingly recite to the county clerk and recorder a consideration greater or less than the actual consideration referred to in section 39-13-102 (2) (a) and (2) (b) in connection with the granting or conveying of title to real property by any deed or instrument in writing to which the documentary fee applies.

(2) Any person who commits either of the acts set forth in subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than three months, or by both such fine and imprisonment. (L 67)

39-13-107. ASSESSOR TO COMPILE CONTINUING RECORD. It is the duty of each assessor to examine at least once each year all documents recorded in his county upon which a documentary fee has been paid and to determine in each case the consideration upon which such fee was computed and paid. He shall compile and maintain in his office a continuing record of all such consideration to assist him in appraising property and determining the actual value thereof as required by the provisions of section 39-1-103 (5). (L 67)

39-13-108. DISPOSITION OF FEES. All documentary fees collected by the county clerk and recorder shall be deposited with the county treasurer at least once each month and credited by him in the manner prescribed by law. (L 67)

31-25-107 (9) (a), C.R.S. 1973, for payment of taxes according to the provisions of said section, so long as said division remains in effect. (L 75)

39-1-112. TAXES AVAILABLE - WHEN. All taxes levied pursuant to the provisions of articles 1 to 13 of this title shall be available for expenditure by the political subdivision for which levied during its fiscal year, as collected. (L 64)

39-1-113. ABATEMENT AND REFUND OF TAXES. No abatement or refund of taxes erroneously or illegally levied shall be made by the board of county commissioners unless a hearing is had thereon, at which hearing the assessor shall have the opportunity to be present. Whenever any abatement or refund is recommended by the board of county commissioners, an application therefor, reciting the amount of such abatement or refund and the grounds upon which it should be allowed, shall be submitted to the administrator for his review pursuant to section 39-2-116. If an application is approved, the board of county commissioners shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board of county commissioners shall order the refund of taxes pro rata by all taxing jurisdictions receiving payment thereof. (L 77)

39-1-114. WHO MAY ADMINISTER OATH. Whenever any fact, matter, or thing is required by the provisions of articles 1 to 13 of this title to be verified by oath or affirmation, any assessor, treasurer, or county clerk and recorder, or a deputy of any of said officers, may administer such oath or affirmation. The deputy need not certify the oath in the name of the principal. (L 64)

39-1-115. RECORDS PRIMA FACIE EVIDENCE. The assessment rolls, the tax warrants, the entries made in the books of the treasurer, and the lists of lands sold for taxes recorded by the treasurer or the county clerk and recorder, or a certified copy thereof, shall be prima facie evidence of all things appearing therein in all courts and places. (L 64)

★ 39-1-116. PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION. Except when pursuant to an order of any court of competent jurisdiction, or as otherwise provided by law, any person who divulges or makes known in any way the contents of any private document, as specified in section 39-4-103 or in section 39-5-120, to any person not authorized to have access to such documents is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. (L 64)

39-1-117. PRIOR ACTIONS NOT AFFECTED. Nothing in articles 1 to 13 of this title shall apply to or in any manner affect any valuation, assessment,

or demolished subsequent to the assessment date in any year, it is the duty of the owner thereof or his agent to promptly notify the assessor of such destruction or demolition and the date upon which the same occurred. In all such cases, such personal property or improvements shall be valued by the assessor at the proportion of its valuation for the full calendar year that the period of time in such year prior to its destruction or demolition bears to the full calendar year. Failure of the owner thereof or of his agent to so notify the assessor prior to the date taxes are levied shall be considered a waiver, and no proportionate valuation by the assessor shall then be required. (L 64)

39-5-118. FAILURE TO RECEIVE SCHEDULE - VALIDITY OF VALUATION. No determination of the actual value of any taxable personal property made by the assessor shall be rendered invalid by reason of his failure to secure or receive the personal property schedule required to be completed and returned to him prior to his determination of such value. (L 64)

39-5-119. REFUSAL TO ANSWER - COURT ORDER. Whenever any person refuses to be interviewed by the assessor or his deputy or refuses to answer any pertinent questions relative to taxable property owned by him, or in his possession, or under his control, then, in the discretion of the district court having jurisdiction in the county and upon affidavit of the assessor or his deputy showing such refusal to be interviewed or to answer such questions, such person shall be cited before such court and shall be required by the court then and there to submit to such interview and to answer such questions. All costs of such proceedings shall be assessed by the court against such person, and judgment and execution shall be entered therefor as in other civil cases. (L 67)

★ 39-5-120. TAX SCHEDULES ENDORSED AND FILED - AVAILABILITY FOR INSPECTION. All personal property schedules and exhibits or statements attached thereto returned to or secured by the assessor shall be endorsed with the name of the person whose taxable personal property is listed therein and shall be filed in either alphabetical or numerical order and retained for a period of six years, after which time they may be destroyed. Such schedules and accompanying exhibits or statements shall be considered private documents and shall be available on a confidential basis only to the assessor and the employees of his office, the treasurer and the employees of his office, the executive director of the department of revenue and the employees of his office, and the administrator and the employees of his office. Such exhibits or statements shall be available on a confidential basis to the board and the county board of equalization when information contained in such documents is pertinent to an appeal or protest. (L 76)

39-5-121. NOTICE OF INCREASED VALUATION. No later than May 24 in each year, the assessor shall mail to each person whose taxable personal

**39-3-110. PAYMENT OF TAXES ESTINGUISHES LIEN. Payment to the treasurer of prorated taxes for the current year, as provided in sections 39-3-108 and 39-3-109, together with payment of any other unpaid taxes and penalty interest or charges, shall extinguish the lien for taxes on such property, or a portion thereof; but if only a portion of any parcel, tract or lot of property becomes legally exempt from general taxation and no taxes are collected at that time, the lien of taxes levied or to be levied shall attach to the remaining portion of said property.** (L 64)

39-3-111. CONDEMNATION BY TAX EXEMPT AGENCY - TREASURER'S DUTIES. In all cases where an entire property, or a portion of any parcel, tract, or lot of property is likely to become legally exempt from general taxation through exercise of the power of eminent domain, the treasurer shall be joined as a party respondent in any such action, and upon joinder and notice of the proceedings, he shall assert a claim for the amount of any prorated taxes for the current year on such property, and all other unpaid taxes, penalty interest, or charges thereon with the clerk of the court in which the proceedings are filed. Upon institution of any such proceedings, the lien of general taxes levied and to be levied shall be transferred from the property acquired or sought to be acquired to any money awarded or to be awarded for the taking of such property. Nothing in this section shall require any treasurer to file a claim in any such proceedings involving acquisition of only a portion of any property, if he is satisfied that there is sufficient taxable property remaining after the taking of such portion to satisfy any lien for the amount of taxes payable on such portion taken. (L 64)

★ 39-3-112. TAXATION OF EXEMPT PROPERTY - TAXES NOT TO BECOME LIEN. (1) When any property which for any reason is exempt from taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user thereof shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property, except as provided in this subsection (1) and as provided in subsections (3), (4), and (5) of this section. (L 75)

(2) Taxes shall be assessed to such lessee or user of property and collected in the same manner as taxes assessed to owners of such property; except that such taxes shall not become a lien against the property. When due, such taxes shall be a debt due from the lessee or user to the board of county commissioners for the county where said property is located, and in the city and county of Denver to such other body as is authorized by law to levy taxes, and shall be recoverable by such body by direct action in debt on behalf of each governmental entity for which a tax levy has been made. (L 75)

(3) This section shall not vary in any manner the taxation of mines or oil and gas or oil shale or geothermal leaseholds and lands under articles 1 to 13 of this title. The valuation for assessment of mines or oil and gas or oil shale or geothermal leaseholds and lands shall be determined pursuant to articles 6 and 7 of this title. (L 75)

**(4) (a) This section shall not apply to any property owned by a home rule or statutory county, city and county, city, or town, or by a territorial charter city, if such property is subject to payments in lieu of taxes under section 29-3-120, C.R.S. 1973** **(L 76)**

**(b) This section shall not apply to any property owned by a home rule or statutory county, city and county, city, or town or by a territorial charter city, if such property was, before July 1, 1976, leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit; but such exemption shall not extend beyond the term of such lease or loan or option included in the agreement in effect before said date.** (L 76)

(c) This section shall not apply to rights-of-way or easements acquired by public utilities or for access roads. (L 76)

(d) This section shall not apply to any property owned by a political subdivision of the state which is used in the provision of normal facilities, services, or operations authorized by constitution or statute to be provided by such political subdivisions. (L 76)

(5) This section is not applicable to lands used solely for agricultural purposes and improvements thereon. (L 75)

(6) The valuation for assessment of lands owned by the United States and used for recreational purposes shall be thirty percent of the fees paid by the user of said lands to the United States for the use thereof in the previous calendar year. (L 75)

(7) Nothing in this section shall be construed to apply to properties exempted by territorial charter. (L 75)

By: Bruce Wanmack
John Kohler
Introduced: 5/22/80
Advanced: 5/22/80
Substituted: 6/12/80
Adopted: 6/12/80

ORDINANCE NO. 80-35

AN ORDINANCE LIMITING PROPERTY TAXES TO FIVE MILLS

BE IT ORDAINED BY the Fairbanks North Star Borough Assembly that:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Code of the Fairbanks North Star Borough.

Section 2. Section 3.08.140 is amended by adding a new subsection to read:

Section 3.08.140 (B) Property taxes assessed or levied by the Fairbanks North Star Borough, inclusive of existing current bonded indebtness, and principal and interest payments thereon, but exclusive of any future bonded indebtness and principal and interest payments thereon, incurred, and passed by a majority of voters in any general or special election, after July 1, 1980, shall be limited to a maximum of five (5) mills.

Section 3. Effective date. This ordinance shall become effective on July 1, 1980, and shall remain in effect unless repealed by a majortiy of the assembly of the Fairbanks North Star Borough.

PASSED AND APPROVED THIS 12th DAY OF JUNE, 1980.

Harry Kleinman
Presiding Officer

ATTEST:

Clerk of the Assembly



**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901

August 15, 1980

Terry L. Earley, State Assessor
Department of Community & Regional Affairs
Pouch B
Juneau, AK 99811

Re: TITLE 29 REVISIONS

Dear Terry:

Attached are copies of excerpts from title 29, chapter 53. I have included my recommended revisions and/or additions in the right column. Recommended deletions are shaded in the body of the text.

My work schedule has been such that I was unable to address this matter as quickly as I would have liked. I apologize.

Sincerely,

Michael W. Worley
Director of Assessments
Ketchikan Gateway Borough

MWW/jfs

RECEIVED
AUG 21 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS



**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901

# MEMORANDUM

TO: Russell W. Walker, Municipal Attorney

THRU: Judi Slajer, Borough Manager

FROM: Michael W. Worley, Director of Assessments

RE: Revisions to Title 29

DATE: August 14, 1980

I support the revision of AS 29.53.135 (see attached copy) as stated in your memorandum dated July 31, 1980.

Attached are my suggestions for further revisions of Chapter 53. Revisions are stated in the right margin, and deletions are highlighted in the body of the text.

**Sec. 29.53.029. Required exemptions.** (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a householder not exceeding $500 in value;

(Housekeeping)

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of the pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

If used by educational groups, the property must be used exclusively for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(Housekeeping)

(e) After January 1, 1973 the real property owned and occupied as a permanent place of abode by a resident 65 years of age or over whose gross annual income totals less than $10,000 is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption; however, in the case of more than one party eligible for an exemption with

respect to the same property, the total combined gross annual income of the parties may not exceed $10,000. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560—44.62.570.

(f) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought and must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section, and in that respect may as one form of proof require authorization from the taxpayer to verify gross income level by reference to gross income shown in the latest state income tax return available for all or part of the assessment year for which an exemption is sought.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section.

(h) Nothing in (e)—(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in § 25 of this chapter. However, under (e)—(i) of this section only the amount of revenue lost to the municipality by reason of the exemption authorized in those provisions may be reimbursed to the municipality by the state.

(i) In (e)—(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes. (§ 2 ch 118 SLA 1972)

History of section. — See City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

This section was enacted pursuant to Alaska Const., art. IX, § 4. Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists, Sup. Ct. Op. No. 591 (File No. 1060), 462 P.2d 432 (1969).

Intent of constitutional convention. —The constitutional convention intended that only so much of the property used for religious purposes as was being used to produce income should be taxable, that such other parts should be exempt, and that a proration between taxable and nontaxable parts should be made. 1962 Op. Att'y Gen., No. 15.

Purpose.—The purpose of this section is to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment is largely irrelevant. McKee v. Evans, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

under (e) of this section

tioned in this section, is not subject to valuation by first class cities for the purposes of AS 14.17.010 et seq., to the extent that it is exempt from taxation. 1962 Op. Att'y Gen., No. 18.

Exclusive employment of occupants of properties sought to be taxed was such as to bring these properties within the exemptions provided in subsections (b)(1) and (b)(2) for residences of ministers owned by religious organizations, or property used for "solely charitable purposes" or "religious education." North Pac. Union Conference Ass'n of Seventh Day Adventists v. Harmon, 5 Alaska L.J. No. 11, p. 228 (Nov., 1967).

The providing of recreational facilities, such as accommodations for campers, is a charitable use of the property. Matanuska-Susitna Borough v. King's Lake Camp, Sup. Ct. Op. No. 472 (File No. 857), 439 P.2d 441 (1968).

Ordinance exempting from local taxation any class of real or personal property.—A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen., No. 1.

Electric cooperative operating under arrangement with federal agency is not exempt.—A nonprofit cooperative is not an agency of the United States government simply by virtue of an "arrangement" with the Rural Electrification Administration pursuant to 7 USC §§ 901—915, and therefore immune from local taxation. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

There is no statutory authority exempting the property of Chugach Electric Association from taxation by the city of Anchorage and the Anchorage independent school district. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

Exemption of property on federal land inapplicable to Railroad Reserve. — The doctrine that property located upon federally owned land is immune from local taxation is inapposite where it is not shown that the Railroad Reserve is "federal property" or under the exclusive jurisdiction of the federal government. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

Sec. 29.53.025. Optional exemptions and exclusions. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

See § 29.53.020.(a)(2)

(Housekeeping)

(C) historic sites, buildings and monuments.

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

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

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act. (§ 2 ch 118 SLA 1972)

City may not exempt property without express authority.—The authority of a municipal corporation to allow exemptions of particular property from taxation, unless expressly conferred by law, has very generally been denied. Valentine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929).

Ordinance exempting from local taxation any class of real or personal property.—A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen., No. 1.

Valuation of full and true value not precluded. — The fact that first class cities may choose the tonnage valuation of ships for the purposes of taxation does not preclude them from making a valuation of full and true value for the purposes of taxation. It necessarily follows that boats and vessels should be valued at full and true value for the purpose of AS 14.17.010 et seq. 1962 Op. Att'y Gen., No. 18.

Rules applicable to second class cities.—The rules applicable to boats and vessels in first class cities apply equally to those under the jurisdiction of second class cities. 1962 Op. Att'y Gen., No. 18.

Sec. 29.53.030. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is fixed at $200 for each 20 acres or fraction of 20 acres. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value. (§ 2 ch 118 SLA 1972)

Replace with local Severance tax on all resources (timber, fill, minerals, etc.)

Sec. 29.53.110. Assessment notice. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing. (§ 2 ch 118 SLA 1972)

Sec. 29.53.120. Corrections. (a) A person receiving an assessment notice shall advise the assessor of errors or omissions in the assessment of his property. The assessor may correct errors or omissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board. (§ 2 ch 118 SLA 1972)

Sec. 29.53.130. Appeal. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city. (§ 2 ch 118 SLA 1972)

**Taxpayer may contest valuation.**—Under this section a taxpayer may contest valuation before a board of trustees meeting as a board of equalization. Yakutat & S. Ry. v. City of Yakutat, 16 Alaska 18, 227 F.2d 9 (9th Cir. 1955).

**Determining portion of property devoted to purposes of organization.**—Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970).

within 30 days of the effective date of the notice.

(b)If the property owner disagrees with the assessed value, the assessor shall review the assessment and inform the property owner of his findings allowing 10 days for appeal to the board. If the assessed value changes, the assessor shall send a revised notice to the property owner.

be allowed 10 . . . the notification described in §29.53.120(b above, to

**Sec. 29.53.135. Board of equalization.** The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, or it may delegate this authority to a board appointed by it for that purpose. The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business. The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance adopt rules for the membership and conduct of the board. (§ 2 ch 118 SLA 1972)

not fewer than three members.

**Borough assembly as administrative body.** — When the borough assembly functions as a board of equalization or adjustment, it acts as an administrative, not a legislative, body. 1965 Op. Att'y Gen., No. 7.

When the borough assembly sits as an administrative body, whether as a board of equalization or adjustment, the weighted vote may not be used. 1965 Op. Att'y Gen., No. 7.

Sec. 29.53.140. Hearing. (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed or proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1.

(f) An appellant may appeal to the superior court for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial. (§ 2 ch 118 SLA 1972)

Scope of review. — The superior court will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. The superior court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of evaluation. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970); Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

When valuation or assessment violates due process.—The valuation and assessment of property for taxes does not contravene the due process clause of the 14th amendment unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer's property rights. Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

**Sec. 29.53.150. Supplementary assessment rolls.** The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. (§ 2 ch 118 SLA 1972)

**Erroneous omissions from assessment roll do not invalidate all taxes.** —The omission of property from an assessment roll, through error of judgment or of law, will not invalidate all taxes, thus practically putting an end to the operations of government. Valentine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929).

Sec. 29.53.155. Manifest errors discovered on the assessment roll may be corrected by the assessor and an adjustment made to the roll subsequent to its certification.

**Sec. 29.53.160. Tax adjustments on property affected by a natural disaster.** (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law. (§ 2 ch 118 SLA 1972)

Sec. 29.53.170. Tax levy and rate. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of general ordinances, but the rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest. (§ 2 ch 118 SLA 1972)

Sec. 29.53.180. Rates of penalty and interest. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 10 per cent may be added to all

date of repurchase, together with delinquent taxes assessed and levied as though it had continued in private ownership.

(b) After termination of the right of redemption there is no right to repurchase property held for, or devoted to, a public purpose. (§ 2 ch 118 SLA 1972)

Payment of taxes constitutes an application to repurchase property from foreclosure. Jameson v. Wurtz, Sup. Ct. Op. No. 259 (File No. 431), 396 P.2d 68 (1964).

Sec. 29.53.380. Proceeds of tax sale. Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

Sec. 29.53.385. Payment of taxes upon public utilization. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

Sec. 29.53.390. Refund of taxes. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight per cent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred. (§ 2 ch 118 SLA 1972)

, or if in the absence of suit, the borough assembly determines that judgment for the recovery of the taxes would be obtained if legal proceedings were brought, the amount of the taxes shall be paid to the taxpayer

## Article 3. City Property Tax.

Section
400. Power of levy
405. Differential tax zones
410. Limited property taxing power for second class cities

Sec. 29.53.400. Power of levy. Home rule and first class cities within boroughs may levy a general property tax. A property tax,

**Sec. 29.53.050. Tax limitation.** (a) No municipality may levy and tax for any purpose in excess of three per cent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58. (§ 2 ch 118 SLA 1972; am § 4 ch 1 FSSLA 1973; am § 5 ch 159 SLA 1975)

Needs to be changed to $1,500 to be consistent with § 29.53.045..

**Effect of amendments.** — The 1973 amendment, effective January 1, 1974, added subsection (b).

The 1975 amendment, effective June 26, 1975, in subsection (b), inserted "(1)," "upon values which," and "exceed" in both the first and second sentences, deleted "either (1)" preceding "$1,000" in those sentences, and added the fourth sentence.

**Editor's note.** — Section 8, ch. 159, SLA 1975, contains a severability clause.

Alaska Statutes 29.53.055 and 29.58.180(a) authorize taxes to pay for municipal bonds, independent of the limitations of this section or AS 29.53.045, and regardless of whether the bonds are in default or default is pending. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Alaska Statute 29.53.055, literally read, does not render this section and AS 29.53.045 meaningless. AS 29.53.055 applies only to debt financing. The limitations of this section and AS 29.53.045 apply to operating revenues. Merely because they do not also curb taxes to pay for bonds does not render them nullities. North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

**Regulation denying credit against tax levied under AS 43.56 was invalid.** An emergency regulation which denied a credit against the tax levied by the state under AS 43.56.010(a) for property taxes collected by municipalities in excess of the limitations set forth in AS 29.53.045 and subsection (b) of this section was invalid since AS 43.56.010(d) mandates that all taxes paid under AS 29.53.045 are to be credited against the levy of AS 43.56.010(a). North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Lee McAnerney
Commissioner

DATE: August 20, 1980

FILE NO:

THRU: Lawrence H. Kimball, Jr.
Director/Community Planning

TELEPHONE NO: 465-4750

FROM: David Dye D.D.
Planner III
Division of Community Planning

SUBJECT: Title 29 Revisions

As requested, this memo is a list of suggestions and comments for revision of Title 29 of the Alaska Statutes. Some of these comments are products of the consensus viewpoint of the staff. Some are the products of a particular staff member's concern and experience with a given provision. Several otherwise meritorious suggestions do not appear in this memo because the provisions to which they are addressed are located in other titles and could not easily be integrated into Title 29 or they are primarily a matter of DCRA's jurisdiction vis a vis other State agencies. It is my feeling that these issues must be dealt with separately in order to avoid the appearance that our Department is attempting to restructure its statutory authority under the guise of revising Title 29 or construing the mandate of SCR 66 in an excessively broad fashion.

Many of the suggestions concern policy questions which are sure to be debated extensively as the revision process continues. I do not feel it is appropriate, at this point, to offer statutory drafts implementing these policy considerations. In some cases, a mere substitution, addition, or clarification is all that is suggested and these are presented with more specificity than questions with broader policy implications. In one or two instances, a model draft of a new provision is offered as a guide where it is appropriate to do so.

Other suggestions were modified or eliminated because, after some reflection, I felt that Title 29 already adequately addressed the question or that the suggested change would have unanticipated and unwanted consequences. Given that I was not guided by the divine revelation in excerising my editorial license, I invite other staff members to continue to advocate revisions I have not favored or overlooked.

General Consideration

Title 29 provides a framework for municipal authority and function in Alaska. The relationships among the entities it creates are complex and intertwined. Therefore, the language of the statute is necessarily complex and requires a certain sophistication and studied familiarity to master. This is perhaps unavoidable given the striking diversity of conditions in Alaska. However, the burden of using this complex blueprint falls unevenly on smaller communities. Larger urban communities usually possess the technical and professional resources to deal with Title 29's requirements and options. Many smaller communities do not.

Because of this lack of expertise and resources some basic concepts are not well understood and some functions are performed badly or not at all by these small municipalities. It is ironic that many larger municipalities have home rule status which relieves them of the burden of conforming to most of the finer details of Title 29 while most smaller communities must do so.

If Title 29 is to serve as both a mandate and as a guide, it will be most effective where it is clearest and most straightforward. A primary goal of revision should be to clarify, define and simplify to the greatest extent possible. To do so comprehensively would require a great deal of work but would undoubtedly be worth the effort if the result were better local government.

On the other hand, there are areas which would benefit from a bit more complexity. Wherever a public body, commission, or board performs a discretionary or quasi-judicial duty there should be standards, guidelines, criteria, and legislative intent spelled out with some specificity. Too often these entities do not understand the necessity of procedural regularity and therefore do not function at an acceptable level of competence and evenhandness.

Chapter 18, Article 4-Development Cities

The development cities statute should be eliminated or, in the alternative, thoroughly restructured in light of the experience gained in the few abortive attempts at implementing its provisions. The case for elimination of the development cities law has been convincing laid out in prior DCRA analyses. The following is a lengthly quote from an April 20, 1976 intra-Division memo:

> The Development City law has been a failure. As of this date, this statute has been applied to only one area, notorious Lost River, and that project fizzled and then went "dud". A stunning indication of the value of the Development City law is found in the fact that it was substantially instigated, according to an Anchorage Times editorial (January 31, 1975), by the very group sponsoring its most egregious failure, Lost River.
>
> Once a petition is offered for development city, a great deal of State authority is set in motion, but no development city petitions other than Lost River have or will be forthcoming because development cities are usually undesirable or impractical public and private investments. Let me elaborate on this point.
>
> Building a community from scratch--and that is what a development city is essentially--is a very costly proposition to the public purse. The more costly it becomes, the more controversial and the less willing the State and public are to commit public funds to

to finance the proposed city's service and facilities requirements. Remember how nearby Nome jealously questioned the potentially great expenditure of State and Federal energy and financial resources for Lost River.

Lost River was bound to a State policy--which should also apply to future development city proposals--that State fiscal support of a development city will be forthcoming only if the development city first demonstrates economic feasibility without State subsidies. Considering the nature of the kind of development most likely to foster a development city proposal this is impossible. Most will be based on single industry natural resource development, be it mining like Lost River, or possibly lumbering and associated wood processing or activities supporting onshore or offshore oil and gas development. Absent the creation of a diversified regional economy, a development city isolated in the bush has virtually no potential for attracting further permanent industrial growth and only limited possibilities for commerical growth. Thus, the city collapses when the natural resource upon which it is founded becomes depleted.

Spending public funds on a community bound for extinction is not a sound investment unless the economic returns to the public substantially exceed public investment costs. Substantial public investment can cause a development city to generate a regional economy attracting more lasting industrial and commerce development, especially through State and federal investment for a regional transportation network--i.e., for airport, port and/or highway transportation facilities. However, even with such public investment, there is no guarantee that the regional economy created will be self-sustaining without continued substantial public investment. Bethel, a regional center created by substantial federal and State investment in public services and facilities, cannot sustain its regional economy without ever constant and substantial federal and State subsidy.

The development city will not only be fiscally infeasible from the State's point of view, but also as a functioning municipality. Lost River, which should fairly well exemplify any new city built from the ground up in the hinterlands, was hardly an attractive prospect in the municipal bond market. Its assessed valuation was extremely low while required bonded indebtedness was astronomically high. Not
a good bond investment. Projected municipal expenditure for community development in Lost River was reported as extremely high due to the high construction and maintenance cost characteristic of bush Alaska. On the other hand, expected revenue was extremely

low, attributable to the usual absence of other revenue-producing industrial and commercial operations in a single-industry city, and a low public ability-to-pay taxes, since an unusually large share of individual and family consumer expenses in remote high cost-of-living Alaskan settlements are required for the purchase of necessities. Under these foregoing circumstances, municipal fiscal health would be the exception and not the rule for a development city.

A development city will have just as hard a time becoming a socially viable community. The Bethel magneticism syndrome is a premier problem. A new community situated in the middle of the bush and chockfull of services and facilities of a high-quality never before experienced in a region could, and probably would, create an in-migration of bush citizens. The phenomenon of in-migration from rural to urban areas has been discussed and analyzed about the world for years and as of yet no one has formulated a workable, humane solution to the tremendous physical, social and governmental problems and pressures it creates in the receiving urban settlement. Bethel says it all.

Natural resource cities cannot seem to hold their workforce, having a high labor turnover and, resultantly, a high turnover of families whose continued presence is the prime ingredient for community stability. Faro, a development city (mining) in the Yukon is geographically the closest example of this instability. It was well designed and provided every essential amenity. Today, visitors and many of its former residents remark that Faro is a tedious place lacking the community spirit and cohesiveness that inexplicably only organic community development can provide. Only close to genius planning can create a brand new development city with the vitality and stability natural to communities created and evolving organically. Tapiolas, however, are exceptional and almost more a result of fortuity of circumstances than of deliberate planning.

The private sector has not exactly been flooding the Local Boundary Commission with petitions for development city incorporation. Private reluctance to jump on the bandwagon of the Development City concept is based on a good capitalist economic sense and the company-town mentality.

First, most conventional industrial development will not locate in the bush away from the established markets and amenities and thus reassuring to developers in existing cities. Second, past experience reveals that those kinds of natural resource ventures, large or small, most likely to be candidates for development city treatment

> want to avoid association with any kind of municipal organization whether a development city or a regular municipality. Go it alone is the ethic, with the principal developer providing the facilities and services to the employees of the operation. Look to Prudhoe Bay, Thorne Bay and Red Bay as examples of this company-town mentality. The principal developer knows he can provide needed services for his development if he so wishes to assume the obligation. He does not have the same degree of assurance where these services are promised by a newly created municipal entity with no experience or demonstrated financial or functional capability in providing essential services supportive of industrial activity and concommitant residential and commercial build-up. The company town reaction will probably extend to any new industrial settlements arising as a consequence of offshore oil and gas development occurring well away from existing municipalities of any consequence. (Memo from Sid Wolf, Senior Planner to Kevin Waring, Directory Division of Community Planning, April 20, 1976).

The case against development cities is reinforced by the experience gained from the proposed development city of Afognak. The developer of Afognak was an ANCSA village corporation with large holdings of timber lands located within the boundaries of the proposed city. Also located within the boundaries were timber lands owned by other village corporations, permanent logging camps, and up to eighty private landowners. These various groups protested the formation of the development city and the local boundary commission finally disapproved the incorporation petition. It was argued that the development of timber land other than those held by the city's developer might be subject to land use controls designed to inhibit competition. Private land holders complained that the composition of the City Council during the development stage denied them representation and that the council meetings would not be public. They also argued the City might use its power to issue revenue bonds excessively and that there was no voter approval as a check on this power. Due to the particular status of ANSCA lands, it was feared that the ultimate liability for bonding for other municipal indebtedness would fall on the private non-Native landholders. Objections were also raised to what was perceived as a massive and unjustified State subsidy to private industry.

In retrospect, it has been argued that the Afognak case was a misapplication of the development cities statute. Perhaps the better viewpoint is that the statute was not designed to anticipate the variety of conditions to which its general application would make it susceptible. It is clear that the statute was intended primarily for the Lost River type of situation i.e., a reasonably compact development located in an isolated and virtually unpopulated area with no diversity in land ownership and no competing development. Given the complex land ownership pattern created by ANCSA, the large amount of land required for some types of resource development and the somewhat random pattern of rural population

it can be anticipated that future development cities, if any, have a good chance of facing the same problems as Afognak. Some of these problems could be ameliorated by restructuring the statute but others are likely to remain as latent political questions.

Perhaps the best framework for judging the development cities law is the utilitarian propective. To date no development city exists and no serious proposal is on the horizon. The statute books are thick enough without special interest legislation which even the special interests have not found useful.

Chapter 33, Article 4-Planning, Platting and Zoning

Section 29.33.070 (b)(2). The present language of this provision was adopted by amendment in 1979. DCRA is on record as favoring the language of this provision as it existed prior to its 1979 amendment. The department was concerned that allowing a borough to delegate planning authority to a city within the borough may lead to gaps and inconsistency in planning. This is still a valid objection. The previous language allowed a borough to delegate only administrative and enforcement responsibilities to a city within the borough. This was a reasonable and efficient arrangement which struck a balance between the need for areawide continuity and the need for local responsibility. The Department should therefore recommend a return to the pre-1979 statutory language.

Section 29.33.080 (b)(4). The term "official" map needs to be defined as it has a technical meaning which is not apparent by reference to common usage. An official map is a document adopted by the legislative body of the community. It pinpoints the location of future streets and other public facilities. The official map serves as notice on developers that the municipality intends to acquire certain specified property(it is not however, a comprehensive or general plan). (A good discussion of official maps is contained in Principals and Practice of Urban Planning, International City Managers Association, Wash., D.C., 1968).

Section 29.33.080 (f). Among other things, paragraph (f) requires that "the commission shall establish, subject to approval by the assembly, rules and regulations for the conduct of its meeting." The assembly is not required to adopt these rules and regulations by ordinance. The wording of paragraph (f) should be changed to require the adoption of these rules and regulations by ordinance. In the alternative, a new section could be added to Title 29 which requires that the rules and regulations of all municipal boards, commissions, and departments be codified and published. Either of these changes would increase public access to these rules and regulations and thereby help to insure procedural regularity in the performance of administrative and quasijudical functions.

Section 29.33.090. This section should be rewritten to eliminate the use of the term "zoning" and a broader term such as "land use regulation"

or "land use management" should be substituted. Euclidian zoning, whereby land is divided into use restricted districts, has not always proved to be the best or most appropriate method for regulating community development in Alaska, particularly in rural communities. "Permit" and "performance standards" systems are examples of devices used in other parts of the country to accommodate the needs for flexibility in planning. The use of the broader concept of land use regulation would include traditional zoning but would not limit communities to this device. It would also help to avoid the rather narrow and inflexible interpretion given to zoning powers by some courts.

Enabling legislation should be added to section 29.33.090 for the transfer of development rights. This land use device has evolved in recent years as a way to accomodate extensive use of community police powers to zone for open space or to preserve historic buidlings with the right of property owners to the reasonable use of their property. Other devices such as comprehensible regulation, eminent domain and acquisition of conservation easements accomplish the same public goal but require large expenditures of public funds.

The transfer of development rights system creates zones where development is greatly restricted for some public purpose. The owners of the restricted property are given the power to sever the right to develop from the rest of the fee in the land to transfer (sell) that right to an adjacent or remote parcel of land. The receiving property is no longer limited by the bulk and density requirements of its zone and may be over-developed in an amount equal to the transferred right.

The use of this device could be an important tool in shaping attractive and functional communities while at the same time allowing appropriate development to the greatest extent possible. A good discussion of this concept along with model enabling legislation can be found in: Rose, "A Proposal for the Separation and Marketability of Development Rights as a Technique to Preserve Open Space," 2 Real Estate Law Review 635 (Winter, 1974.).

Section 29.33.150.245. Paragraph (a) of section 29.33.150 should be rewritten to explicity state that all subdivisions are required to be platted and that these plats must be recorded except where the requirement is waived in specified circumstances. Chapter 15 of Title 40 of the Alaska Statutes concerning subdivisions and dedications should be integrated into Title 29.

Section 29.33.170. The waiver provisions of section 29.33.170 should be modified and a new section added authorizing short subdivisions and short plats. Under present waiver provisions, a large tract of land could be successively subdivided into four or less parcels without ever

triggering the platting requirements. Short plat authority would avoid this result by requiring simplified plats and summary approval for small subdivisions. A model short plat and short subdivision statute is set out below:

> Section 29.33. . The assembly or council may adopt regulations and procedures for the summary approval of short plats and short subdivisions or revisions thereof. Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filling of the short plat for record in the office of the recorder: provided, that regulations shall contain a requirement that land in short subdivisions may not be further divided in any manner [within a period of five years] without filing of a final plat.
>
> Section 29.33. . Definitions 1) "Short subdivision" is the division of land into four or less lots, tracts, parcels, sites, or subdivisions for the purpose of sale or lease. 2) "Short plat" is the map or representation of a short subdivision.

If the provisions of AS 40.15 relating to subdivisions and dedication, were integrated into Title 29 a new section should be added as follows:

> Section 29.33. . Purpose: The purpose of this chapter is to regulate the subdivision of land to promote the public health, safety, and general welfare in accordance with standards established by the State to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewage, parks and recreation area, sites for schools and school grounds and other public requirements; to provide for proper ingress and egress; and to require uniform momumenting of land subdivision and conveyancing by accurate legal description.

Chapter 41-Powers of Third Class Boroughs

Section 29.41.010. This section should be rewritten to specifically include or exclude all or part of the provisions of Chapter 48 'powers applicable to all municipalities) with particular attention paid to Section 29.48.010 and Section 29.48.260.

The last sentance of paragraph (a) of Section 29.41.010 states that: "Area wide excerise of powers other than education and tax assessments and collection is not authorized." Paragraph (b) states that a third class borough may, under certain circumstances, excerise any power excerised by a third class borough but only on a service area basis. Are third class boroughs prohibited, except on a service area basis, from:

aquiring, using, and disposing of real property; the power to sue and be sued; or the power to expend funds for the good of the municipality? The literal application of section 29.41.010 would seem to limit the excerise of these and other general municipal powers to service areas created especially for the purpose.

Chapter 48 Article I-General Powers

Section 29.48.010. Sub-section (9) of this section allows the disposal of real and personal property for purposes authorized under this or other law. Unlike section 29.48.260, this provision requires no procedural safeguards nor does it require that such action be done by ordinance.

Sub-section (9) should also be rewritten to allow for land exchanges between municipalities and private persons in certain circumstance which will occur as a result of the implementation of section 14 (c)(3) of ANSCA. Under section 14 (c)(3) municipalities will receive 1280 acres of land to be used for future municipal expansion. Several municipalities will not be able to select appropriate land in or near the municipality because most or all of the available land has been conveyed to private persons pursuant to section 14 (c)(1). It would be advantageous for a municipality to be able to exchange some of this inconveniently located land for parcels more suited to municipal purposes. Procedural safeguards should be built in to guard against improper exchanges.

Section 29.48.020. This section should be placed in another chapter. Chapter 48, in which this section is located, is entitled "Powers Applicable to all Municipalities". This section deals with powers of second class boroughs in areas outside cities and not with municipalities in general. It should be placed in another chapter.

Chapter 48 Article 4-Miscellaneous Provisions

The provisions of Section 29.48.260 relating to disposal of municipal properties could be improved by several additions and changes as outlined below:

The term "municipal purpose" in subsection (a) should be defined, or in the alternative, standards or criteria for determing when municipal land is no longer required for municipal purposes should be added to this section.

Certain procedural requirements are specified in subsection (c). The authorized methods for sale of municipal land are auction or by opening of sealed bids. Adding authority for disposal by lottery at fair market value, or some lesser figure set by the municipal legislative body, would give municipalities a fair and reasonable way to distribute land

to persons of low or moderate income. The State has used this method for some time and there is no apparent reason why it would not be appropriate for municipalities. Another provision of sub-section (c) requires voter ratification of any ordinance for the sale, lease or disposition of real property or interest of real property valued at $25,000 or more. The ravages of inflation has made this provision unnecessarily burdensome to municipalities. In today's market, this provision could require voter ratification for the sale of one lot in some urban municipalities. An appropriate figure would be two to four times the present figure.

Sub-section (d) exempts municipal lands acquired from the State from the procedural requirements of subsection (c). The policy behind this provision is not apparent from reading the statute. It has been suggested that the purpose of this provision is to facilitate the transfer of excess municipal to private ownership, particularly for residential use. If this indeed is the policy behind this subsection, it should be rewritten to exempt transfers for specific purposes regardless of the source of the land. Many municipalities have or will soon receive land from non-State sources (Townsite Trust land, section 14(c)(3) ANCSA land, etc.) which may be equally appropriate for transfer to residential or other private use. It doesn't make much sense to require all the procedural steps of subsection (c) if this land is to be disposed for the same purpose as State land.

The Alaska Supreme Court has recently interpreted sub-section (e) in the case of Libby v. Dillingham. After considering competiting in terpretations of this paragraph, the court said that municipal land leased to "benefical new industries" must comply with the procedural requirements of paragraph (c) of the same section. As a result of the Libby decision, communities cannot now negotiate the lease or sale of municipal property to industries which they wish to attract into the community without first engaging into an elaborate competitive bid procedure. This provision should be rewritten to specifically exclude these kinds of transactions from the requirements of paragraph (c).

Many rural communities have expressed the desire to make residential land available to local residents but fear that under present land disposal procedures much of the land would pass to wealthy non-residents who are able to pay a higher price for the land. A new provision should be written which allows for preferances to certain classes of people (e.g. heads of household, non-owners of residential property, etc.) to insure that municipalities have some control over this problem. By listing which classes of preferences are appropriate, guidance would be given to communities so that they would not attempt to exclude classes of people protected by State or Federal law. This is especially important since many communities have expressed an interest in using durational

residency requirements for land disposal preference purposes without realizing that such preferences are clearly unconstitutional. At the time of this memo, the Zobel case has not been decided by the Alaska Supreme Court. The outcome of that case may have broad implications for all classes of preference rights. Therefore, any proposed system of preference rights should be carefully reviewed in light of the final holding in the Zobel case.

One type of preference right deserves particular attention because of the inequities created by the application of section 14 of ANCSA. Section 14 (c)(1) of the Act requires that village corporations reconvey those lands occupied prior to Dec. 18, 1971 as a primary place of residence, primary place of business, subsistence campsite or headquarters for reindeer husbandry. After these claims are satisfied, section 14(c)(3) requires the village corporation to reconvey 1280 acres of land for future expansion to any municipality located in the village or, if no municipality exists, to the State in trust for a future municipality. Unfortunately conveyance of land to the various village corporations has not proceeded in the expeditious manner envisioned by ANCSA. It has been over eight years since the passage of the Act and the process of conveyance if far from complete. As a result community expansion and new development has continued in the traditional fashion from Dec. 18, 1971 to the present. Most of this expansion has occurred with the tacit or express permission of the community. However, the village corporations will not be able to convey title to land occupied after Dec. 18, 1971.

Much of this occupied land will eventually be conveyed to municipalities under section 14(c)(3) and many of these communities have expressed a desire to convey those lands occupied after Dec. 18, 1971 to present occupants. However, there is no provision in Title 29 allowing them to do so. These occupants, many of whom have made expensive improvements such as houses or businesses on the land, will have to compete for the land under the present land disposal provisions of section 29.48.260.

A new sub-section should be added to section 29.48.260 which would permit a municipality, if it so chooses, to grant these occupiers a preference right to acquire land they have substantially improved. Such a provision would avoid the injustice of denying the legitimacy of traditional land practices in rural Alaska and the hardships of forefiture which will inevitably fall on many families and small businesses.

The following is a tenative draft of a new sub-section designed to implement this policy:

> Section 29.48.260( ). Notwithstanding the provisions of (c) of this section, the assembly or council may by ordinance establish a formal procedure for the disposal of land received pursuant to

section 14(c)(3) of the Alaska Native Claims Settlement Act (P.L. 92-203,85 Stat.638) to any person who substantially improves the land prior to the date on which title is conveyed to the municipality. The amount of land disposed to any person shall not exceed an amount necessary for the reasonable use and enjoyment of the improvements. The ordinance shall require notice of intent to dispose of the land in the manner provided in (c)(2) of this section. Upon written request submitted prior to disposal, the assembly or council shall hold a hearing and issue written findings of fact to resolve disputed claims. The ordinance shall provide a right of appeal to the Superior Court if filed within 60 days of a hearing. Disposal may be without or with consideration not to exceed fair market value of the land prior to improvement. Expenses, if any, for notice appraisal and survey shall be paid by the grantee.

Chapter 78 General Provisions

This chapter contains the "definitions" section of Title 29. This section should be expanded to include the terms specifically mentioned in this memo and any other terms which, upon review and reflection, are suspectable to an ambiguous or technical meaning.

Index

The present index is inadequate. Many topics are not adequately cross referenced or are not mentioned at all. A careful revision and update would be extremely useful.

cc: Veronica Clark

RECEIVED
SEP 09 1980
DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

OFFICE OF ADMINISTRATION
September 3, 1980



Terry L. Earley
State Assessor
Dept. of Community & Regional Affairs
Division of Local Government Assistance
Pouch B
Juneau, Alaska 99811

Dear Mr. Earley:

The City of Valdez would like to submit a comment with regard to the current plans to revise Alaska Municipal Code - Title 29 as it pertains to property tax - specifically the Senior Citizen Property Exemption program.

During a recent council meeting it was suggested that the age limit to qualify for the Senior Citizen Property Tax Exemption program be reduced to something less than 65 - perhaps 62. Council felt this would be one means by which people who chose to retire earlier than 65 could be benefitted

Thank you for your consideration.

Sincerely,

CITY OF VALDEZ, ALASKA

Mark Lewis
City Manager

P. O. BOX 307 . . . VALDEZ, ALASKA 99686 . . . TELEPHONE (907) 835-4313

**TITLE 29 REVISION COMMITTEE**
**Policy Advisory Group Meeting**

**Minutes of August 27 & 28 1980**

The first meeting of the Policy Advisory Group of the Title 29 Revsion Committee was held August 27, 1980 in the Conference Room of the Legislative Information Office, 1024 6th Avenue, Anchorage, Alaska. The meeting was called to order by Billy G. Berrier, Director of the Division of Legal Services at 9:00 am.

Present were: Ted Berns, Terry Cook, Marilyn Dimmick, James Kohler, Gene Moore, Donna Sherby, Jonathan Solomon, Russell W. Walker, Ronald Larson, Senator Arliss Sturgulewski, Senator Bob Mulcahy, Representative Margaret Branson, Representative Charles H. Parr as members of the Policy Group. Also present were Phil Smith and Mr. Palmer McCarter, Ex Officio Members of the Policy Advisory Group. Allan E. Tesche attended representing the Technical Committee. Ted Berns and Russell Walker are also members of the Technical Committee. Mike Walleri of the Tanana Chiefs Conference, Inc., and Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee were present. Billy Berrier and Tamara Cook were present representing the Division of Legal Services, Legislative Affairs. Tam Cook explained that Ginny Chitwood from the Alaska Municipal League could not be present but would attend future meetings as an Ex Officio member.

The first order of business was the selection of a chairman for the committee. Nominations were opened and Senator Sturgulewski was nominated by Representative Parr. The nomination was seconded and Senator Sturgulewski was elected Chairman by acclamation.

Mr. Berrier spoke on the role of the Technical Revision Committee and asked for an appointment of a group. A motion to set up a Technical Revision Group was made by Representative Branson. The motion was seconded and carried. The Technical Revision Committee members will be Ted Berns, Richard Garnett, III; John Messenger, Jim Nordale, JoAnne Shanley, Gerald Lee Sharp, Allan Tesche, and Russell Walker.

The Ex Officio members were introduced and there was discussion as to their role. It was agreed that they should sit at the table and take part in the discussion. Palmer McCarter spoke about the role of Community and Regional Affairs. He said that there would be a representative of C&RA at every meeting, either he or Patrick Poland would attend. Mr. McCarter also presented a letter from the Local Boundary commission requesting the statutes regarding Development cities be left in Title 29 but improved. Phil Smith spoke on the concerns of RuralCAP regarding the impact of government on villages and rural areas.

Representative Parr suggested directions for the Policy Committee: 1). greater self determination and latitude for local governments; and 2.) that elected officials should be able to understand Title 29 without the help of attorneys. Senator Sturgulewski agreed that Title 29 needed clarification.

The members present of the Technical Committee met briefly and Ted Berns, as spokesman, gave a report regarding the ideas they discussed. The group recommended that Title 29 be broken down into three sections.

1. The first section to be general provisions applying to all local government.
2. The second section to be delineation of procedures and additional limits on specific forms of government.
3. The third section to be directory provisions to be used unless the local government adopts ordinances of their own.

It was decided that the Technical Committee should attempt to reorganize Title 29 along these lines and present a draft at the next meeting.

Mike Walleri, Village Government Specialist, Tanana Chiefs Conference, Inc., spoke, saying he would like a simplification of government.

A list of items pertaining to Title 29 included in the preliminary draft of the Alaska Municipal League 1981 policy statement was handed out. .

Future meeting dates and places were discussed. None were decided upon.

The kinds of things applicable to all municipalities were discussed, such as incorporation, dissolution, boundary changes, classification of government, extraterritorial powers, merger/consoldiation, revenue, taxation, bonding, and intergovernmental relations.

Protection of people in service areas who are not represented by local government, such as persons living outside city limits, was discussed.

The meeting recessed at 4:00 pm.

The meeting was called to order the second day at 9:00 am., Chairman Sturgulewski presiding. In addition to the persons present at the first day's meeting, Chris Johnson of House Research and Nels Franklin from near Dillingham were present, and introduced by Chairman Sturgulewski.

Ted Berns gave a recap of the first days meeting.

Terry Cook was appointed repository of ridiculous laws.

Senator Mulcahy spoke on the problem of getting information, drafts, and policy issues to all municipalities within the time constraints. Phil Smith suggested a teleconference and said that he would be presenting material at the Alaska Federation of Natives Convention (23-25 October 1980, in Anchorage). It was decided that the problem of getting materials and information to the public would be an agenda item at the next meeting. Palmer McCarter, Phil Smith, and Ginny Chitwood of the Alaska Municipal League were appointed to a committee to research this problem and make recommendations.

Melissa Fouse was introduced as the new secretary to the Title 29 Revision Committee.

As part of the reorganization of Title 29, there was discussion as to which statutues belonged in which category.

Representative Parr wants a uniform provision on executive session. There was discussion on executive sessions.

The question of retaining present categories of government was raised and discussed. Ted Berns suggested only two classes of boroughs and home rule, pointing out that there are no first class boroughs.

The question of development cities was raised and discussed. Should we retain, restructure, or eliminate development cities?

There was discussion on the third category. If a municipality choses to follow procedures, should they be required to follow all of them?

Senator Mulcahy's legislation regarding the recognition of village governments was discussed. Copies of HB 192 are to be mailed to committee members.

There was discussion of persons representing committee members being allowed to vote. Mr. Berrier had reservations based on the appointment of the members of the commission according to resolution. It was decided that persons filling in for committee members be allowed to take part in the discussion, but would not be allowed to vote.

The meeting was adjourned at 12:00 pm.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse

P.O. BOX 57 MC GRATH, ALASKA 99627
PHONE (907) 524-3825

August 26, 1980

Arliss Sturgulewski, Senator
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

Dear Senator Sturgulewski,

Back at the beginning of the summer, I attended a meeting called by the Division of Community Planning. It was a "loose meeting" in that the agenda was flexible and covered many areas and concerns. Somewhere in the meeting, we touched upon the changes proposed by the Community & Regional Affairs Committees. If I am not mistaken, everyone agreed that the committees were on the right track especially in regards to the establishment of service areas following REAA boundaries.

Well, it seems that those of us living in the "bush" know more about what happens in Juneau than some of the state employees living and working there. For example, the Dept. of Health & Social Services just unveiled a plan whereby the communities of Holy Cross, Anvik, Shageluk and Grayling which are all in the Iditarod Area School District, REAA 11, will now receive there public health nurse services from Bethel. Ms Lois Bergerson decided that those people would be better served from Bethel than McGrath. Was there any local input from those communities? Was any consideration given to the fact that those people are Athabascans and not Yupiks? Did anyone think to explore the logic behind the boundaries of REAA 11? The answer to all three questions is no. However, Ms Bergerson is adamant that the changes will take effect on Sept. 1 irregardless of any protests.

It is my firm hope that when the Legislature convenes in January, that the Community & Regional Affairs Committees will reintroduce the same package of bills.

Sincerely,

Robert S. Juettner
City Administrator

8/29/80 Advised Bob I would bring to Committee → Jim Cooke – Please copy AS 29 Review. Committee will ex- Officio + Dept HSS + Fran Ulmer

HOME PHONE [illegible]

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
PHONE 465-3738 OR 3739
HOME PHONE 789-7897

HOUSE MAJORITY LEADER
VICE CHAIRMAN JUDICIARY COMMITTEE
MEMBER, RULES COMMITTEE
MEMBER, SPECIAL COMMITTEE
ON SUBSISTENCE

House of Representatives

August 26, 1980

Mr. Palmer McCarter, Director
Division of Local Government Assistance
Department of Community & Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Sir:

It has come to my attention that the second class cities and unincorporated village governments in the Bristol Bay Region will experience severe problems in meeting the September 20, 1980 deadline for mailing completed State Revenue Sharing applications to qualify for the $25,000 minimum entitlement provided for in the new law revising the State Revenue Sharing Program. It has further come to my attention that applications were only recently mailed to general law municipalities and that applications for traditional governing councils have yet to be mailed.

The September 20th time deadline is further compounded by the problem that many of the villages in our region are currently unaware of the provision in the new law which provides state aid to eligible governments recognized under the Alaska Native Claims Settlement Act. Another very real problem is the frequency of mail delivery service, which is sporatic at best, to many of the villages in the more remote areas.

A lot of work on the part of rural legislators went into FCCHB 192 reforming the State Revenue Sharing Program to include state aid to unincorporated governments and the $25,000 minimum entitlement provision for small rural municipalities with no tax base.

With the September 20th deadline for mailing applications just around the corner, it appears that many local governments that could take advantage of the new State Revenue Sharing program will be unable to do so. I would encourage your department to strongly consider extending the deadline to allow more local governments desperately in need of such monies to have the time to properly complete the application process.

Thank you.

Very sincerely,

Nels A. Anderson Jr.

Nels A. Anderson, Jr.

cc: Senator George Hohman
Rep. Bill Parker
Sen. Arliss Sturgulewski
Governor Hammond
Commissioner Lee McAnerney, CRA
TUNDRA TIMES
TUNDRA DRUMS

OK

copy Title 29 committee

TO: The Honorable Lee McAnerney
Commissioner
Department of Community
& Regional Affairs

DATE: August 14, 1980

FILE NO:

TELEPHONE NO:

FROM: Ernst W. Mueller
Commissioner
Department of Environmental
Conservation

SUBJECT: Designation of "Village"

Thank you for your letter of August 13 concerning the use of the term "City" rather than "Village" for small rural incorporated communities. A term I find even more offensive is the word "bush" as a substitute for "rural."

I fear, however, that "village" may be with us a long time. AS 46.07.080(2) reads:

> "'village' means an unincorporated community which has between 25 and 600 people residing within a two-mile radius, or a second class city." (Emphasis added)

We have tried to encourage the Legislature to revise this language; perhaps we can ask them to replace "village" with a term such as "eligible rural community."

cc: Tim Bergin

RECEIVED
AUG 15 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS



**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Judith Slajer, Borough Manager*

FROM: Kathryn Carssow, Planning Director

DATE: August 14, 1980

RE: A.S. 29.63.090, Service Area

As we discussed, Judi pointed out a problem in the following excerpt from A.S. 29.63.090:

> ...the exercise of the powers must be approved by a majority of the qualified voters residing within the service area...

This doesn't correspond with A.S. 29.63.015, outlining procedures for special assessments, where the borough notifies the legal owner of record of real property of the proposed assessment, and where, if the bearers of 50% of the assessment protest, the process stops. These two sections are too interdependent for such a discrepancy.

The wording under service areas is unclear. Who has the right to vote: the renter residing on the property in the proposed service area or the absent property owner, who will bear the assessment? I'd guess the legislature envisioned the property owner residing on the lot; your point about the absentee land owner living in Florida is well taken. Moving owners onto their property in trailers long enough to hold an election is equally absurd. More research is needed to find clear and equable wording, but as a start I suggest the following for discussion:

> ...the exercise of powers must be approved by a majority of the qualified voters <u>who are legal owners of real property</u> within the service area...

*(Judi: Please note your comments.)

Russ - I feel that making this just real property owners is very limiting - would approach the problem from a petition standpoint if there is a number of residents that has problems also

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
P. O. BOX 7300
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

July 31, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 N. Franklin Street
Juneau, Alaska 99801

Re: Title 29 Review

Dear Ginny:

In furtherance of our telephone conference this date, please find enclosed herewith a preliminary list of matters the Ketchikan Gateway Borough and staff would appreciate being considered regarding the proposed Title 29 review. As I also mentioned, we would expect further submissions by staff as soon as possible as their concerns are developed.

If we can submit any further information regarding these points, please do not hesitate to so advise.

Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

cc: Borough Manager
City Manager

1. AS 29.40.037 - Extraterritorial Jurisdiction:

Amend to include "harbors" as type of facility municipality may own or operate outside its boundaries.

Comments: The City of Ketchikan currently leases from State and operates several boat harbors outside the boundaries of the City.

2. AS 29.53.135 - Board of Equalization:

Amend to clarify authority of assembly to appoint a board composed of not less than three (3) persons who may be (a) members of the assembly, (b) private individuals with certain experience, or (c) combination of (a) and (b). [See attorney Tesche memorandum, page 3]

3. Interest Rate:

The legal rate of interest now provided for in various tax enforcement provisions is eight (8%) percent.[1] Consideration should be given as to whether this rate should be increased. Also, interest rate on special assessments [AS 29.63.060(a)] is linked to the interest on real property taxes.

4. AS 40.15.030; AS 40.15.050 - Dedication of Streets, Alleys and Thoroughfares:

Add language to specifically provide that although second class borough may, as the platting authority, require, as a condition of approval of a subdivision of property, the dedication of rights-of-way and easements, and the installation of roads, sewers, and other utilities and improvements, and the dedication of such rights-of-way and improvements to the public, that the borough does not by such action become liable or responsible for any maintainance, operation, or inspection thereof, or for injuries to any person using the improvements (i.e., child drowns in drainage culvert not covered, cleaned, inspected, or maintained).

---

[1] See: AS 29.53.180(a)(1), (a)(2), and (c)
AS 29.53.375
AS 29.53.390
AS 29.53.415(d) (sales tax)

**Comments: Since a second class borough does not have road or other maintenance powers, but via the planning commission is the agency that requires and approves, incident to its platting authority, the design, construction and installation of subdivision improvements, which by AS 40.15.030 - AS 40.15.050 are "deemed to have been dedicated to public use," a question regarding ownership and duty to inspect and repair the facilities arises (See 9.65.070 - [immunity applies only "when the municipality is neither the owner nor lessee of the property involved"]). State law has addressed certain aspects of the matter in AS 38.08.090.**

7. Implementation of Grants:

Amend AS 37.05.315 [HB 578] to require the State Department of Community and Regional Affairs to receive, administer, and implement any State grants which a municipality does not have the power to administer and implement (such as those appropriated by Ch. 50 SLA 80 as is now the procedure regarding grants to unincorporated communities where there is no incorporated entity qualified to receive the grant (AS 37.05.315(h)(3)). Also amend AS 37.05.315(c) to not impose covenant requirements on municipality with no power to operate and maintain the facility.

6. AS 29.33 - Planning, Platting and Zoning:

(a) AS 29.33.085 - Comprehensive Plan: Amend section to require comprehensive plan review every five (5) years rather than every two (2) years.

Comments: See paragraph (1) of Planning Director's memorandum dated July 22, 1980.

(b) AS 29.33.090 - Zoning: Expand on enabling language to assure borough is not restricted in forms of zoning permitted.

Comments: See paragraph (2) of Planning Director's memorandum dated July 22, 1980.

(c) AS 29.33.150 - Platting Jurisdiction and Power: Amend subsection (b) to delete the following language in brackets and adds the underlined language to clarify the responsibility of State to comply with design and other requirements and only exempts State from actual construction requirements:

"(b) The regulations adopted under (a) of this section apply to subdivision plat of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board, except that the platting board [may not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat] must approve the subdivision plat if the plat meets all local platting regulations other than those requiring the construction of roads or capital improvements on state land included in the subdivision plat. Subdivision plats of undeveloped state land for disposal shall be accompanied by engineering plans for all improvements required by local regulations applicable to the subdivision of private land."

Comments: See paragraph (3) of Planning Director's memorandum dated July 22, 1980.

(d) AS 29.33.200 - Alteration of Replat: Amend or add a new section to allow for approval and recording of plats for minor boundary adjustments without going through formal planning commission hearings where no new lots are created, and no new dedications of roads or other rights-of-way are involved.

Comments: See paragraph (4) of Planning Director's memorandum dated July 22, 1980.

(e) AS 9.55.275: Add language to recognize that a change in boundary pursuant to AS 09.55.275 may result in a substandard size lot, and that compliance with normal subdivision requirements is not required with waiver by assembly permitted.

Comments: Cities or other public agencies frequently acquire in fee narrow strips or areas for road widening, sewer, park or other facilities which are very small in size (i.e., pump station for sewer system 25 x 25 etc.) and the public agency may in fact be prohibited from acquiring excess area not actually required for the public improvement. Such acquisitions frequently result in a change of boundary within the provisions of AS 09.55.275 and planning commission approval of a preliminary plat and also a final plat, is required.

(f) State Filing of Acquisitions. Filing of a plat with the local planning authority should be required if State acquires easements or rights-of-way across platted parcels.

Comments: See paragraph (4) of Planning Director's memorandum dated July 22, 1980, addressing need for filing with the local planning authority.

(g) AS 29.33.170 - Waiver of Subdivision Requirements: Amend section to make waiver permissive and clarify access which must be found to exist before platting authority may waive plat approval and recording requirements.

Comments: See paragraph (5) of Planning Director's memorandum dated July 22, 1980.

7. AS 29.53 - Corrections, Cancellations, Refunds and Transfers of Taxes. Add sections to provide procedures for correction of tax roll, refund or cancellation of taxes after confirmation and certification of final tax roll when required to correct clerical or mathematical errors, assessment of non-existent property, errors in legal description, or other administrative problems. AS 29.53.-390 does not accommodate the foregoing.

Comments: The Borough assessor advises the State assessor, with assistance and input from local assessors, will be making suggestions and proposals regarding the above.




**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901


**TO:** Judith Slajer, Borough Manager

**FROM:** Kathryn Carssow, Planning Director

**DATE:** July 22, 1980

**RE:** Title 29 Revisions

Last week, Bill, Jim, and I met to discuss improvements to Title 29; following are our recommendations --- add, (delete):

1. Section 29.33.085. Comprehensive plan. (b)...The planning commission shall undertake an overall review of the plan at least once every (two) five years.

   To do justice to the time and money invested to develop the original policies, an overall review of the comprehensive plan every two years is impossible for a small department like ours with other major projects. We prefer revision every five years to allow us time to detect and incorporate changes in economic, population, and land use trends and to undertake other major planning efforts without increasing our existing staff.

2. Section 29.33.090. Zoning. We intend to do additional research on this section. Our concern is that performance zoning may not be allowed under this section.
   AS 29.33.090 states in part "The assembly shall regulate... use of land...by districts or contract zoning." Contract zoning being a hybrid of a district (Euclidean) type zoning. Many performance systems do not employ districting as a control element. Therefore present state law may not include enabling language for other than land use controls based on traditional Euclidean zoning.

3. Section 29.33.150. Platting jurisdiction and power. (b)...the platting board (may not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat) must approve the subdivision plat if the plat meets all local platting regulations other than those requiring the construction of roads or capital improvements on state land included in the subdivision plat. Subdivision plats of undeveloped state land for disposal shall be accompanied by engineering plans for all improvements required by local regulations applicable to the subdivision of private land.

Of course we prefer to see this section deleted altogether, but clarification along these lines will be an improvement.

4. Section 29.33.200. Alteration of replat petition. See attached memo from Jim re: feasibility of shortened plat procedure.

   This section needs language to distinguish plat alterations from subdivisions.

   Also, AS 09.55.275 requires plat approval for parcels condemned for public purposes - e.g. city condemnation of the Wingren property for the sewer pump station - but AS 29.33 does not have corresponding language speaking to approval of substandard parcels for public purposes. See Attachment 2.

   See Attachment 3 for Bill's explanation of problems resulting from condemnations for state right-of-ways.

5. Section 29.33.170. Waiver in certain cases. (a) The platting authority (shall) may...

   (1) each tract or parcel of land will be located on or have (adequate access to a) developed road access to a public highway or street;...

   (3) the conveyance is not made for the purpose of, or in connection with, a present (or projected) subdivision development;

   For purposes of maintaining accurate platting records Section 29.33.170 should be deleted entirely; as a minimum, we recommend the above clarifications. The first is intended to define "adequate access." The second deletes the reference to projected development; for all practical purposes it's a meaningless criteria.

wr



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Judith Slajer, Borough Manager

THRU: Kathryn Carssow, Planning Director

FROM: Jim Rapp, Zoning Administrator

DATE: January 15, 1980

RE: Feasibility of Shortened Plat Procedure

At the January 14, 1980 workshop on the proposed new subdivision ordinance considerable discussion centered on the possibility of shortened plat procedures for "minor" subdivisions. A minor subdivision is basically one that does not involve the creation of additional lots or new streets. An example would be, two neighbors wishing to swap a 10' wide strip of land along their common side lot line in order to correct a house siting error. Proposed Section 55.10.045 (attached) provides a mechanism for such a shortened procedure.

This proposed section, as presented to the Borough Assembly, calls for a one step approval by the Platting Board, as opposed to the usual two step approval. As originally recommended by the Planning Commission in their review of the new ordinance, this provision was made an entirely administrative responsibility. Provided the limitations of Section 55.10.045 were honored, the designated planning official would approve the plat, obtain necessary signatures (Borough Manager, Planning Commission Chairperson, etc.) and see to its recording. However, the Municipal Attorney, in reviewing the Planning Commission's recommendations, found that Alaska Statutes Title 29 and Title 40 mandated approval by the full Platting Board in all cases.

Alaska Statute 29.33.200 sets out a replat alteration procedure that states that the petition shall be filed for approval by the Platting Board. This is reinforced by Alaska Statute 40.15, Dedications and Subdivisions, which calls for platting authority action in several instances. Alaska Statute 29.33.200 is the only vehicle suggesting the application of a minor subdivision procedure and unfortunately perhaps does not accomodate the greatest possible shortening of the process.

Administrative approval of short plats is a practice widely used in other areas and has several advantages, such as reduced processing times and costs. In order to protect neighboring properties, I would suggest that public notices be sent out for short plats with a five day response limitation. If any significant problems come to light as a result, an administrative decision would be made to present the plat to the full Board. Amendments to Alaska Statute 29 would be necessary for Ketchikan to adopt such a policy. Section 55.10.045 of the revised subdivision ordinance is the most expeditious route available at present. If a change in state law is desired, I suggest the Assembly refer the matter to legal and planning staff for preparation of language addressing the necessary changes and subsequent discussion of this issue with our state legislators.

wr

City is submitting this plan as a matter of form. The statute requiring the plat is AS 09.55.275, quoted here in full:

> "Replat approval. No agency of the state or municipality may acquire property located within a municipality exercising the powers conferred by AS 29.33.150 - 29.33.245 which results in a boundary change unless the agency or municipality first obtains from the municipal platting authority preliminary approval of a replat showing clearly the location of the proposed public streets, easements, rights-of-way, and other taking of private property. Final approval of replat shall be similarly obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners."

Attachment: Site Plan

TO: Kathy Carrsow, Planning Director

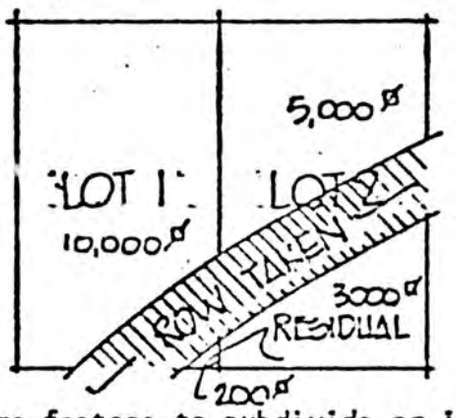
FROM: Bill Jones, Associate Planner

DATE: July 17, 1980

RE: Title 29

In reviewing Title 29 I was not able to identify any specific section which would apply to the State of Alaska "taking" land for rights-of-way without the benefit of a replat. My concern is that these defacto subdivisions often become obstacles to proper land development.

The following sketch illustrates the problem and I have included questions that "local planners" are often asked about results they were powerless to affect.




Can I use the square footage to subdivide or increase density ?

Can I put a culvert under the road and use it for a drainfield ?

Can I sell it to someone else ?

Just what can I do with it ?

Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

June 12, 1980

TO: Mr. Billy Barrier
FROM: Marjorie Gorsuch mg
RE: FCCSHB947

Being aware that you will be involved in the revision of Title 29, as per the requirements of CSSCR66 which directs the Alaska Legislative Council to review the Municipal Government statutes, I want to call your attention to an area of law, enacted by the Eleventh Legislature as FCCSHB947, which you will want to address during the course of your revision. In the haste of the last days of legislative activity, the following omissions went unnoticed when the Free Conference version of the bill was adopted.

Section 9 AS 29.23.025 (e) outlines the procedures to be followed if a reapportionment ordinance has not been approved by the voters after the assembly has determined that reapportionment is necessary. The law does not address what happens to the order--is it voted on by the people? Can the order be appealed? Is administrative or judicial review provided for?

In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.

Both the draftsman, Jack Chenoweth, and Ginny Chitwood of the Municipal League which will be involved in the revision of Title 29 are familiar with the problems in the Free Conference law and would be able to answer any questions.

**More grist for the Title 29 mill:**

**Elsie O'Brien (Houston city clerk) to Arliss Sturgulewski**

**(1) AS 29.28.190, recall provisions --**

**Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain**

**(2) AS 29.63.090 -- service areas within boroughs**

**The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.**

General observation with respect to Title 29 -- would like greater information within the text of the ~~statute~~ volume. (This is probably not possible because of the strict format relating to what may be annotated. However, perhaps CRA Department should receive an amount so that each year, for small cities, a loose-leaf form of Title 29 may be prepared or updated which carries changes in law, applicable commentary, case decisions, AG opinion texts, etc. supplied by the Dept on a quarterly basis. -- The cities could reimburse for the service, or for a portion of it.)

8/7 JC

**Tanana Chiefs Conference, Inc.**

Doyon Building
1st and Hall Streets
Fairbanks, Alaska 99701
Phone (907) 452-8251

RECEIVED
AUG - 5 1980
DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

August 1, 1980

Ms. Lee McAnerney
Commissioner
Dept. of Community & Regional Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

This letter is in response to your June letter requesting comments on the Title 29 Municipal Government Code Revision authorized under Senate Concurrent Resolution No. 66. As indicated by our prior correspondence, we are greatly interested in this area and wish to submit the following comments to be used in the Title 29 revision project.

RECOGNITION OF TRADITIONAL GOVERNMENTS

Local government in rural Alaska is extremely complex. This complexity is primarily due to the vast number of board, commissions, municipal corporations, ANCSA Native Village corporations, town site trusts, recognized entities for municipal trust lands, IRA councils, traditional councils, etc. For sometime TCC has been in favor of local government simplification. The problems of local government should not be addressed through the creation of new boards, commissions, corporate bodies, or new forms of municipal government. Rather, rural local government should be reorganized to utilize existing bodies and enhance those bodies. The introduction of new and novel forms of government may only lead to confusion as rural residents attempt to deal with their local governmental matters.

In connection with this policy of local government simplification, we believe it is important to fulfill the constitutional guarantee that the legislature shall provide for performance of services that it deems necessary or advisible in the unorganized borough and allow for maximum local participation and responsibility. This policy is substantially analogous to the federal policy of self-determination.

To meet these two basic policies, we feel it is necessary that the state of Alaska recognize the traditional governments which currently operate in Alaska. Such recognition will do several things. First, it will allow for the coordination of the funds currently available to local communities from sources other than the state, i.e., BIA, HUD, various CETA programs, etc.

To some degree this issue has already been addressed in the recognition of traditional governments for revenue sharing purposes. We feel, however, that more cooperation is needed between the state and these traditional governmental forms to fully realize maximum local participation and responsibility. To implement this, we favor such legislation as S.B. 565 introduced last session.

By extending such recognition to existing village and community organizations, we believe that rural government will be substantially enhanced. The recognition of such existing bodies will obviate the necessity for the specialized advisory committees, specialized service areas and boards and substantially contribute to local government simplification in the currently unorganized areas of rural Alaska. In addition, such recognition will fulfill the constitutional guarantee of maximum local participation and responsibility.

DECENTRALIZATION OF STATE SERVICES

It is sometimes difficult even for Alaskans to fully comprehend the geographical immenseness of Alaska. An appreciation of the sheer size of Alaska cannot be achieved through casual reference to a map. A full appreciation of Alaska's geographical size can only be appreciated by traversing this great land through conventional transportation systems. To the rural resident, this means being dependent on urban based state service personnel located at various sites throughout the state. Seldom is it possible for the rural resident to contact a state agency locally or even make a single phone call to a single urban government office to solve any problem. The urban Alaskan faces a similar problem in having to rely on state personnel based in other urban centers.

In both the rural and urban contexts, the root problem is the economy of scale. It is simply not economically feasible to establish free standing state agencies at the local level. The administrative cost to establish such programs would be enormous, but the need for decentralized state services is evident. State services should be available in the areas of need. State services should be available at a local level in all localities of the state to the extent that this is feasible. This problem can only be solved through the cooperation of local and state governments to provide maximum local services. This cooperation can be achieved by allowing the local governments to contract for the providing of state services. Basically, this will allow the merger of local and state program administration and allow a maximum amount of direct state financing directed toward program operations. Additionally, it is perceived that such cooperation would make the operation of state programs more responsive to local needs and desires.

It should be remembered, however, that the legislature under this theory will retain ultimate policy decision-making authority. It is only the administration of state and local programs which will be affected. Additionally, it should be recognized that not all state programs can be effectively decentralized, nor is it desirable that all state programs be decentralized. Rather, it is important that those state programs which are technically capable of being decentralized and for which there is a stated need and desire for local program operation should be decentralized through contracting.

LOCAL GOVERNMENT CONSORTIUMS

During the last legislature, several bills were produced out of the interim work of the Senate and House Community and Regional Affairs Joint Local Government Study of 1979. These bills recognized the need for coordinated regional planning.

Last February, TCC submitted comments on this legislation. At that time, we stated that existing local governments should be used as much as possible and that regional concerns can best be addressed through consortiums of existing governments.

Consortiums are advisable for a number of reasons. First, they would be entirely voluntary. The committee hearings fairly indicated strong opposition to "mandatory" regional organization. Second, consortiums could easily coordinate existing programs allowing for current program and plan continuity. Third, a consortium would not create a new independent regional entity and, thus, it would be possible to avoid the type of intergovernmental conflicts which characteristically exist between boroughs and included cities. Finally, the consortium would be governed by a flexible agreement between communities. Such agreements could be flexible enough to address unique regional variations found within each area. In addition, a community's participation would be voluntary, and, therefore, presumably supported by the local community.

The arrangements which we propose are currently authorized under Article X, §13 of the Alaska Constitution which allows local governments to enter into compacts for the joint administration of functions and powers. What is needed is clarification of the permissible scope and impact of these agreements, and new legislation which would allow such consortiums to jointly exercise authority outside of their existing local boundaries.

Conceivably, these consortiums would do three things. First, they would provide for coordinated administration of local governments. By splitting costs and sharing staff, the consortiums could provide a higher quality of service at a reduced cost, where the fragmented governments that now exist cannot operate. Second, the consortiums could address regional concerns, provide a forum for expressing those concerns, and advise state agencies on regional needs and desires.

**Third, they would jointly exercise those powers which they agree to jointly exercise outside their current respective boundaries, or within existing boundaries, upon consent of the respective municipal governments.**

## STATE SUPPORT OF LOCAL AUTHORITY

**There are a number of disincentives to a rural municipal government which wishes to exercise its municipal authority. For example, a rural community which passes an ordinance, may not be able to enforce it. If a city attempts to enforce its ordinances, it is subject to substantial liability under current tort law. Where a civil plaintiff or criminal defendant often have free legal assistance available, a city has severely limited funding available to enforce its ordinances or defend against civil complaints. If a city looses a civil suit, the resulting judgment could bankrupt the city or substantially incumber future revenues. In this atmosphere, it is impossible to expect a responsible city official to fully exercise the local government functions.**

It is important that the state assist rural municipal government if it is to succeed. Many of the problems can be addressed in Title 29 itself. For example, municipal liability can be reduced to acceptable levels by enactment of a rule raising the standard of municipal tort liability for only those official acts involving "wanton and willful" conduct rather than mere negligence alone. Municipal ordinances and regulations can be assimilated into state law to allow state prosecution of local violations. Such assimilation could be dependent upon compliance with a model municipal code enacted by regulation or dependent on approval of the attorney general's office or Department of Community and Regional Affairs. Communities enacting nonapproved regulations and ordinances, however, should still be able to enforce them in the conventional manner.

Initially, such a system seems expensive to implement. It should be noted, however, that the state is expanding its criminal justice presence in rural Alaska. The proposed Bush Justice Corrections Plan would provide the basic infrastructure required by the above model. In light of these developments, the above model is a minor addition to the planned infrastructure.

## IMPLEMENTATION OF LOCAL INPUT

Often local governments and state agencies are not coordinated. Most notably, state land disposals have often conflicted with local land use/development plans. State law generally favors local control or at least local input in the organized areas of the state. In the unorganized areas of the state, however, the state agencies seem to dominate. This exists in spite of the constitutional promise of maximized local participation. We, therefore, propose that some mechanism be inserted into law to provide for fuller local participation.

Three alternatives exist. First, an administrative restraint may be placed on agencies' actions. Specifically, a community or consortium must agree to agency actions/plans affecting the community or consortium. In the absence of such consent, the agency would have to show, in a locally neutral administrative hearing, that the best interest of the state requires such agency action/plan.

A second alternative would be a planning restraint on the agencies. The communities or consortiums would produce regional plans with which the agencies must comply. Without compliance, the agencies would have to get a waiver from the community or consortium or proceed through a local neutral hearing.

Third, a political mechanism could be established. State law could require agencies to have local plans/actions approved by a local hearing officer at a local hearing. This would allow affected communities and consortiums an opportunity to provide input and hopefully influence agency actions in their areas.

We hope that you find the above comments useful, and that these concerns find their way into the planned Title 29 revisions. We will be glad to respond to any questions regarding the above proposals and plan to augment these comments as needed.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. Williams

William C. "Spud" Williams
President

WCW/4877m
113a11

**AREAS OF AS 29 (MUNICIPAL CODE) REQUIRING ATTENTION**

**DICTATED 7/29/80 BUT NOT READ**

**BY GERALD L. SHARP**

---

**The use of the word election throughout the code should be examined with the eye to eliminating all those references to "general" election where it was meant to refer to a municipal election. Where a state general election was meant, the word "state" should be added.**

AS 29.08.010, 29.13.010 and 100, and 29.78.010(1)(2)(8)

A careful reading of the code indicates that a unified unit of home rule local government is not a municipality. Under these sections, it is not a home rule municipality. If this was the intent, it should be clarified in the definitions. Along this same line, all sections which apply to home rule boroughs and home rule cities should be reviewed to determine whether they should also apply to unified units.

AS 29.08.020

An interpretive guide should be provided for the court so that it does not seize upon this section to revive Dillon's Rule.

AS 29.13.100

The effect of the phrase "acting otherwise than as provided" should be examined to determine whether this phrase means that a home rule municipality may do neither more nor less than is prescribed for home rule municipalities. See the Whitson case.

AS 29.18.130

We should probably address REAA's under this section.

AS 29.18.140(a)(b)

This section implies that a newly incorporated city or borough may succeed a home rule or previously incorporated general law city or borough. Was this meant?

**AS 29.18.180**

**Organizational grants under this section appear to be inadequate.**

AS 29.18.330

**The resident training and hire preference should be examined for constitutionality.**

AS 29.23.060(a)

**This section implies that there may be no special meetings if any member is not notified.**

AS 29.23.060(d)

Some consideration should be given to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

AS 29.23.070

This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.080

This section should be checked to determine whether it tracts with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.040 et. seq.

The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualifications of officers as these relate to the mayor, council, and assembly memebers should be uniform as between a city and a borough.

AS 29.23.210

Does this require four votes on a procedural motion? This language should parallel the similar provisions for

boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions.

AS 29.23.310

Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)

Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360

My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

AS 29.23.370

I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps, there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to serve two different masters, the legislative body, and the chief administrator.

AS 29.23.395 through .401

This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470

I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480

I suggest that the adoption of an ordinance at the very next meeting after the repeal of a manager plan is expecting

too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540

The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school boards budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. (Sour grapes on my part, perhaps.) Also, it appears that this section would permit a person working in the grants section of the Department of Community and Regional Affairs to serve on an assembly or a council.

AS 29.28.015

I question why the mayor in a manager type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030

It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the state of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.080(a)

This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.110

This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

**AS 29.28.130**

**This section should be clarified to indicate whether a re-elected official may be recalled within six months within of his second election.**

AS 29.28.140

This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting. They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.

AS 29.28.150

Some thought should be given to clarifying this section to require that the name of each elected official appear on a separate petition and not be on the same petition with any other elected official. The statement of the grounds should also be limited to 200 words.

AS 29.28.160

Either the clerk or the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170

I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60. If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be given an additional ten days for their sloppiness or inadequate performance.

AS 29.28.200(c)

If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name

**is removed from the recall ballot, may he then be reappointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?**

AS 29.28.210

**If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?**

AS 29.28.250

What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS 29.33.010

Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in its Lafayette decision.

AS 29.33.050

While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read "and shall establish, maintain, and operate."

AS 29.33.080(e)

Consideration should also be given here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

AS 29.33.085(b)

The requirement that the commission present new recommendations on a comprehensive plan every two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it does not appear that there is any

question as to the validity of an ordinance which is adopted pursuant to a comprehensive plan which has not been reviewed for more than two years. Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.110(b)(1)

I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works. The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)

It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance," or "variances from the terms of the zoning ordinance," or "requests....".

AS 29.33.120

It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)

I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150

It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

AS 29.33.170(a)(1)

I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.

AS 29.33.150(b) and AS 29.33.160(c)

These sections need to be revised out of the code.

AS 29.33.190

This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.200

This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

AS 29.33.240

I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vest in a municipality upon vacation.

AS 29.41.010

Perhaps the idea of third class boroughs should be re-examined.

AS 29.48.010

I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I

believe some consideration should be given to whether or not there should be a catch-all grant clause. Also, something should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.030

This may be the appropriate section to deal with the Lafayette antitrust problems. Under subsection (b), someone to check to determine whether the reference to the Alaska Transportation Commission makes sense in the light of SB 577 (sorry, I do not have the bill with me as I dictate this).

AS 29.48.033

Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

AS 29.48.050

I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.070, .080, and .090

The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly be adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)

Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110

AS 29.48.110 should be changed to make it clear that a

municipality may establish more than a single historic district.

AS 29.48.160(b)

If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.190(b)

This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and be for a capital improvement.

AS 29.48.200

The fine limitation and the imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

AS 29.48.210

This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide basis.

AS 29.48.250

Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260

I believe the exemption which is set forth in (d) should be expanded to incompass any land which the municipality disposes of.

AS 29.48.270(b)(c)

These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

AS 29.48.310, 320, and 330

Although these three sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights Card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.010

Again the problem of how this is to apply to unified units of government; also, this section should be changed to permit the use of areawide revenues on a non-areawide basis.

AS 29.53.020(a)(1)

Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

AS 29.53.020(a)(3)

A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps, hospital, which are used in this section. Also, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt; for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.030

This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

AS 29.53.060

Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.135

This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to the exempt use.

AS 29.53.150

A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

AS 29.53.180

This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.415 and .440

Something needs to be added to these sections to take care of the problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.73.020

This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.

**Matanuska-Susitna Borough**
BOX B, PALMER, ALASKA 99645 • PHONE 745-3246
BOROUGH ATTORNEY'S OFFICE

July 30, 1980

Lee McAnerney, Commissioner
Department of Community & Regional Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

As you, Phil Smith of Rural CAP and Ginny Chitwood of the Alaska Municipal League recently requested, I am happy to enclose a list of revisions the Legislature and its Policy Committee may wish to consider in connection with revision of AS 29. Let me emphasize this is only a partial list of areas where AS 29 may be improved.

Cordially,

Allan E. Tesche
Borough Attorney

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Enclosure

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29.08

Although an attempt has been made in this Chapter to classify the various kinds of Alaskan municipalities, more recent amendments to Title 29 and unification of several cities and boroughs have resulted in confusion over definitions of "cities", "boroughs", and "municipalities". It is not clear, for instance, whether the unified Municipality of Anchorage is a city, a borough, or unified municipality or all three forms of government within existing provisions of AS 29.

29.13.100

The Code should contain a uniform system for designating statutes that expressly apply to home rule municipalities and all such statutes should be consistently cross referenced.

29.23.050

The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

29.23.060(d)

Circumstances, other than financial interests, which allow a member to abstain should be better defined.

29.23.080

The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

29.23.130(B)

Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

29.23.150 and AS 29.23.470

Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

29.23.170

This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto. For instance, if the mayor vetos a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

29.23.200

The three year residency requirement here is also probably invalid.

29.23.210

As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

29.23.250

Another probably invalid three year residency requirement.

29.23.270

This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

29.23.555

This section has been superceded by AS 39.50.

29.28.070(b)

Reference to "last general election" in this subsection is unclear; considerable confusion has existed in the past over whether the term refers to the last state or municipal election.

29.28.130 et seq

Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

29.33.070--245

Serious thought should be given to the purpose of the planning, platting and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

29.33.190

This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which has not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53 .310 allows persons holding security interest in illegally subdivided lands

to obtain release for portions of lots or tracts [illegible] though such lands were illegally subdivided in violation of AS [illegible].

29.33.070

It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

29.33

The current language of this chapter, as it incorporates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restrictive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

29.33.250

Presumably the transfer required is one from all cities exercising the power rather than from a city.

29.33 and 29.38

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities)?

29.48.030(b) AS 29.48.035(b) and (c)

These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code.

Moreover, AS 29.48.030 and .35, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very lease confusing and perhaps unnecessary.

Reference to powers granted to second class boroughs to construct and maintain Local Service Roads and Trails under AS 19.30.251 should be made in this section.

Reference to the power granted to local governments to regulate use of public streets, alleys and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

29.48.030(a)(12)

The term transportation "system" used in this section should be defined.

29.48.260

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of lanc offered for sale and the date upon which such valuations must be based. Moreover,

the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

29.58.135

The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

29.53

Should be amended to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years. An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

29.63.090

The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

8.60.050-100

Regulation of junk yards in this section should be cross-referenced to those sections of Title 29. relating to areawide planning, platting and zoning powers.

9.25.110-120

It is unclear whether public records statutes apply at all to municipal government. If it is the intention of the Legislature to apply the public records laws of AS 9.25.110-120 to cities and boroughs, then those sections should be amended accordingly with an appropriate cross references to Title 29.

# City of St. Mary's

P.O. Box 163
ST. MARY'S, ALASKA 99658

July 29, 1980

Department of Community and Regional Affairs
Pouch B
Juneau, Alaska 99811

Re: Recommendations for changes in Title 29
To Title 29 Policy Committee

Gentlemen:

At the request of Mayor Paukan I am submitting the following comments on some of the provisions of Title 29 that the City would like to see changed. The provisions I have commented upon are those that have proved somewhat troublesome during my duration as City Manager. There are no doubt many other provisions that require change.

29.23.570 VACANCIES: This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570

29.23.070 and 29.43.040 PLANNING, PLATTING AND ZONING The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

29.48.190 BUDGET AND CAPITAL PROGRAM Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except though lengthy procedures to ammend the budget. The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the orignial appropriation.

29.48.220 POST AUDIT The audit requirement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million

29.48.260 MUNICIPAL PROPERTIES I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's. First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak english from participating in auctions. The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

I can see no reason for subjecting leases of City land to the same requirements that attach to sales of city land. This unduly restricts the City's ability to make land available for new businesses.

It is not clear whether the exception developed in subsection (e) is free from the requirements of prior appraisal and public auction or sealed bid.

29.68.010 LOCAL BOUNDARY COMMISSION The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative session has begun. The delay in time between the decision of the Local Boundary Comm'n. and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

I am delighted to see the efforts to review Title 29. I hope it produces some beneficial results. I trust these comments will prove helpful.

Sincerely,

CITY OF ST. MARY'S

Timothy E. Troll
City Manager

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## Proposed Agenda

The proposed agenda for the meeting is:

1. Introduction of policy advisory group members.
2. Selection of a chairman.
3. Discussion of the role of the technical revision committee.
4. Discussion of the role of proposed ex-officio members representing Community and Regional Affairs, Ruralcap, and the Municipal League.
5. Presentation of proposed items for consideration by staff and ex-officio members.
6. Open discussion.
7. Setting future meeting dates for the policy advisory group.

**SUMMARY OF ATTORNEY GENERAL MEMOS AND OPINIONS CONCERNING TITLE 29 - 1972-80**

1. AS 29.03.210 - .240 - (M) July 3, 1979
Vacation of a state easement across state-owned land does not constitute "disposal of an interest in land" and strict statutory requirements of notice for disposals of state land are not required. Notice required by due process are fulfilled by the notice procedures set when the state is acting as a platting authority in the unorganized borough and in third class boroughs under AS 40.15.075.

2. AS 29.13.010, 29.53.055 - (O) August 29, 1978
A strict tax-limit ordinance conflicts with state law and is void. An ordinance which, without exception, limits property tax rates would impair the obligation of contracts.

3. AS 29.13.100 - (M) July 10, 1978
Home rule boroughs are not precluded from establishing their own postsecondary educational institution which is independent of the University of Alaska.

4. AS 29.13.100, 29.48.037 - (O) May 5, 1977
Because AS 29.48.037 is identified by AS 29.13.100 as among those provisions which a home rule municipality may not provide to the contrary, it is exclusive and no additional services may be provided or jurisdiction exercised extraterritorially by any municipality. Only the matters provided for in AS 29.48.037 are within a municipality's power and it may not levy an extraterritorial tax. Insofar as revenue sharing is available for providing a serive or facility identified in AS 29.48.037, a municipality providing the service or facility extraterritorially should qualify. Ownership of the situs of the facility should have no effect except insofar as a provision on revenue sharing may contemplate ownership as a condition of eligibility. If a municipality operates a park, it makes no difference that it is on federally owned land.

5. AS 29.13.100, 29.53.035 - (O) May 19, 1972
Farm lands must be assessed at their value for farm use only.

6. AS 29.18 - (M) July 27, 1979
The Department of Natural Resources may not grant municiapl and ANCSA selections of state land within the capital site at Willow.

7. AS 29.18.180, 29.18.200-.460 - (M) February 22, 1978
Development cities are not entitled to an organization grant, only to land (AS 29.18.420) and to shared revenue (AS 29.18.440).

8. AS 29.18.190 - (M) February 14, 1974
Lands leased for oil and gas are not vacant for municipal selection. Lands classified "resource management" are appropriated and removed from municipal selection.

9. AS 29.18.201 et seq. - (M) May 22, 1979
The Department of Natural Resources should not put land selected by municipalities or by Cook Inlet Regional Corp. into the land disposal bank even though there is insufficient state land available to meet the acreage limits suggested by the letter of intent accompanying the provision creating the land disposal bank.

10. AS 29.18.201 et seq. (M) May 18, 1979
The Department of Natural Resources is obligated to approve and convey leased land which has been selected by a unified municipality prior to July1, 1979, the effective date of the act changing this obligation.

11. AS 29.18.202 - (M) October 19, 1978
The director of the Division of Lands may use AS 38.053.315 to do substantial equity for municipalities which do not contain "vacant, unappropriated, unreserved general grant land" for purposes of municipal selection. Mental health lands are not "general grant lands" for purposes of municipal selection.

12. AS 29.18.205(e) - (M) December 15, 1978
A nomination of land for selection by a municipality segregates it from homestead appropriation. (Interpretation of the Alaska Homestead Act.)

13. AS 29.28.030 - (M) December 15, 1978
Re-registration in a new municipality is not required before a person may vote in the municipal elections. The statute requires only 30 days residency and registration to vote in state elections.

14. AS 29.18.213(12) - (M) June 20, 1979
Kodiak Borough selections of land classified as timber land on Shutak Island should not be approved. Timber land is not "vacant, unappropriated, unreserved land" unless classified in accordance with an agreement between a municipality and the state providing for state management of municipal land.

15. AS 29.18.340, 29.23.555 - (O) September 27, 1972
A conflict of interest would arise in the event that a state employee who serves as a member of a Development City Council should also have a stock interest in the major development company.

16. AS 29.18.360, .460, 29.33.010(b), .050, .070 - (M) April 6, 1978
A development city, during its development stage, could take over planning and zoning under AS 29.33.080 from the borough, though it need not do so. An organized borough retains full authority over any schools. It is the borough, and not the development city, which must develop and adopt the district coastal management program, however, the development city's plan must be considered by the borough when it develops and adopts the coastal management program.

17. AS 29.23.020 - (M) November 6, 1978
Re-apportionment must occur when the existing apportionment does not meet equal protection (one-man, one-vote) standards. Redistribution of voting power among the existing membership (weighted voting) does not meet re-apportionment requirements for borough assemblies.

18. AS 29.23.020 - (O) February 25, 1974
The municipal code, not AS 14.12.030(a), governs the size of assembly-school boards in third class boroughs. Localities were intended to have broad latitute in determining the composition of their assemblies and the narrow restrictions on size of school boards ought not to be applied where the assembly also serves as school board.

19. **AS 29.23.020(a) - (O) February 9, 1973**
**Inclusion of non-resident military personnel and dependents in the population base for purposes of apportioning representation on a borough assembly is not constitutionally required.**

20. **AS 29.23.021 - (M) March 21, 1980**
**Apportionment plan may provide for district-at-large representation absent an attempt to underrepresent a racial or political minority.**

21. **AS 29.23.021 - (M) March 20, 1980**
**Weighted or fractional voting is not a constitutionally valid method of reapportionment.**

22. AS 29.23.100 - (O) October 31, 1974
School boards must be elected at large rather than from zones. (Incorrect - see (O) Aug. 29, 1977)

23. AS 29.23.170(a) - (O) May 2, 1977
The mayor may veto the "local source" resolution but he may not exercise an item veto upon it (or the subdequent appropriation) to strike or to reduce any of its items. The item veto is to be used solely on appropriations and my not be used on school budget "items." The "local source" resolution (setting the total amount of local money to be used to finance schools) is not itself an appropriation but rather sets the limit and advises school officials of it. A subsequent enactment makes the appropriation.

24. AS 29.23.310 - (O) August 29, 1977
Borough school board members may be elected from zones, but they must be elected only at-large from zones (while they represent the zone in which they reside, they are responsible to the entire borough electorate).

25. AS 29.28 - (O) June 6, 1977
Inaccuracy of recall petition's allegations is not concern of election officials or the courts and is irrelevant. The only question to be decided is whether or not the charges are sufficiently specific to allege incompetence or misfeasance if they were in fact true.

26. AS 29.28.140, .150(a) - (O) April 12, 1977
Recall petitions must allege specific instance of misconduct, incompetence, or failure to perform prescribed duties. Voters alone determine merits of recall petitions.

26. AS 29,23.010(b), 29.58.340 - (M) January 24, 1980
A power becomes areawide with respect to a borough and any city within it upon the duly authorized transfer of the power from the city to the borough. With respect to a city in the borough which did not transfer the same power, it is not areawide. A city which has transferred a power is not prohibited from exercising that power if the borough failed to do so.

27. AS 29.33.150 - (O) March 24, 1980
State subdivision legislation does not pre-empt local zoning of post-sale private development. A municipality may not disapprove a state subdivision plat, or prevent the sale of lots in that subdivision, based upon the fact that the land is not residentially zoned by the municipality. In the platting process, the municipality may attach

reasonable terms and conditions -- including conditions relating to lot size, configuration and layout. Private buyers of lots within a state subdivision are not immune from local zoning, so, although the zoning ordinance may not be used to prohibit platting of the subdivision, or the subsequent sale of lots, the ordinance does control subsequent private development.

28. AS 29.33.150 - (M) January 21, 1980
A borough cannot require the state to do the following work in relation to a subdivision of state land: 1. define transportation corridors to be utilized for access to subdivisions; 2. analyze defined transportation corridors as to grade and soils to insure the feasibility of borough standard road contruction; 3. in all areas in the subdivision proposal where existing grades indicate potential problems, submit proposed road plans and profiles to the satisfaction of the engineering department.

29. AS 29.33.250 - .290, 29.38.020 - .030 - (M) July 26, 1979
While a first class or home rule borough can acquire additional areawide powers merely by transfer from the city, a second class borough can do so only with respect to powers which it has already acquired to be exercised in the area outside cities. That requires an election in most instances.

30. AS 29.33.010(b), .260(b), .290(c) - (M) January 24, 1980
The borough is under a duty to exercise the powers which are transferred to it when it approved the transfer. City ordinances become borough ordinances and the borough has a duty to enforce them until they are repealed or amended by the borough assembly. A city may no longer exercise power transferred to the borough, except that a city may exercise a power which is not being exercised by the borough.

31. AS 29.33.290, .360, .550 - (M) April 20, 1979
A general law municipality may not provide by ordinance for the powers to confirm appointments, suspensions, and discharges of municipal officers and employees to be extended to include more than is prescribed by the Municipal Code.

32. AS 29.33.290, 29.48.030 - (M) February 6, 1979
No authority exists for a borough to divest itself of an areawide power and thereby restoreit to a city from which it was previously transferred. Cities may presumably act as agents or contractors of the borough for carrying out its exercise of the power.

33. AS 29.33.290(c) - (O) - March 5, 1973
North Star Borough succeeds to Fairbank's interest in Alaska land notwithstanding statutory conditions on forgiving the loan by the State Bond Committee

34. AS 29.41 - (M) January 6, 1977
Third class boroughs are nothing more than school districts.

35. AS 29.43.020, 29.48.010(7), 29.53.415(a), .440, .450 - (M) January 9, 1980
The limitation placed on a borough's sales tax is three percent. A bed tax on hotel occupants should be considered a sales tax subject to the limitation.

36. AS 29.48.010, .440 - (O) August 14, 1979
A city of any class has the power to levy and collect sales taxes. Sale of utility services is a sale for sales tax purposes. Public utility cooperatives are exempt from all local sales and use taxes however. No local tax upon a utility company can be passed on to utility subscribers outside the local unit of government.

37. AS 29.48.010 - .035, 29.68.440 - (M) September 30, 1976
The Municipality of Anchorage has the power to contract to maintain local roads and trails.

38. AS 29.48.010(4) - July 16, 1975
Powers and functions may be conferred on municipalities by statutes not contained in the Municipal Code. AS 44.47.180-.230 constitute effective law and second class boroughs need not acquire additional powers under AS 29 in order to authorize expenditures of administrative costs required by those sections.

39. AS 29.48.010(11), .210 - (M) May 12, 1975
Boroughs may advance monies from their general funds to their service areas even in the absence of specific statutory authority.

40. AS 29.48.130(a)(5) - (M) October 21, 1977
Implementation of a CETA regulation regarding retirement benefits may require action by Anchorage to fund retirement contributions. Under state law, municipal funds may be used to fund these benefits only if the municipal assembly or council enacts an ordinance to that effect.

41. AS 29.48.200 - (M) July 24, 1979
Municipalities can precribe mandatory sentencing for OMVI. The maximum for violating any local ordinance is $500 and 30 days.

42. AS 29.48.260 - (M) August 22, 1979
For the limited purpose of providing certain facilities in rural areas, Regional Housing Authorities may be considered political subdivisions of the state. A municipality may dispose of its property to a political subdivision, so a racially exclusive regional association can receive municipal property for public housing programs.

43. AS 29.53.020, .045 - (M) November 9, 1977
A city may prohibit hunting as a safety measure within city limits, but not for wildlife management purposes.

44. AS 29.53.020(a) - (M) March 7, 1979
No amendment to AS 29.53.020 could modify the definition of taxable property for purposes of the general statewide property tax. The "business inventories" exemption form municipal property taxation will not affect total state revenue.

45. AS 29.53.020(a)(3), .020(c) - (M) April 5, 1973
To remain tax exempt, property may generate income solely for the statutorily expressed purposes. The income derived from property must be from only its use as classroom space under this section.

46. AS 29.53.020(e) - (M) August 17, 1979
By interpretive regulation, a property tax exemption can be limited to comport with legislative intent. The Department of Community and Regional Affairs may define "permanent place of abode" as being

limited to not more than one acre if urban nor more than five acres if rural because the legislature intended to relieve senior citizens from tax burdens on their dwellings, not to create a windfall for holders of vast tracts of land. However, such a regulation must be adopted under the APA to have legal effect.

47. AS 29.53.020(e) - (g), .025 (M) September 17, 1975
State must reimburse municipalities for senior citizen exemptions even though the local tax code also exempts the property from taxation, but the Department of Community and Regional Affairs could adopt interpretive regulations stipulating that payments will be made to a municipality for revenue lost to it for claims only to the extent that senior citizens' exemption exceeds an exemption the senior citizens are eligible for under municipal ordinance.

48. AS 29.53.045, .045(e), .050 -.(O) May 16, 1978
The military population should be included in the total when calculating the average per capita assessed valuation in the state.

49. AS 29.53.045, . 050 - (M) May 2, 1978
AS 29.53.045(a) gives a municipality a choice as to the methods of taxation, but both methods are subject to the 30 mill limit.

50. AS 29.53.135 - (M) February 10, 1978
The phrase "at least ... over and above the number required for a quorum" means at least one more than a quorum. Since the statute does not set a maximum number, it may be set by ordinance. The phrase "number of members of" refers to the number required for a quorum and does not require an appointed board's membership to include assembly members. (Suggests that this statute be rewritten.)

51. AS 29.53.180(b), .390(b) - (M) December 21, 1979
Municipalities must pay interest on excess tax penalties they have levied. A municipality may initiate refunds on its own motion.

52. AS 29.53.405 - (M) February 1, 1980
Differential tax zones within cities are authorized. Changes in differential tax zones may be made by ordinance without voter approval.

53. AS 29.53.415 - (M) October 6, 1976
A city may impose a tax upon retail sales and limit it to intoxicating liquor, or apply a higher rate to the sale of alcoholic beverages than the sales of other commodities.

53. AS 29.53.415, .440, .450 - (M) August 21, 1973
A municipality may impose a sales tax on the sale of intoxicating liquor.

54. AS 29.63.010, 29.53.010-.020 - (M) April 23, 1974
State property is subject to special assessments by units of local government for improvements which benefit the property.

55. AS 29.63.065 (M) October 24, 1975
The state must reimburse a municipality for special assessments which persons 65 years of age or older are exempt from paying in full at its initial levy, not in installments as allowed in AS 29.63.060.

56. AS 29.63.090 - (O) January 14, 1974
Depending upon circumstances, a service area can embrace one or more cities as well as unincorporated areas.

57. AS 29.68.010(b)(3), 29.78.010 - (M) August 24, 1979
The state and the United States need not be considered "property owners" for purposes of obtaining consent to annexation by ordinance. This way property-owner consent is not lost when state or federal holders of rights of way, easements, railroads, streambeds and the like do not consent to annexation.

58. AS 29.68.010(b)(3) - (M) April 17, 1979
The Bureau of Land Management's townsite trustee is a "property owner" for purposes of the requirement of obtaining consent to annexation.

59. AS 29.68.020 - (O) April 29, 1975
The repeal of the provision which excluded military reservations from mandatory boroughs did not thereby cause their inclusion. The borough must annex military reservations.

60. AS 29.68.240, .410 - (O) February 18, 1976
A unified municipality can issue general obligation bonds approved by the voters of its predecessor units of government.

61. AS 29.68.500 - (O) October 5, 1973
Including an existing city within a new city does not, in itself, dissolve it. (This is probably wrong, i.e., the lesser is probably swallowed by the greater.)

62. (M) August 21, 1973
There is no state law which prohibits boroughs and municipalities from levying user charges and industrial cost recovery assessments for waste treatment facilities which have been federally funded.

# ARTICLE X

## LOCAL GOVERNMENT

**Purpose and Construction**

**SECTION 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.**

**Local Government Powers**

SECTION 2. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

**Boroughs**

SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

**Assembly**

SECTION 4. The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

(The amendment to this section was approved by the voters of the State August 22, 1972 and became effective October 14, 1972. It deleted the second and third sentences which specified city and non-city representation on the borough assembly.)



**Service Areas**

**SECTION 5. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.**

**Unorganized Boroughs**

SECTION 6. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

**Cities**

SECTION 7. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

**Council**

SECTION 8. The governing body of a city shall be the council.

**Charters**

SECTION 9. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

**Extended Home Rule**

**SECTION 10. The legislature may extend home rule to other boroughs and cities.**

**Home Rule Powers**

**SECTION 11. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.**

**Boundaries**

SECTION 12. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

Agreements: Transfer of Powers

SECTION 13. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

Local Government Agency

SECTION 14. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities; collect and publish local government information, and perform other duties prescribed by law.

Special Service Districts

SECTION 15. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

# STATE OF ALASKA

## THE LEGISLATURE

1980

| Source | Legislative Resolve No. |
|---|---|
| CSSCR 66 | 39 |

Directing the Alaska Legislative Council to revise AS 29 (Municipal Government).

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

WHEREAS Alaska has a system of local government that differs uniquely in constitutional concept and in law from traditional local government; and

WHEREAS the law governing municipalities in Alaska was last reviewed completely in 1972 at which time significant elements of the local government structures were still in a formative stage; and

WHEREAS numerous amendments to the municipal code have been made since its adoption which have not been fully integrated into the code; and

WHEREAS much experience in the Alaska system of local government has been gained since adoption of the municipal code; and

WHEREAS there is a need for a comprehensive revision of the municipal code which will consider the 1972 code, amendments to it, and the experience gained since its adoption;

BE IT RESOLVED by the Alaska State Legislature that under the provisions of AS 24.20.090 and Uniform Rule 48(c) the Alaska Legislative Council is directed to prepare a revision of Title 29 of the Alaska Statutes (Municipal Government) by directing the legal services division of the Legislative Affairs Agency to prepare the revision with the assistance of a policy advisory group representative of the concerned public from all areas of the state and persons experienced in the application of AS 29, and soliciting the advice of the Alaska Code Revision Commission; and be it

FURTHER RESOLVED that the policy advisory group consist of two members of each house of the legislature appointed by the presiding officer of each house; public members of the policy advisory group shall be selected by the presiding officer of each house from persons recommended by legislative members, by the Department of Community and Regional Affairs, the Alaska Municipal League, the Rural Alaska Community Action Program, Inc., the Department of Law, and by the legal services division; and be it

FURTHER RESOLVED that a proposed revision of AS 29 be presented to the legislature during the first 30 days of the First Session of the Twelfth Legislature.

scomm

#23:12

| NAME | SENT TO: | DATE: |
| --- | --- | --- |
| Suggestions | | |
| Title 29 Rev. | Wkg Grp. Svendsen | 16 Sep 80 |
| | | |
| | | |
| | |

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.08.
(Allan Tesche)
Adopt uniform definitions of "municipality", "borough", and use the terms consistently throughout the title.
Need to be better defined

AS 29.08.010
(Gerald L. Sharp)
(& 29.13.010 & 100, & 29.78.010(1)(2)(8)
A careful reading of the code indicates that a unified unit of home rule local government is not a municipality. Under these sections, it is not a home rule municipality. If this was the intent, it should be clarified in the definitions. Along this same line, all sections which apply to home rule boroughs and home rule cities should be reviewed to determine whether they should also apply to unified units.

AS 29.08.020
(Gerald L. Sharp)
An interpretive guide should be provided for the the court so that it does not seize upon this section to revive Dillon's rule.

AS 29.13.100
(Richard W. Garnett, III)(Allan E. Tesche)
Clarify criteria for application of non-title 29 provisions to home rule, maybe require inclusion in laundry list.

AS 29.13.100
(Gerald L. Sharp)
The effect of the phrase "acting otherwise than as provided" should be examined to determine whether this phrase means that a home rule municipality may do neither more nor less than is prescribed for home rule municipalities. See the Whitson case.

AS 29.18.
(Richard W. Garnett, III)
Clarify rights to VUU land vis a vis state classification under AS 38.

AS 29.18.130
(Gerald L. Sharp)
We should probably address REAA's under this section.

AS 29.18.140(a)(b)
(Gerald L. Sharp)
This section implies that a newly incorporated city or borough may succeed a home rule or previously incorporated general law city or borough. Was this meant?

**SUGGESTIONS - TITLE 29 REVISION**

**AS 29.18.180**
**(Gerald L. Sharp)**
**Organizational grants under this section appear to be inadequate.**

**AS 29.18.330**
**(Gerald L. Sharp)**
**The resident training and hire preference should be examined for constitutionality.**

AS 29.23.025(e)(9)
(Marjorie Corsuch)
Clarify what happens to the reapportionment order if a reapportionment ordinance has not been approved by the voters.

AS 29.23.029
(Marjorie Corsuch)
There should be additional provisions for judicial review and relief.

AS 29.23.031
(Marjorie Corsuch)
There should be additional provisions for judicial review and relief.

AS 29.23.040
(Gerald L. Sharp)
(et.seq.) The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualificiations of officers as these relate to the mayor, council, and assembly members should be uniform as between a city and a borough.

AS 29.23.050
(Allan E. Tesche)
The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

AS 29.23.060(a)
(Gerald L. Sharp)
This section implies that there may be no special meetings if any member is not notified.

AS 29.23.060(d)
(Gerald L. Sharp)
Some consideration should be give to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.23.060(d)
(Allan E. Tesche)
Circumstances, other than financial interests, which allow a member to abstain should be better defined.

AS 29.23.070
(Gerald L. Sharp)
This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.070 &
(City of St. Mary's)
(& 29.43.040) The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

AS 29.23.080
(Gerald L. Sharp)
This section should be checked to determine whether it tracks with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.080
(Allan E. Tesche)
The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

AS 29.23.130(B)
(Allan E. Tesche)
Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

AS 29.23.150
(Allan E. Tesche)
(& 29.23.470) Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

AS 29.23.170
(Allan E. Tesche)
This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto.

AS 29.23.170(cont'd)
(Allan E. Tesche)
For instance, if the mayor vetos a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden? —mayoral approval?

AS 29.23.200
(Allan E. Tesche)
The three year residency requirement here is also probably invalid.

AS 29.23.210
(Gerald L. Sharp)
Does this require four votes on a procedural motion? This language should parallel the similar provisions for boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions. why

AS 29.23.210
(Allan E. Tesche)
As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

AS 29.23.250
(Allan E. Tesche)
Another probably invalid three year residency requirement.

AS 29.23.270
(Allan E. Tesche)
This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

AS 29.23.310
(Gerald L. Sharp)
Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)
(Gerald L. Sharp)
Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360
(Gerald L. Sharp)
My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.23.370
(Gerald L. Sharp)
I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to service two different masters, the legislative body, and the chief administrator.

AS 29.23.395
(Gerald L. Sharp)
(Through .401) This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470
(Gerald L. Sharp)
I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480
(Gerald L. Sharp)
I suggest that the adoption of an ordinance at the very next meeting after the repeal of manager plan is expecting too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540
(Gerald L. Sharp)
The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school board's budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. Also, it appears that this section would permit a person working in the grants section of the Department of C&RA to serve on an assembly or a council.

AS 29.23.555
(Allan E. Tesche)
This section has been superceded by AS 39.50.

AS 29.23.570
(City of St. Mary's)
This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570.

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.25.110
(Richard W. Garnett, III)(Allan E. Tesche)
Clarify application of public records law to municipality.

AS 29.28.
(Bruce Aronson)
Once a sufficient petition has been accepted, members of the council should not be able to resign and be re-appointed to the council.

AS 29.28.
(Bruce Aronson)
Statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition.

AS 29.28.
(Bruce Aronson)
A transition period should be provided by statute to allow a person recalled to service for a while after the recall election has been certified to allow a government to continue to operate.

AS 29.28.015
(Gerald L. Sharp)
I question why the mayor in a manager-type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030
(Gerald L. Sharp)
It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the State of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.040
(Richard W. Garnett, III)
More specificity as to whether recall may be based on "political" factors.

AS 29.28.070(b)
(Richard W. Garnett, III)
Service area initiatives are potential problems; could lead to "Balkanization" of municipalities.

**SUGGESTIONS - TITLE 29 REVISION**

**AS 29.28.070(b)**
**(Richard W. Garnett, III)(Allan Tesche)**
**Standardize use of "general" and "regular" as to elections to avoid uncertainty as to required number of signatures.**

**AS 29.28.080(a)**
**(Gerald L. Sharp)**
**This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the**

AS 29.28.080(a)(cont'd)
(Gerald L. Sharp)
initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.090(b)
(Richard W. Garnett, III)
Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

AS 29.28.110
(Gerald L. Sharp)
This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

AS 29.28.130
(Bruce Aronson)(Lee Sharp)
Change provision so that all officials would be subject to recall after six months in office. The six month grace period would not apply if a person is re-elected to the same office.

AS 29.28.130
(Allan E. Tesche)
(Et. seq.) Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28.070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

AS 29.28.140
(Bruce Aronson)
Grounds for recall are too narrow.

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.28.140
(Gerald L. Sharp)
This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting.

AS 29.28.140(cont'd)
(Gerald L. Sharp)
They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.

AS 29.28.150
(Bruce Aronson) (Lee Sharp)
A recall petition should be required to contain the mailing address of each person who signs it and a separate petition should be filed for each person sought to be recalled. Statement of grounds should be limited to 200 words.

AS 29.28.160
(Gerald L. Sharp)
Either the clerk of the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170
(Gerald L. Sharp)
I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60? If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be give an additional ten days for their sloppiness or inadequate performance.

AS 29.28.180
(Bruce Aronson)
A new petition should not be filed sooner than six months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

**SUGGESTIONS - TITLE 29 REVISION**

**AS 29.28.190**
**(Elsie O'Brien)**
**Add a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.**

AS 29.28.200(c)
(Gerald L. Sharp)
If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name is removed from the recall ballot, may he then be reappointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?

AS 29.28.210
(Gerald L. Sharp)
If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?

AS 29.28.250
(Jack Chenoweth)
Include a provision somewhere by which a state officer has authority to appoint municipal voters to fill elected city or borough offices when the number of members drops below the number required to produce a quorum.

AS 29.28.250
(Gerald L. Sharp)
What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS.29.33.
(Allan E. Tesche)
The current language of this chapter, as it incorporates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restructive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

AS 29.33.
(Allan E. Tesche)
Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

**SUGGESTIONS - TITLE 29 REVISION**

**AS 29.33.010**
**(Gerald L. Sharp)**
**Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in it's Lafayette decision.**

**AS 29.33.050**
**(Gerald L. Sharp)**
**While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read " and shall establish, maintain, and operate".**

**AS 29.33.070**
**(Allan E. Tesche)**
**It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section**

**AS 29.33.070**
**(Allan E. Tesche)**
(Through 29.33.245) Serious thought should be given to the purpose of the planning, platting, and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

**AS 29.33.080(e)**
**(Gerald L. Sharp)**
Consideration should also be give here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

**AS 29.33.085(b)**
**(Gerald L. Sharp)**
The requirement that the commission present new recommendations on a comprehensive plane very two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it soes not appear that there is any question as to the validity of an ordinance which is adopted pursuant to a comprehensive plan which has not been reviewed for more than two years.

AS 29.33.085(b)(cont'd)
(Gerald L. Sharp)
Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.110(b)(1)
(Gerald L. Sharp)
I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works.

AS 29.33.110(b)(1)(cont'd)
(Gerald L. Sharp)
The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)
(Gerald L. Sharp)
It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance", or "requests...".

AS 29.33.120
(Gerald L. Sharp)
It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)
(Gerald L. Sharp)
I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150
(Gerald L. Sharp)
It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

How do rules + regs relate + subdiv ordinance

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.33.150(b)
(Gerald L. Sharp)
(& 29.33.169(c)) These sections need to be revised out of the code.

170(b) - can leg body limit boards right to grant waiver

AS 29.33.170(a)(1)
(Gerald L. Sharp)
I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.

AS 29.33.190
This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.190
(Allan E. Tesche)
This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which hs not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even

AS 29.33.190(cont'd)
(Allan E. Tesche)
though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

recubdiv of lot = replat

AS 29.33.200
(Gerald L. Sharp)
This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

AS 29.33.240
(Gerald L. Sharp)
I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vests in a municipality upon vacation.

245 - administrative officer

**SUGGESTIONS - TITLE 29 REVISION**

service area of city inside + after borough has acquired non-areawide power

AS 29.33.250
(Allan E. Tesche)
Presumably the transfer required is one from all cities exercising the power rather than from a city.

2ko - if borough has non-areawide

AS 29.38.
Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

AS 29.41.
(Bruce Aronson) (Lee Sharp)
Eliminate third class boroughs. Re-examine idea.

AS 29.48.
(Richard W. Garnett, III)
Consider need for APUC regulation of municipality owned utilities.

AS 29.48.010
(Gerald L. Sharp)
I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I believe some consideration should be given to whether or not there should be a catch-all grant clause.

AS 29.48.010(cont'd)
Gerald L. Sharp
Also, something should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.030
(Bruce Aronson)
There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what type of enforcement services a city must provide.

AS 29.48.030
(Palmer McCarter)
Clarify whether "health and hospital power" is one or two separate local powers.

AS 29.48.030(b)
(Allan E. Tesche)
(& 29.48.035(b)&(c)) These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code. Moreover, AS 29.48.030 and .35, inasmuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

AS 29.48.030(b)(cont'd)
(Allan E. Tesche)
(& 29.48.035(b)&(c)) Reference to powers granted to second class boroughs to construct and maintain Local Service Road and Trails under AS 19.30.251 should be made in this section. Reference to the power granted to local governments to regulate use of public streets, alleys, and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

AS 29.48.030(a)(12)
(Allan E. Tesche)
The term transportation "system" used in this section should be defined.

AS 29.48.033
(Gerald L. Sharp)
Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

035 - first sentence of (a) should be general grant

AS 29.48.050
(Gerald L. Sharp)
I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.070
(Gerald L. Sharp)
(& 29.48.080 & 48.090) The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)
(Gerald L. Sharp)
Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110
(Gerald L. Sharp)
AS 29.48.110 should be changed to make it clear that a municipality may establish more than a single historic district.

AS 29.48.130(5)
(Richard W. Garnett, III)
No need to require ordinance for routine fund transfers.

AS 29.48.150(a)
(Richard W. Garnett, III)
Majority required to set ordinance for hearing. Should be less.

AS 29.48.160(b)
(Gerald L. Sharp)
If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.170
(Richard W. Garnett, III)
Need some procedure for enacting municipal regulations.

AS 29.48.190(b)
(Gerald L. Sharp)
This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and before a capitol improvement.

AS 29.48.190
(City of St. Mary's)
Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except through lengthy procedures to amend the budget.

AS 29.48.190 (cont'd)
(City of St. Mary's)
The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the original appropriation.

AS 29.48.200
(Gerald L. Sharp)
The fine limitation and imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

AS 29.48.210
(Gerald L. Sharp)
This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide bases.

AS 29.48.220
(City of St. Mary's)
The audit requrement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class.

AS 29.48.220(cont'd)
(City of St. Mary's)
The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million.

AS 29.48.250
(Gerald L. Sharp)
Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260
(Richard W. Garnett, III)
Vote on sale of property over $25,000 is unduly burdensome.

AS 29.48.260
(Gerald L. Sharp)
I believe the exemption which is set forth in (d) should be expanded to encompass any land which the municipality disposes of.

AS 29.48.260
(City of St. Mary's)
I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's.

AS 29.48.260(cont'd)
(City of St. Mary's)
First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak English from participating in auctions.

AS 29.48.260(cont'd)
(City of St. Mary's)
The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

AS 29.48.260
(Allan E. Tesche)
Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

AS 29.48.270(b)(c)
(Gerald L. Sharp)
These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

AS 29.48.310
(Gerald L. Sharp)
(& 29.48.320, & 330) Although these sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.
(Allan E. Tesche)
Should be aneded to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years.

AS 29.53.(cont'd)
(Allan E. Tesche)
An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

AS 29.53.010
(Richard W. Garnett, III)
Permit exemption of all personalty or of various classes.

AS 29.53.010
(Gerald L. Sharp)
Again the problem of how this is to apply to unified units of government; also, this section should be changed to permit the use of areawide revenues on a non-areawide bases.

AS 29.53.020
(Clara M. Eccles)
Extend property tax exemption to include disabled veterans of any age.

AS 29.53.020(a)(1)
(Gerald L. Sharp)
Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

AS 29.53.020(a)(3)
(Gerald L. Sharp)
A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps hospital, which are used in this section. Aslo, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt;

AS 29.53.020(a)(3) (cont'd)
(Gerald L. Sharp)
for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.025(b)(1)
(Richard W. Garnett, III)
Clarify "delegation" of powers to service areas.

AS 29.53.030
(Gerald L. Sharp)
This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

AS 29.53.060
(Gerald L. Sharp)
Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.080
(Ribert H. Ziegler, Sr.)
Assessors should not be allowed to have access to sale price of property by requesting this information from buyers or sellers.

AS 29.53.135
(Gerald L. Sharp)
This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to exempt use.

AS 29.53.135
(Allan E. Tesche)
The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

AS 29.53.150
(Gerald L. Sharp)
A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

AS 29.53.180
(Gerald L. Sharp)
This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.415
(Gerald L. Sharp)
(& 29.53.440) Something needs to be added to these sections to take care of problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.58.
(Ben T. Delahay
A new section should be added authorizing that an ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

AS 29.63.
(Ben T. Delahay)
The chapter on service areas should be clarified; there is too much authority in the assembly to handle decisions in the service area which should be made by the people paying the taxes in the area.

AS 29.63.
(Bruce Aronson)
Community councils should be advisory only by statute and money from the state for service areas ought to be appropriated for the city, not the local council.

AS 29.63.090(e)
(Richard W. Garnett, III)
Clarify "delegation" of powers to service areas.

AS 29.63.090
(Elsie O'Brien)
Loans by borough to service area should be subject to prior approval by voters within the service area.

AS 29.63.090
(Allan E. Tesche)
The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

AS 29.68.
((Bruce Aronson)
Statutes should be changed so that cities are not able to annex territory without providing services to the annexed area and so that people living outside cities who are receiving services pay for them.

AS 29.68.010(cont d)
(City of St. Mary s)
The delay in time between the decision of the Local Boundary commission and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

AS 29.68.010
(City of St. Mary's)
The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative section has begun.

AS 29.73.020
(Gerald L. Sharp)
This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.

AS 29.78.101(16)
(Richard W. Garnett, III)
Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

## General Revision Suggestions - Title 29

AS 29
(Tanana Chiefs Conference, Inc.)
Do not create new forms of local government in the unorganized borough, but rather recognize the traditional governments currently operating.

(Tanana Chiefs Conference, Inc.)
Allow local government to contract for the providing of state services, so that programs can be administered locally.

(Tanana Chiefs Conference, Inc.)
Coordinated regional planning should be done by existing local governments on a voluntary basis through the formation of consortiums of existing governments. These would be allowed to jointly exercise authority outside of their local boundaries.

(Tanana Chiefs Conference, Inc.)
Reduce municipal liability by raising the standard of municipal tort liability for only those official acts involving, "wanton and willful" conduct rather than mere negligence. Municipal ordinances and regulations should be assimilated into state law to allow state prosecution of local violations.

(Tanana Chiefs Conference, Inc.)
Alternatives for fuller local participation in the unorganized borough in state action:

1. A community or consortium must agree to agency actions/plans affecting the community. In the absence of consent, the agency would have to show, in a locally neutral administrative hearing, that the best interest of the state requires the action/plan.

2. Communities or consortiums produce regional plans with which state agencies must comply or get a waiver from the community or proceed through a local neutral hearing.

3. Agencies could be required to have local plans/actions approved after a local hearing by a local hearing officer.

**SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80**

AS 29.
(Ernst Mueller)
[Also applicable to AS 46.07.020(2)] Replace the term "village" with "eligible rural community".

AS 29.
(David Dye, Planner III, C&RA)
Improve the index.

AS 29.
(Richard Careaga)
Consider replacing present local planning provisions with the Model Land Development Code (1975). Particularly consider the Code's division of responsibilities between state and local planning.

AS 29.
(Richard Careaga)
Tie other provisions located on other titles to Title 29, AS 46.35 in particular, if they impose obligations on local governments in addition to those set out in Title 29.

AS 29.
(Ivan Widom)
Reconsider the 40% runoff election and perhaps remove that requirement.

AS 29.
(Frederick McGinnis)
Allow for local administration of DHSS programs. See "Outline of Discussion Topic".

AS 29.08.
(Allan Tesche)
Adopt uniform definitions of "municipality", "borough", and use the terms consistently throughout the title.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.08.010
(Gerald L. Sharp)
(& 29.13.010 & 100, & 29.78.010(1)(2)(8)
A careful reading of the code indicates that a unified unit of home rule local government is not a municipality. Under these sections, it is not a home rule municipality. If this was the intent, it should be clarified in the definitions. Along this same line, all sections which apply to home rule boroughs and home rule cities should be reviewed to determine whether they should also apply to unified units.

AS 29.08.020
(Gerald L. Sharp)
An interpretive guide should be provided for the the court so that it does not seize upon this section to revive Dillon's rule.

AS 29.13.100
(Richard W. Garnett, III)(Allan E. Tesche)
Clarify criteria for application of non-title 29 provisions to home rule, maybe require inclusion in laundry list.

AS 29.13.100
(Gerald L. Sharp)
The effect of th phrase "acting otherwise than as provided" should be examined to determine wheth this phrase means that a home rule municipality may do neither more nor less than is prescribed for home rule municipalities. See the Whitson case.

AS 29.18.
(Richard W. Garnett, III)
Clarify rights to VUU land vis a vis state classification under AS 38.

AS 29.18.
(David Dye, Planner III, C&RA)
Eliminate or restructure provisions dealing with development cities.

AS 29.18.130
(Gerald L. Sharp)
We should probably address REAA's under this section.

AS 29.18.140(a)(b)
(Gerald L. Sharp)
This section implies that a newly incorporated city or borough may succeed a home rule or previously incorporated general law city or borough. Was this meant?

AS 29.18.180
(Gerald L. Sharp)
Organizational grants under this section appear to be inadequate.

AS 29.18.330
(Gerald L. Sharp)
The resident training and hire preference should be examined for constitutionality.

AS 29.23.025(e)(9)
(Marjorie Gorsuch)
Clarify what happens to the reapportionment order if a reapportionment ordinance has not been approved by the voters.

AS 29.23.029
(Marjorie Gorsuch)
There should be additional provisions for judicial review and relief.

AS 29.23.031
(Marjorie Gorsuch)
There should be additional provisions for judicial review and relief.

AS 29.23.040
(Gerald L. Sharp)
(et.seq.) The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualificiations of officers as these relate to the mayor, council, and assembly members should be uniform as between a city and a borough.

AS 29.23.050
(Allan E. Tesche)
The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

AS 29.23.060(a)
(Gerald L. Sharp)
This section implies that there may be no special meetings if any member is not notified.

AS 29.23.060(d)
(Gerald L. Sharp)
Some consideration should be give to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

AS 29.23.060(d)
(Allan E. Tesche)
Circumstances, other than financial interests, which allow a member to abstain should be better defined.

AS 29.23.070
(Gerald L. Sharp)
This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.070 &
(City of St. Mary's)
(& 29.43.040) The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.23.080
(Gerald L. Sharp)
This section should be checked to determine whether it tracks with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23 080
(Allan E. Tesche)
The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

AS 29.23.130(B)
(Allan E. Tesche)
Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

AS 29.23.150
(Allan E. Tesche)
(& 29.23.470) Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

AS 29.23.170
(Allan E. Tesche)
This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto.

AS 29.23.170(cont'd)
(Allan E. Tesche)
For instance, if the mayor vetos a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

AS 29.23.200
(Allan E. Tesche)
The three year residency requirement here is also probably invalid.

AS 29.23.210
(Gerald L. Sharp)
Does this require four votes on a procedural motion? This language should parallel the similar provisions for boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions.

AS 29.23.210
(Allan E. Tesche)
As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

AS 29.23.250
(Allan E. Tesche)
Another probably invalid three year residency requirement.

AS 29.23.270
(Allan E. Tesche)
This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

AS 29.23.310
(Gerald L. Sharp)
Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)
(Gerald L. Sharp)
Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360
(Gerald L. Sharp)
My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

AS 29.23.370
(Gerald L. Sharp)
I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to serve two different masters, the legislative body, and the chief administrator.

AS 29.23.395
(Gerald L. Sharp)
(Through .401) This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470
(Gerald L. Sharp)
I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480
(Gerald L. Sharp)
I suggest that the adoption of an ordinance at the very next meeting after the repeal of manager plan is expecting too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540
(Gerald L. Sharp)
The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school board's budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. Also, it appears that this section would permit a person working in the grants section of the Department of C&RA to serve on an assembly or a council.

AS 29.23.555
(Allan E. Tesche)
This section has been superceded by AS 39.50.

AS 29.23.570
(City of St. Mary's)
This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570.

AS 29.25.110
(Richard W. Garnett, III)(Allan E. Tesche)
Clarify application of public records law to municipality.

AS 29.28.
(Bruce Aronson)
Once a sufficient petition has been accepted, members of the council should not be able to resign and be re-appointed to the council.

AS 29.28.
(Bruce Aronson)
Statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition.

AS 29.28.
(Bruce Aronson)
A transition period should be provided by statute to allow a person recalled to service for a while after the recall election has been certified to allow a government to continue to operate.

AS 29.28.015
(Gerald L. Sharp)
I question why the mayor in a manager-type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030
(Gerald L. Sharp)
It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the State of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.040
(Richard W. Garnett, III)
More specificity as to whether recall may be based on "political" factors.

**SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80**

AS 29.28.070(b)
(Richard W. Garnett, III)
Service area initiatives are potential problems; could lead to "Balkanization" of municipalities.

AS 29.28.070(b)
(Richard W. Garnett, III)(Allan Tesche)
Standardize use of "general" and "regular" as to elections to avoid uncertainty as to required number of signatures.

AS 29.28.080(a)
(Gerald L. Sharp)
This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the

AS 29.28.080(a)(cont'd)
(Gerald L. Sharp)
initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.090(b)
(Richard W. Garnett, III)
Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

AS 29.28.110
(Gerald L. Sharp)
This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

AS 29.28.130
(Bruce Aronson)(Lee Sharp)
Change provision so that all officials would be subject to recall after six months in office. The six month grace period would not apply if a person is re-elected to the same office.

AS 29.28.130
(Allan E. Tesche)
(Et. seq.) Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28.070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

AS 29.28.140
(Bruce Aronson)
Grounds for recall are too narrow.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.28.140
(Gerald L. Sharp)
This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting.

AS 29.28.140 (cont'd)
(Gerald L. Sharp)
They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.

AS 29.28.140
(JoAnne Shanley)
There could be an argument made for consistency between this section and AS 15.45.510 which provides the grounds for recall of state officials.

AS 29.28.150
(Bruce Aronson) (Lee Sharp)
A recall petition should be required to contain the mailing address of each person who signs it and a separate petition should be filed for each person sought to be recalled. Statement of grounds should be limited to 200 words.

AS 29.28.150
(JoAnne Shanley)
This section should be rewritten to include a requirement of the name and office of the person (singular) to be recalled and a clarification that if more than one official is considered for recall a petition for each individual must be circulated.

AS 29.28.160
(Gerald L. Sharp)
Either the clerk of the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170
(Gerald L. Sharp)
I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60? If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be give an additional ten days for their sloppiness or inadequate performance.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.28.180
(Bruce Aronson)
A new petition should not be filed sooner than six months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

AS 29.28.190
(Elsie O'Brien)
Add a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.

AS 29.28.190
(JoAnne Shanley)
The present wording is too vague with the use of the word "immediately" and should specify a specific time frame, i.e. 10 days.

AS 29.28.200(c)
(Gerald L. Sharp)
If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name is removed from the recall ballot, may he then be reappointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?

AS 29.28.210
(Gerald L. Sharp)
If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?

AS 29.28.250
(Jack Chenoweth)
Include a provision somewhere by which a state officer has authority to appoint municipal voters to fill elected city or borough offices when the number of members drops below the number required to produce a quorum.

AS 29.28.250
(Gerald L. Sharp)
What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS.29.33.
(Allan E. Tesche)
The current language of this chapter, as it incorporates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restructive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

AS 29.33.
(Allan E. Tesche)
Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

AS 29.33.
(Ivan Widom)
Boroughs have too much power. A borough should not plan for a city.

AS 29.33.010
(Gerald L. Sharp)
Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in it's Lafayette decision.

AS 29.33.050
(Gerald L. Sharp)
While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read " and shall establish, maintain, and operate".

AS 29.33.070
(Allan E. Tesche)
It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

AS 29.33.070
(Allan E. Tesche)
(Through 29.33.245) Serious thought should be given to the purpose of the planning, platting, and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

AS 29.33.070(b)
(JoAnne Shanley)
Redraft to read: If a first class or home city is located more than 25 miles from the boundary of the borough seat, the planning, platting and zoning responsibilities within the city may be exercised by the city after a city ordinances providing for the exercise thereof is approved by a majority of the electors within the city voting on the question at a regular or special election or by council ordinance.

AS 29.33.070(b)(2)
(David Dye, Planner III, C&RA)
Do not allow a borough to delegate planning authority to a city, but allow only the delegation of administrative and enforcement responsibilities.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.33.080(e)
(Gerald L. Sharp)
Consideration should also be give here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

AS 29.33.080(f)
(David Dye, Planner III, C&RA)
Require the assembly to adopt rules and regulations by ordinance. In the alternative, add a section requiring regulations of all municipal boards, commissions, and departments to be codified and published.

AS 29.33.080(b)(4)
(David Dye, Planner III, C&RA)
Define the term "official map".

AS 29 33.085(b)
(Gerald L. Sharp)
The requirement that the commission present new recommendations on a comprehensive plane very two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it soes not appear that there is any question as to the validity of an ordinance which is adopted pursuant to a comprehensive plan which has not been reviewed for more than two years.

AS 29.33.085(b)(cont'd)
(Gerald L. Sharp)
Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.090
(David Dye, Planner III, C&RA)
Eliminate the use of the term "zoning" and use "land use regulation". Add enabling legislation for the transfer of development rights.

AS 29.33.110(b)(1)
(Gerald L. Sharp)
I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works.

AS 29.33.110(b)(1)(cont'd)
(Gerald L. Sharp)
The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)
(Gerald L. Sharp)
It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance", or "requests...".

AS 29.33.120
(Gerald L. Sharp)
It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)
(Gerald L. Sharp)
I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150
(Gerald L. Sharp)
It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

AS 29.33.150(b)
(Gerald L. Sharp)
(& 29.33.169(c)) These sections need to be revised out of the code.

AS 29.33.150(a)
(David Dye, Planner III, C&RA)
Explicitly state that all subdivisions are required to be platted and that plats must be recorded. Integrate AS 40.15 into Title 29.

AS 29.33.170
(David Dye, Planner III, C&RA)
Modify waiver provisions and add authority for short subdivisions. See model provision.

AS 29.33.170(a)(1)
(Gerald L. Sharp)
I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.

**SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80**

AS 29.33.190
This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.190
(Allan E. Tesche)
This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which hs not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even

AS 29.33.190(cont'd)
(Allan E. Tesche)
though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

AS 29.33.200
(Gerald L. Sharp)
This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

AS 29.33.240
(Gerald L. Sharp)
I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vests in a municipality upon vacation.

AS 29.33.250
(Allan E. Tesche)
Presumably the transfer required is one from all cities exercising the power rather than from a city.

AS 29.38.
Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

AS 29.41.
(Bruce Aronson) (Lee Sharp)
Eliminate third class boroughs. Re-examine idea.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.41.
(David Dye)
Specifically include or exclude all or part of the provisions of AS 29.48., expecially 29.48.010 and 29.48.260.

AS 29.48.
(Richard W. Garnett, III)
Consider need for APUC regulation of municipality owned utilities.

AS 29.48.
(David Dye, Planner III, C&RA)
Add a new section allowing preferences in land being disposed of to individuals to certain classes of people (heads of household, non-owners of real property) to avoid the use of durational residency requirements. Allow a preference for people who have occupied land after December 18, 1971. See proposed draft.

AS 29.48.010
(Gerald L. Sharp)
I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I believe some consideration should be given to whether or not there should be a catch-all grant clause.

AS 29.48.010(cont'd)
Gerald L. Sharp
Also, something should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.010(9)
(David Dye, Planner III, C&RA)
Rewrite to provide procedureal safeguards (the action be done by ordinance). Allow for land exchanges between municipalities and private persons. Under ANSCA, municipalities will receive land for future municipal expansion, but some municipalities will not be able to select land which is near the municipality because land is not available. It would be advantageous to allow for exchange of inconveniently located parcels.

AS 29.48.020
(David Dye, Planner III, C&RA)
This section should be placed in another chapter. It does not deal with "Powers Applicable to All Municipalties".

AS 29.48.030
(Bruce Aronson)
There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what type of enforcement services a city must provide.

AS 29.48.030
(Palmer McCarter)
Clarify whether "health and hospital power" is one or two separate local powers.

AS 29.48.030
(Gerald L. Sharp)
This may be the appropriate section to deal with the Lafayette antitrust problems. Under subsection (b), someone to check to determine whether the reference to the Alaska Transportation Commission makes sense in the light of SB 577. (Sorry, I do not have the bill with me as I dictate this.)

AS 29.48.030(b)
(Allan E. Tesche)
(& 29.48.035(b)&(c)) These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code. Moreover, AS 29.48.030 and .35, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

AS 29.48.030(b)(cont'd)
(Allan E. Tesche)
(& 29.48.035(b)&(c)) Reference to powers granted to second class boroughs to construct and maintain Local Service Road and Trails under AS 19.30.251 should be made in this section. Reference to the power granted to local governments to regulate use of public streets, alleys, and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

AS 29.48.030(a)(12)
(Allan E. Tesche)
The term transportation "system" used in this section should be defined.

AS 29.48.033
(Gerald L. Sharp)
Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

AS 29.48.035(14)
(JoAnne Shanley)
"building, housing and related codes, which may be provided by cities within cities..." needs rewording (cities within its own boundaries?)

AS 29.48.037
(JoAnne Shanley)
(b) states that a city can protect its watersheds and enforce such protection outside its boundaries ONLY upon the approval, by ordinance, of the municipality where the watersheds are located. This poses a problem when a city tries to exercise the protection of its water supply which lies outside the city limits but within the organized borough and where the borough is not actively involved in any such protection but refuses to allow the city to exercise such.

AS 29.48.037(cont'd)
(JoAnne Shanley)
If a borough has, in effect, veto power over the city's action in this regard, the borough government should be required to be actively involved in the exercise of such protected activity itself.

AS 29.48.050
(Gerald L. Sharp)
I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.050(d)
(JoAnne Shanley)
Redraft to read: For purposes of AS 29.48.050 - .070 a public utility which is not regulated as to rates and services by the Alaska Public Utilities Commission shall not be considered as regulated by AS 42.05.

AS 29.48.070
(Gerald L. Sharp)
(& 29.48.080 & 48.090) The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)
(Gerald L. Sharp)
Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110
(Gerald L. Sharp)
AS 29.48.110 should be changed to make it clear that a municipality may establish more than a single historic district.

AS 29.48.130(5)
(Richard W. Garnett, III)
No need to require ordinance for routine fund transfers.

AS 29.48.150(a)
(Richard W. Garnett, III)
Majority required to set ordinance for hearing. Should be less.

AS 29.48.150
(Ivan Widom)
Clarify the number of times an ordinance should be voted upon.

AS 29.48.160(b)
(Gerald L. Sharp)
If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.170
(Richard W. Garnett, III)
Need some procedure for enacting municipal regulations.

AS 29.48.190(b)
(Gerald L. Sharp)
This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and before a capitol improvement.

AS 29.48.190
(City of St. Mary's)
Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except through lengthy procedures to amend the budget.

AS 29.48.190 (cont'd)
(City of St. Mary's)
The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the original appropriation.

AS 29.48.200
(Gerald L. Sharp)
The fine limitation and imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

**SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80**

AS 29.48.210
(Gerald L. Sharp)
**This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide bases.**

AS 29.48.220
(City of St. Mary's)
The audit requirement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class.

AS 29.48.220(cont'd)
(City of St. Mary's)
The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million.

AS 29.48.250
(Gerald L. Sharp)
Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260
(Richard W. Garnett, III)
Vote on sale of property over $25,000 is unduly burdensome.

AS 29.48.260
(Gerald L. Sharp)
I believe the exemption which is set forth in (d) should be expanded to encompass any land which the municipality disposes of.

AS 29.48.260
(City of St. Mary's)
I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's.

AS 29.48.260(cont'd)
(City of St. Mary's)
First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak English from participating in auctions.

AS 29.48.260(cont'd)
(City of St. Mary's)
The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

AS 29.48.260
(Allan E. Tesche)
Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

AS 29.48.260(a)
(David Dye)
The term "municipal purpose" should be defined or standards for determining when land is no longer required for municipal purposes should be added.

AS 29.48.260(c)
(David Dye, Planner III, C&RA)
Add authority for disposal by lottery of land. Increase the $25,000.00 figure by two to four times.

AS 29.48.260(d)
(David Dye, Planner III, C&RA)
Rewrite to exempt transfers of land for specific purposes regardless of the source of the land.

AS 29.48.260(e)
(David Dye, Planner III, C&RA)
Exclude these transactions for the requirements of (c).

AS 29.48.270(b)(c)
(Gerald L. Sharp)
These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

**SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80**

AS 29.48.310
(Gerald L. Sharp)
(& 29.48.320, & 330) Although these sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.
(Allan E. Tesche)
Should be ameded to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years.

AS 29.53.(cont'd)
(Allan E. Tesche)
An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

AS 29.53.
(Terry Earley, State Assessor)
Add a section requiring the Department of Community and Regional Affairs, in consultation with an assessor, to determine the full value of taxable property in each district. See proposed bill draft.

AS 29.53.
(Dave Braden, Assessor)
Add a section requiring confidentiality of information gathered for assessment purposes should be added. See sample statutes.

AS 29.53.
(Dave Braden, Assessor)
Assess exempt property used by a non-exempt person. See sample Michigan law.

AS 29.53.
(Michael Worley, Assessor)
Add a section allowing the assessment roll to be corrected by the assessor and an adjustment made subsequent to its certification.

**SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80**

AS 29.53.010
(Richard W. Garnett, III)
Permit exemption of all personalty or of various classes.

AS 29.53.010
(Gerald L. Sharp)
Again the problem of how this is to apply to unified units of government: also, this section should be changed to permit the use of areawide revenues on a non-areawide bases.

AS 29.53.020
(Clara M. Eccles)
Extend property tax exemption to include disabled veterans of any age.

AS 29.53.020
(Terry Earley, State Assessor)
Exempt one motor vehicle owned by a resident 65 years of age or older from taxation. See proposed bill draft.

AS 29.53.020
(Dave Braden, Assessor)
It is logical that reimbursement be limited to that amount which exceeds a local exemption granted to senior citizens, but to extend it to a local exemption that if applied for "would have been granted" is too much. Mobile homes should not be taxed as real property, but should be licensed like motor vehicles at which time an ownership tax is charged.

AS 29.53.020(c)
(Michael Worley, Assessor)
Delete "educational groups for classroom space".

AS 29.53.020(f)
(Michael Worley, Assessor)
After "granted" on the first line insert a reference "under (e) of this section".

AS 29.53.020
(Mark Lewis, City Manager, Valdez)
Change the age limit for qualifying for the senior tax exemption to 62 to encourage people to retire earlier.

AS 29.53.020(a)(1)
(Gerald L. Sharp)
Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

**SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80**

AS 29.53.020(a)(2)
(Michael Worley, Assessor)
Delete $500.00 limitation on the exemption of household furniture.

AS 29.53.020(a)(3)
(Gerald L. Sharp)
A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps hospital, which are used in this section. Aslo, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt;

AS 29.53.020(a)(3) (cont'd)
(Gerald L. Sharp)
for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.025
(M. Westfall)
Classification of boats for purposes of taxation by tonnage should be changed to more realistic amounts.

AS 29.53.025(b)(1)
(Richard W. Garnett, III)
Clarify "delegation" of powers to service areas.

AS 29.53.025(b)(2)(A)
(Michael Worley, Assessor)
Delete optional exemption for household furniture.

AS 29.53.030
(Gerald L. Sharp)
This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

AS 29.53.030
(Michael Worley, Assessor)
Replace section dealing with mining claims with a local severance tax on all resources (timber, fill, minerals, etc.)

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.53.030(b)
(Michael Worley, Assessor)
Delete "30 days before the equalization hearings".

AS 29.53.035(c)
(Dave Braden, Assessor)
The income requirement for the farm use exemption should be reduced to 5% or eliminated in order to encourage agriculture in the state. Consider additional preferential tax treatment.

AS 29.53.050(b)
(Michael Worley, Assessor)
Change the $1,000.00 to $1,500.00 to be consistent with 29.53.045.

AS 29.53.060
(Gerald L. Sharp)
Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.060
(M. Westfall)
Include the words "having a situs within the taxing district" after the word "property". Boats and airplanes are commonly removed from the district during the first month of the year to avoid taxation.

AS 29.53.080
(Ribert H. Ziegler, Sr.)
Assessors should not be allowed to have access to sale price of property by requesting this information from buyers or sellers.

AS 29.53.110(a)
(Michael Worley, Assessor)
Delete "and the dates when the board of equalization will sit" for the assessment notice requirement.

AS 29.53.120(a)
(Michael Worley)
Insert a requirement that a person advise the assessor of errors within 30 days of the effective date of the notice.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.53.120(b)
(Michael Worley, Assessor)
Delete. Add the following subsection: "If the property owner disagrees with the assessed value, the assessor shall review the assessment and inform the property owner of his findings allowing 10 days for appeal to the board. If the assessed value changes, the assessor shall send a revised notice to the property owner".

AS 29.53.130(b)
(Michael Worley, Assessor)
Amend to allow 10 days for appeal from the date the notice is effective. Delete "unless the board finds that the taxpayer was unable to comply".

AS 29.53.135
(Gerald L. Sharp)
This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to exempt use.

AS 29.53.135
(Allan E. Tesche)
The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

AS 29.53.135
(Michael Worley)
Provide that the board of equalization consist of not fewer than three members. Delete "including but not limited to quorum and voting requirements".

AS 29.53.140(c)
(Michael Worley, Assessor)
Delete "or improper" and "or proved at the hearing".

AS 29.53.150
(Gerald L. Sharp)
A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.53.180
(Gerald L. Sharp)
This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.320
(M. Westfall)
Change person to receive redemption monies from clerk to tax collector, who has the records of assessment and taxation.

AS 29.53.390(a)
(Michael Worley)
Delete "against the borough, the borough shall refund the amount of taxes to the taxpayer" and insert "or if in the absence of suit, the borough assembly determines that judgment for the recovery of the taxes would be obtained if legal proceedings were brought, the amount of the taxes shall be paid to the taxpayer".

AS 29.53.415
(Gerald L. Sharp)
(& 29.53.440) Something needs to be added to these sections to take care of problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.58.
(Ben T. Delahay)
A new section should be added authorizing that an ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

AS 29.63.
(Ben T. Delahay)
The chapter on service areas should be clarified; there is too much authority in the assembly to handle decisions in the service area which should be made by the people paying the taxes in the area.

AS 29.63.
(Bruce Aronson)
Community councils should be advisory only by statute and money from the state for service areas ought to be appropriated for the city, not the local council.

AS 29.63.090(e)
(Richard W. Garnett, III)
Clarify "delegation" of powers to service areas.

AS 29.63.090
(Elsie O'Brien)
Loans by borough to service area should be subject to prior approval by voters within the service area.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.63.090
(Allan E. Tesche)
The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

AS 29.68.
((Bruce Aronson)
Statutes should be changed so that cities are not able to annex territory without providing services to the annexed area and so that people living outside cities who are receiving services pay for them.

AS 29.68.010(cont'd)
(City of St. Mary's)
The delay in time between the decision of the Local Boundary commission and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

AS 29.68.010
(City of St. Mary's)
The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative section has begun.

AS 29.73.020
(Gerald L. Sharp)
This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.

AS 29.78.
(David Dye, Planner III, C&RA)
Expand definitions to include other terms used in Title 29.

AS 29.78.101(16)
(Richard W. Garnett, III)
Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.88.020(e)(3)
(Terry Earley, State Assessor)
Allow the determination of full and true assessed value for second class cities with a population of less than 750 to be based on a comparison with the most comparable cities for which a determination has previously been made. See proposed draft.

SCOMM

#23:13

Sen. Mulcahy
486-3561

Kodiak

information

Mary Jo Simmons
486-4881

Kodiak
legislative
information

Mulcahy
out fishing

Per call 7/1 —
S. Mulcahy is out fishing
& not reachable by radio —
Will be out all of July
but messages can be gotten
to him by radio with
several days notice.

**STATE OF ALASKA**

**Inter-Department Route Slip**

TO:
MAIL STATION NUMBER 3101

DEPARTMENT Legislative Counsel

ATTENTION Tamara Brandt Cook

| | |
|---|---|
| ☐ Approval | ☐ Note & Return |
| ☐ Signature | ☐ Initial & Return |
| ☐ Comment | ☐ Return As Requested |
| ☐ Contact Me | ☐ Return For Approval |
| ☐ Prepare Reply | ☐ Necessary Action |
| ☐ For Your File | ☒ Your Information |

**Remarks:**

FROM:
MAIL STATION NUMBER [illegible]

DEPARTMENT [illegible]

BY [illegible] DATE [illegible]

02-002 (REV.10/73)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF LOCAL GOVERNMENT ASSISTANCE

POUCH B
JUNEAU, ALASKA 99811

January 13, 1981

Ms. Stephanie K. Scott
Administrative Secretary
Haines Borough
P.O. Box H
Haines, Alaska 99827

Dear Stephanie:

RE: TITLE 29 REVISION REGARDING ELECTION OF SCHOOL BOARD MEMBERS

It appears as if the Title 29 Technical Advisory Group has addressed the concern you raised in your January 6, 1981 letter regarding the language of AS 29.33.310. You were concerned that the language, as written, for the election of school board members would not allow for the election of Haines Borough Assembly members on a district basis.

The latest draft of AS 29.33.310 is now numbered 29.24.420 and it has been revised along the same lines as you suggested in your January 6, 1981 letter. The new sections reads as follows:

> Sec. 29.24.420. SCHOOL BOARDS. (a) Each municipal school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large unless a different method of election has been approved by the voters in a regular election.
>
> (b) Notwithstanding (a) of this section, assembly members in a third class borough serve as the school board and the mayor is president of the school board.

I interpret this to mean that subsection (a) of this section does not apply to third class boroughs and that you can continue to elect assembly/school board members by election district. This, of course, is only a proposed change and it could be amended again before it is passed as part of the Title 29 revision package. I will keep you posted if this section is altered to significantly change its intent.

If you have any additional questions or comments please write me.

Sincerely,

Palmer

Palmer McCarter
Director

cc: Tamara Brandt Cook,
Legislative Affairs Agency

21-P3LH

**HAINES BOROUGH**
P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

January 5, 1980

Tamara Cook
Legislative Affairs
Pouch Y
Juneau, Alaska 99811

RE: Title 29 Revisions with respect to a third class borough

Dear Tam:

Now that the Commission has agreed to "grandfather" the Haines Borough we need to look at the statutes and revisions to the statutes which are a problem for the third class borough and which, in some cases, just forget the third class borough.

First of all, we suggest that you simplify 29.41.020 Assembly to Serve as School Board by striking the sentence "Where applicable weighted voting shall apply to board decisions." This sentence is profoundly misleading because weighted voting is prohibited by AS 29.23.021(c).

In order to assert the applicability of 29.48.010 General Powers to the third class borough, we suggest that a sub-section (e) be added to 29.41.010 stating that the general powers conferred by 29.48.010 apply to the third class borough. This would clarify the question posed by Marie Matsuno in her letter of 9/4/80 to Jon Halliwill, Mayor, City of Haines, as to whether the general powers are applicable to the third class borough area-wide or only on a specifically granted service area basis. We believe that our intrepretation of 29.48.010 as applicable to the third class borough carte blance is in line with the interpretation provided in Femmer v. City of Juneau 9 Alaska 175(1937) as foot noted in the present Title 29.

During the revision process I noticed that the third class borough seems to be at odds with 29.33.310 (new section 29.23.420) School Boards.This section states that all board members are elected at large. As you know, the third class borough assembly is the school board. The assembly may elect to be composed other than at large as outlined in 29.23.023 Composition and Form of Representation. It seems that neither the existing 29.23.310 nor the revised version recognize the special relationship between the third class borough assembly and the school board. Does the statement in 29.41.020 that the third class borough assembly is the school board supercede 29.23.310 which mandates an at large election

of school board members or is it necessary to write a clarifying subsection to 29.23.310 indicating that the members of the third class borough school board are the members of the assembly and are elected and composed in accordance with 29.23.023 for assemblies. I would appreciate it if you would take a look at this situation.

For ease of use, new section 29.24.240 Veto should contain a subsection (e) stating that the mayor of a third class borough has no veto power. The mayor is denied the veto power in 29.41.020 (old section number).

Similarly, in new section 29.24.150 Procedures of Legislative Bodies the first sentence should read

> ...except that in a borough which has adopted the manager form of government under AS 29.25.550, or in the third class borough, the mayor serves as presiding officer.

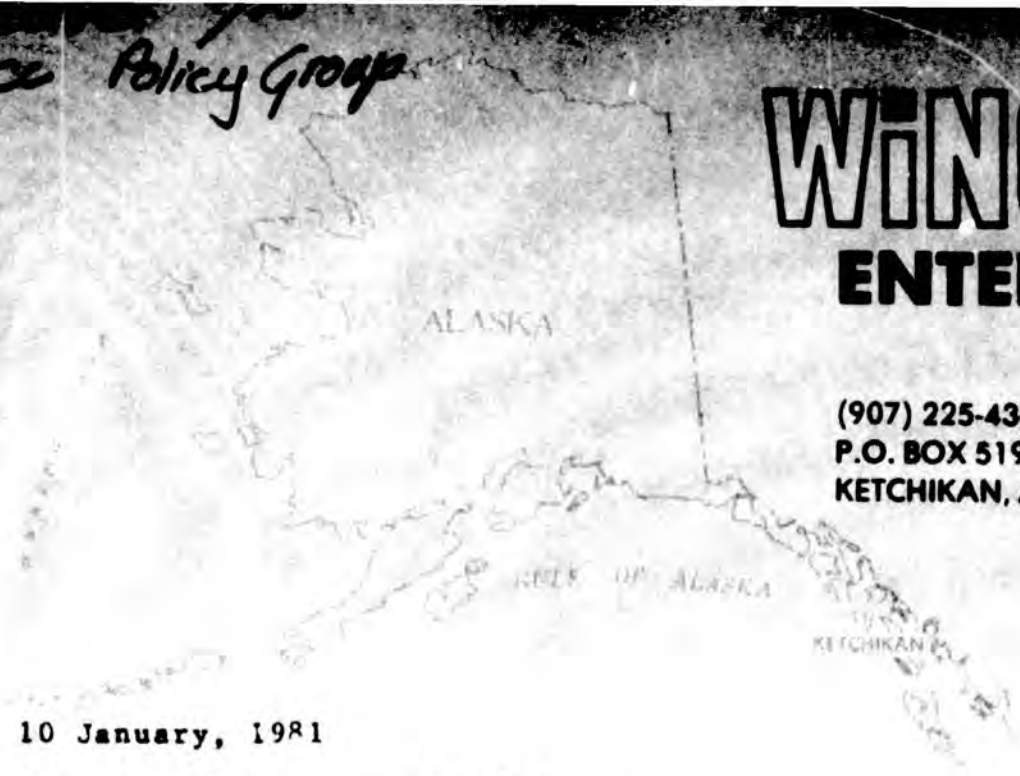
Thank you for looking at these four items. See you in Juneau on the 17th.

Sincerely yours,

Stephanie

Stephanie K. Scott
Administrative Secretary

cc Policy Group




WINGREN
ENTERPRISES

(907) 225-4365
P.O. BOX 5197
KETCHIKAN, ALASKA 99901

10 January, 1981

Senator Arliss Sturgulewski
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Sturgulewski

I quote Alaska Statute 29.53.025. It reads, in part as follows:
(b) Municipalities may by ordinance
(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certified net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

The City of Ketchikan and the Ketchikan Gateway Borough has chosen to listen to the hue and cry from boat owners that if their taxes are increased, they will take their boats and their business elsewhere. I, along with numerous other taxpayers feel that boats should be taxed on assessed valuation, the same as other real property, including airplanes. It is very unlikely that our local government will change to assessed valuation, as long as they have another option. It is also very unlikely that our local state legislators will ever push to amend the state law to make taxation on assessed valuation mandatory. I therefore appeal to you, whom I understand has given this matter some study, to introduce such legislation.

Very truly yours

Paul J. Wingren

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS
DIVISION OF LOCAL GOVERNMENT ASSISTANCE

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4707

July 15, 1980

Haines Borough Assembly
Box H
Haines, Alaska 99827

Dear Assembly Members:

Title 29, which contains the Alaska Statutes on municipal government, specifies that the mayor of a third class borough must be elected at-large for that position. An assemblyman cannot assume the position of mayor since the assemblyman was elected as a voting member of the borough's governing body and the mayor cannot vote. Each assembly member elected to that position has an obligation to vote.

As the mayor of a third class borough cannot vote or exercise the veto power, the assembly need not be concerned about affecting the present borough apportionment by the election of a mayor in addition to the assembly members. There would be no change to the present apportionment.

These comments are offered for your consideration as the Haines Borough prepares for its regular election this fall.

Sincerely,

Palmer McCarter
Director

PMc:MF:jh

cc: Stephanie Scott, Haines Borough
Thomas Blanton, Borough Attorney

Received 7/17/80 SKS

21-P3LH

**MEMORANDUM**

**FROM: FOLTA & ASPER, Borough Attorneys**

**TO: HAINES BOROUGH ASSEMBLY**

**RE: Voting By Borough Mayor**

**DATE: September 18, 1973**

A question has come up under the new municipal code regarding the vote of the Borough Mayor in a Third-class Borough. Third-class Borough questions are difficult to resolve because Chapter 41 of Title 29, which refers to them, only briefly indicates what they can and cannot do. For questions not answered in Chapter 41 we assume that provisions governing First and Second class boroughs apply. The fact that Haines is the only Third class Borough in the state means that no guidance can be had on these questions from the experience of other municipalities in Alaska.

At the present time the assembly has chosen a mayor from among its members and the mayor is following section 29.23.160 which says that the mayor shall participate in assembly decisions but may not vote. Since Mr. Olerud, the present mayor, is a representative of the city of Haines he carries a weighted vote which is lost to city voters by his seeming inability to use it. Although to date the Mayors' non-voting has not affected the outcome of borough consideration on any matter, it is quite possible that this could happen in the future.

After reading the statutes it seems apparant that the problem lies in the fact that the mayor is also a member of the assembly. We have concluded, and our conclusion is agreed on by attorneys in the Local Affairs Agency, that the new municipal code

requires that there be a borough mayor, even in Third-class Boroughs, but that the mayor be a separately elected official, who is not a member of the assembly (Section 29.23.130). This official would be elected at large in the Borough and would be the chief administrator for the Borough, but would not vote. In a first or second class Borough the Mayor has a veto power to overrule the assembly, but this power is specifically denied the mayor in a third class Borough. (Section 29.41.020) The Assembly would continue in its present form but would choose a presiding officer to manage assembly meetings. (Section 29.23. 060 (b) )

Our recommendation at this time is that a Borough Mayor be elected in the Haines Borough whenever possible and in the meantime that Mr. Olerud resume voting with the understanding that his office is really that of Presiding Officer of the Assembly rather than the Borough Mayor as contemplated by the municipal code.

We would point out that the Borough Mayor scheme was primarily written into the municipal code for the use of the larger First and Second class Boroughs and may be too much government for this Third Class Borough, which is operating in good order now without a separately elected mayor. If the Borough must elect a mayor, as the statute seems to require then perhaps this presents a good opportunity to once again consider alternate forms of government for this area. The third class Borough has some very good points but this question and others indicate that it is a sort of Legislative afterthought which will continue to present problems which were never considered by the lawmakers when they enacted the municipal code.

# City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835


January 13, 1981

Mr. Steve Van Sant, President
Alaska Assoc. of Assessing Officers
c/o Matanuska-Susitna Borough
Box B
Palmer, Alaska 99645

Re: Chapter 45
Municipal Taxation

Dear Steve:

I have reviewed the above draft and had our Municipal Attorney review it also. The following comments are submitted for your review and pass through to the legislative committee.

P. 119 - Line 13 - "Exclusive for classroom space" - Amongst the various exempted uses, the above single use of any space appears unworkable.

P. 129 - Line 29-30 - Assessor seek production of records? What records?

P. 132 - Line 17 - "Which are consistant with general rules of administrative procedure." It appears to us that this ambiguous wording opens the door to suit by claim of "rules", This section should be specific.

P. 134 - Line 18 - 20%
Line 26 - 10% Should these not be the same?

P. 141 - Line 23 - "His assigns". We have had problems with this one where a person pays $1.00 or $2 for releases from old, old property foreclosed against then claims the property for only $80 - $60 back taxes. We feel this will specifically create problems unless a definite time period placed in this section. It has happened to us in Sitka. It could certainly happen elsewhere! Perhaps the way to handle it would be to add a paragraph "c" between lines 6 & 7 on page 142, to read;

(c) the right of the former owner and his assigns to repurchase the property ceases 10 years after the end of the redemption period.

Page 143 - Line 21 - 15% interest. Paragraph (b) states if a remittance is made by a taxpayer even through error, the Borough must refund at 15% interest. Doesn't this open the door to allow deliberate overpayment to get 15% - that's better than any bank, time C.D., etc. Maybe I'm getting paranoid, but that seems like opening Pandora's Box. We need some sort of limitation clause.

Page 145 - Lines 4-7. Should also include a late filing penalty the same as real/personal property taxes.

Page 145 - Line 10 - Should include a statement--on that or any other property or item owned by the same person. This would make it clear a lien would not be just on specific property taxes not paid on, but could hamper other property. We have had instances where persons specifically attempt to apply taxes to only partial holdings rather than the total obligations.

Thank you for the opportunity to comment.

Sincerely,

Michael Schmidt
Planning Director/Assessor

cc: Fermin Gutierrez
Peter Hallgren
Earley - State Assessor
Tom Cook, Leg. Affairs
mike worley

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

A BILL

For an Act entitled: "An Act relating to assessments and exemptions from property taxation; and providing for an effective date."

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

* Section 1. AS 29.53.020(h) is amended to read:

(h) Except as provided in (g) of this section, nothing in (e) - (1) [(i)] of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

(j) One motor vehicle owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax established under AS 28.10.431(b).

(k) The state shall reimburse a borough or city for tax revenues lost to it under (j) of this section.

(l) The Department of Community and Regional Affairs shall adopt regulations to implement the provisions of (g), (j), and (k) of this section.

* Sec. 3. AS 28.10.411(d) is repealed.

* Sec. 4. This Act is retroactive to January 1, 1981.

**For an Act entitled: "An Act relating to senior citizen exemption from motor vehicle property tax; and providing for an effective date."**

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

* Section 1. AS 29.53.020(h) is amended to read:

(h) Except as provided in (g) of this section, nothing in (e) - <u>(1)</u> [(i)] of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

(j) One motor vehicle owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax established under AS 28.10.431(b).

(k) The state shall pay a borough or city for tax revenues lost to it under (j) of this section. The payment shall be an amount equal to the tax levied under AS 28.10.431(b) for each vehicle for which a senior citizen exempt affidavit form, as prescribed by the Department of Public Safety, Division of Motor Vehicles, is submitted.

(l) The Department of Community and Regional Affairs shall adopt regulations to implement the provisions of (g), (j), and (k) of this section.

* Sec. 3. AS 29.10.411(d) is repealed.

* Sec. 4. This Act is retroactive to January 1, 1980.

Note: This replaces a suggestion already submitted to the policy group.

MEMORANDUM State of Alaska

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

TO: Tamara Brandt Cook
Legislative Counsel
Legislative Affairs Agency

DATE: September 10, 1980

FILE NO:

TELEPHONE NO:

FROM: Palmer McCarter
Director
Local Government Assistance Division

SUBJECT: Title 29 Revision Committee

Attached are five memos or letters which we have received making suggestions for changes in Title 29 or, in the case of Commissioner Mueller's memo, perhaps to the definition section of Title 46.

You may have already received some of these suggestions already, but on the chance you have not, I enclose all for your use.

Deputy Director Pat Poland and I will both plan to monitor the next meeting of the technical review committee in Anchorage on September 18. Since I will be out of town during the second meeting of the T29 Policy committee (scheduled for September 29-30 in Anchorage), I shall have Pat Poland attend on my behalf.

PMc:jh

cc: Commissioner Ernest Mueller

Attachments:
1) August 14, 1980 memo from Commissioner Mueller to Commissioner McAnerney
2) Packet of 4 draft bills amending sections of Title 29 relating to property taxation submitted by State Assessor.
3) August 5, 1980 letter to State Assessor from Fairbanks North Star Borough
4) August 20, 1980 memo from Division of Community Planning to Commissioner McAnerney
5) September 3, 1980 letter from City of Valdez concerning Sr. Citizen Property Tax exemption.

A BILL

For an Act entitled: "An act providing for determination of full and and true value by the Department of Community and Regional Affairs; and providing for an effective date."

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

* Section 1. AS 29.53 is amended by adding a new section to read:

AS 29.53.190. Determination of full and true value by Department of Community and Regional Affairs. (a) The Department of Community and Regional Affairs, in consultation with the assessor for each district, shall determine the full value of the taxable real and personal property in each district. If there is no local assessor or current local assessment for a district, then the Department of Community and Regional Affairs shall make the determination of full value from information available. In making the determination, the Department of Community and Regional Affairs shall be guided by AS 29.53.060. The determination of full value shall be made before October 1. The Department shall notify all municipalities for which a determination is done of that determination by October 1. The governing body of the borough or city which is the district may obtain judicial review of the determination by filing a motion in the superior

court of the judicial district in which the district is located within 30 days after receipt of the determination. The superior court may modify the determination of the Department of Community and Regional Affairs only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

(b) Motor vehicles subject to the motor vehicle registration tax under AS 28.10.255 shall be treated as taxable property for purposes of (a) of this section.

(c) To determine the debt-to-valuation ratio to be applied to the determination of state aid for school construction under AS 43.18.105-43.18.135, the Department of Community and Regional Affairs, in consultation with the responsible financial officer of each municipality which is a school district, shall annually determine the debt of the municipality and report the determination to the mayor of the municipality and the commissioner of the Department of Education. The determination shall be made by October 1 of each year and shall report the outstanding debt as of July 1 each year.

* Sec. 2. AS 29.88.020(d) is amended to read:

(d) The full and true assessed property value shall be determined by the department in the manner provided under AS 29.53.190 [AS 14.17.140]. When the determination of locally generated revenue includes revenue of a utility received under AS 29.88.010(c)(1)(E), the full and true assessed property value shall include the computed assessed value of the utility,

determined by dividing the amount of the payment in place of taxes made by the utility by the millage rate which would apply to the utility if the utility were subject to levy and collection of taxes under AS 29.53.

* Sec. 3. AS 14.17.140 is repealed.

* Sec. 4. This Act takes effect January 1, 1982.

A BILL

For an Act entitled: "An Act requiring disclosure on a real estate conveyance".

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

* Section 1. AS 34.15.345 is amended to read:

AS 34.15.345. Disclosure of address of record purchaser and consideration. (a) A conveyance may not be accepted for recording unless the instrument shows the mailing address of the buyer.

(b) No instrument evidencing a sale of real property shall be accepted for recording unless the face of the instrument shows the selling price paid for the transfer.

* Sec. 2. AS 34.15.350 is amended by adding a new subsection to read:

(b) "Selling price" means the consideration, in money or any other thing of value, paid, delivered or contracted to be paid or delivered, in return for the transfer of real property, including but not limited to the amount of a lien, mortgage, contract, indebtedness or other encumbrance against the property.

3A

A BILL

For an Act entitled: "An Act relating to determination of full and true assessed value for municipalities."

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

* Section 1. AS 29.88.020(e)(3) is amended to read:

(3) all other second class cities, by comparision, on an individual city basis, with the most comparable cities [DETERMINING THE AVERAGE FULL AND TRUE ASSESSED PROPERTY VALUE OF ALL CITIES HAVING A POPULATION OF LESS THAN 750 PERSONS IN WHICH AN ASSESSMENT HAS BEEN COMPLETED BY A MUNICIPALITY OR] for which a determination is [NOT] made under (1) or (2) of this subsection. The department shall establish which cities are most comparable for purposes of the determination.

fairbanks north star borough
p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761

August 5, 1980

RECEIVED
AUG 11 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

Terry L. Earley
State Assessor
Dept. of Community
& Regional Affairs
Pouch B
Juneau, Ak. 99811

Re: Senate C. R. 66

Dear Terry:

During my brief tenure, two provisions of title 29 pertaining to property taxes have caught my attention.

First, concerning the Farm Use Exemption; presuming its passage was directed toward encouraging agriculture in the State, and discounting the resistance some farmers in this area exhibit by their reluctance to sign up for it, I think the income requirement should either be reduced (say to 5%) or eliminated.

Take a farmer beginning a livestock operation. Nature dictates that it will be several years before productive breeder stock can be developed, let alone producing enough progeny to sell, sufficient to meet the income requirement.

Furthermore, any new farm venture demands high initial investment for equipment, clearing of land and the aforementioned stock developement. They need an incentive to begin - not merely hope they will get relief if successful. I am prejudiced toward preferential treatment as an alternative. This is more consistent with current State agricultural use land sales, tending to establish land values in the eye of the taxpayer and creating a hard argument for and presumption of farm land value to overcome by local assessor.

Second, the Senior Citizen Exemption; and 29.53.020 (G) in particular. It is logical, and only fair, that reimbursement to the City or Borough be limited to that amount which exceeds a local exemption that was granted; but to extend it to a local exemption that if properly applied for "would have been granted" is too much. It is worse than ex post facto, it relates to something that never happened, and I fail to see any logic at all.

Possibly a third subject I would like to see addressed concerns Mobile Homes. I have experienced assessing them (twice now) and enjoyed the euphoria of not assessing them. By their very nature - mobile and subject to title ownership - they are hard to find outside of an established park and by collection time hard to catch up with, in many instances; even becoming personal property when repossessed. I realize this Borough is unique in Alaska regarding personal property, but that is not the basis for my objection to assessing them.

A much more efficient method of taxing them is to require a license (like motor vehicles) at which time a specific ownership tax is charged. That way

the tax is paid and collected at the beginning of the tax year and distributed according to the pro-ration formula of the property tax.

Although not changing existing law, I have several suggestions for additional statues which I understand have been tried before and fly in the face of popular public opinion. Nevertheless, if the legislature is sincere in wanting to improve the administration of the property tax then serious consideration should be given them.

One, a Documentary Fee on Conveyance of Real Property. Enclosed is a copy of the Colorado law for what it is worth. I do know, however, that it worked beautifully and was an inestimable aid in the appraisal process.

Two, Confidentiality of Information as well as a corresponding penalty statute for devulging same. Enclosed are copies of pertinent statutes which I am familiar with. It is difficult to obtain written confirmation of verbal information relating, in particular, to income data, and in some instances cost data, if every Tom, Dick, and Harry has access to it. The penalty statute for divulging information is an added safegaurd for the taxpayer as that puts the assessor under the gun in keeping confidential supportive data from which the final total assessment (clearly public information) may evolve.

Lastly, I am intrigued with assessing exempt property used by a non-exempt person. Terry, I refer to the Michigan statute, upheld by the Supreme Court, which allowed taxing such property. It was tried in Colorado (copy of law attached) but it was so emasculated by amendments ( (3), (4), & (5) of enclosed law) that it was in the process of being declared unconstitutional as being discriminatory-i.e., the only property not excepted was Federal owned - when I last heard about it.

Such a law would cover our railroad, airport, and University of Alaska leases as well as State and Federal lands. Just a thought.

I guess that about covers it for now.

Very truly yours,

Dave

Dave Braden
Borough Assessor

P. S. Am enclosing a copy of our new property tax limitation ordinance for your information.

DB/dg

RECEIVED
AUG 11 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

## ★ Documentary Fee on Conveyances of Real Property

**39-13-101. LEGISLATIVE DECLARATION. (1) The general assembly declares that in enacting laws relating to the general property tax, it has provided that certain property in each county of the state shall be appraised and the actual value thereof determined by the assessor and that one of the several factors to be considered by him in determining the actual value of any property shall be "comparison with other properties of known or recognized value."**

**(2) It further declares that such comparison may be best effected if there is available to the assessor a continuing record of the consideration paid or to be paid by purchasers of real property evidenced, prior to recording, on the document conveying title to such property and recorded in the office of the county clerk and recorder in the several counties of the state in the manner provided by law and that this article is enacted to provide a means of developing such continuing record and making such record available for use primarily by assessors.** (L 67)

39-13-102. DOCUMENTARY FEE IMPOSED - AMOUNT - TO WHOM PAYABLE. (1) There is imposed and shall be paid, by every person offering for recording in the office of the county clerk and recorder any deed or instrument in writing wherein or whereby title to real property situated in this state is granted or conveyed, a fee, referred to in this article as "documentary fee," measured by the consideration paid or to be paid for such grant or conveyance, which documentary fee shall be in addition to any other fee fixed by law for the recording of such deed or instrument in writing.

(2) The amount of documentary fee payble in each case shall be as follows:

(a) When there is no consideration or when the consideration, inclusive of the amount of any lien or encumbrance against the property granted or conveyed, is five hundred dollars or less, no documentary fee shall be payable.

(b) When the consideraton, inclusive of the amount of any lien or encumbrance against the property granted or conveyed, exceeds five hundred dollars, the documentary fee payable shall be computed at the rate of one cent for each one hundred dollars, or major fraction thereof, of such consideration.

(3) All documentary fees shall be payable to and collected by the county clerk and recorder.

(4) In those cases in which real property located in two or more counties is granted or conveyed in a single transaction, each county clerk and recorder shall collect a portion of the total documentary fee referred to in subsection (2) of this section in the same ratio that the consideration fairly attributable to the part of such property located in his county bears to the total consideration. The allocation of the total consideration between counties is to be made by the person offering such deed or instrument in writing for recording. (L 68)

39-13-103. EVIDENCE OF PAYMENT OF FEE. Each county clerk and

recorder shall evidence payment of the documentary fee imposed in this article by imprinting, typing, stamping, or writing in ink on the margin or other blank portion of every document to which such fee applies the words "State Documentary Fee," the amount of documentary fee paid, and the date upon which paid, which impression or notation shall be made on such document before it is recorded. (L 68)

39-13-104. EXEMPTIONS. (1) The documentary fee imposed in this article shall not apply to:

(a) Any deed wherein the United States or any agency or instrumentality thereof or the state of Colorado or any political subdivision thereof is either the grantor or the grantee;

(b) Any deed granting or conveying title to real property in consequence of a gift of such property;

(c) Any public trustee's deed executed pursuant to the provisions of section 38-39-110, C.R.S. 1973;

(d) Any treasurer's deed executed in accordance with the provisions of article 11 of this title;

(e) Any sheriff's deed;

(f) Any instrument which confirms or corrects a deed previously recorded;

(g) Any deed granting or conveying title to cemetery lots;

(h) Any executory contract for the sale of real property of less than three years' duration under which the vendee is entitled to or does take possession thereof without acquiring title thereto, nor to any assignment or cancellation of any such contract;

(i) Any lease of real property or assignment or transfer of an interest in any such lease;

(j) Any document given to secure payment of an indetedness;

(k) Any document granting or conveying a future interest in real property;

(l) Any decree or order of a court of record determining or vesting title;

(m) Any document necessary to transfer title to property as a result of the death of an owner thereof;

(n) Any mineral deed or royalty deed;

(o) Any rights-of-way and easements.

(2) Exemption from payment of the documentary fee imposed in this article must be claimed at the time a deed or instrument is offered for recording. (L 68)

39-13-105. NO DEED RECORDED UNLESS DOCUMENTARY FEE PAID. No deed or instrument in writing to which a documentary fee applies shall be recorded until and unless the documentary fee payable thereon has been paid and evidence of its payment has been imprinted, typed, stamped, or written in ink

thereon as provided in section 39-13-103. Any county clerk and recorder who willfully and knowingly records any document to which a documentary fee applies without having first collected such fee and evidence payment thereof as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars. (L 68)

39-13-106. UNLAWFUL ACTS - PENALTY. (1) It is unlawful for any person to commit the following acts:

(a) To fail or refuse to pay the documentary fee imposed in this article when such payment is required;

(b) To willfully and knowingly recite to the county clerk and recorder a consideration greater or less than the actual consideration referred to in section 39-13-102 (2) (a) and (2) (b) in connection with the granting or conveying of title to real property by any deed or instrument in writing to which the documentary fee applies.

(2) Any person who commits either of the acts set forth in subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than three months, or by both such fine and imprisonment. (L 67)

39-13-107. ASSESSOR TO COMPILE CONTINUING RECORD. It is the duty of each assessor to examine at least once each year all documents recorded in his county upon which a documentary fee has been paid and to determine in each case the consideration upon which such fee was computed and paid. He shall compile and maintain in his office a continuing record of all such consideration to assist him in appraising property and determining the actual value thereof as required by the provisions of section 39-1-103 (5). (L 67)

39-13-108. DISPOSITION OF FEES. All documentary fees collected by the county clerk and recorder shall be deposited with the county treasurer at least once each month and credited by him in the manner prescribed by law. (L 67)

31-25-107 (9) (a), C.R.S. 1973, for payment of taxes according to the provisions of said section, so long as said division remains in effect. (L 75)

39-1-112. TAXES AVAILABLE - WHEN. All taxes levied pursuant to the provisions of articles 1 to 13 of this title shall be available for expenditure by the political subdivision for which levied during its fiscal year, as collected. (L 64)

39-1-113. ABATEMENT AND REFUND OF TAXES. No abatement or refund of taxes erroneously or illegally levied shall be made by the board of county commissioners unless a hearing is had thereon, at which hearing the assessor shall have the opportunity to be present. Whenever any abatement or refund is recommended by the board of county commissioners, an application therefor, reciting the amount of such abatement or refund and the grounds upon which it should be allowed, shall be submitted to the administrator for his review pursuant to section 39-2-116. If an application is approved, the board of county commissioners shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board of county commissioners shall order the refund of taxes pro rata by all taxing jurisdictions receiving payment thereof. (L 77)

39-1-114. WHO MAY ADMINISTER OATH. Whenever any fact, matter, or thing is required by the provisions of articles 1 to 13 of this title to be verified by oath or affirmation, any assessor, treasurer, or county clerk and recorder, or a deputy of any of said officers, may administer such oath or affirmation. The deputy need not certify the oath in the name of the principal. (L 64)

39-1-115. RECORDS PRIMA FACIE EVIDENCE. The assessment rolls, the tax warrants, the entries made in the books of the treasurer, and the lists of lands sold for taxes recorded by the treasurer or the county clerk and recorder, or a certified copy thereof, shall be prima facie evidence of all things appearing therein in all courts and places. (L 64)

★ 39-1-116. PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION. Except when pursuant to an order of any court of competent jurisdiction, or as otherwise provided by law, any person who divulges or makes known in any way the contents of any private document, as specified in section 39-4-103 or in section 39-5-120, to any person not authorized to have access to such documents is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. (L 64)

39-1-117. PRIOR ACTIONS NOT AFFECTED. Nothing in articles 1 to 13 of this title shall apply to or in any manner affect any valuation, assessment,

or demolished subsequent to the assessment date in any year, it is the duty of the owner thereof or his agent to promptly notify the assessor of such destruction or demolition and the date upon which the same occurred. In all such cases, such personal property or improvements shall be valued by the assessor at the proportion of its valuation for the full calendar year that the period of time in such year prior to its destruction or demolition bears to the full calendar year. Failure of the owner thereof or of his agent to so notify the assessor prior to the date taxes are levied shall be considered a waiver, and no proportionate valuation by the assessor shall then be required. (L 64)

39-5-118. FAILURE TO RECEIVE SCHEDULE - VALIDITY OF VALUATION. No determination of the actual value of any taxable personal property made by the assessor shall be rendered invalid by reason of his failure to secure or receive the personal property schedule required to be completed and returned to him prior to his determination of such value. (L 64)

39-5-119. REFUSAL TO ANSWER - COURT ORDER. Whenever any person refuses to be interviewed by the assessor or his deputy or refuses to answer any pertinent questions relative to taxable property owned by him, or in his possession, or under his control, then, in the discretion of the district court having jurisdiction in the county and upon affidavit of the assessor or his deputy showing such refusal to be interviewed or to answer such questions, such person shall be cited before such court and shall be required by the court then and there to submit to such interview and to answer such questions. All costs of such proceedings shall be assessed by the court against such person, and judgment and execution shall be entered therefor as in other civil cases. (L 67)

★ 39-5-120. TAX SCHEDULES ENDORSED AND FILED - AVAILABILITY FOR INSPECTION. All personal property schedules and exhibits or statements attached thereto returned to or secured by the assessor shall be endorsed with the name of the person whose taxable personal property is listed therein and shall be filed in either alphabetical or numerical order and retained for a period of six years, after which time they may be destroyed. Such schedules and accompanying exhibits or statements shall be considered private documents and shall be available on a confidential basis only to the assessor and the employees of his office, the treasurer and the employees of his office, the executive director of the department of revenue and the employees of his office, and the administrator and the employees of his office. Such exhibits or statements shall be available on a confidential basis to the board and the county board of equalization when information contained in such documents is pertinent to an appeal or protest. (L 76)

39-5-121. NOTICE OF INCREASED VALUATION. No later than May 24 in each year, the assessor shall mail to each person whose taxable personal

**39-3-110. PAYMENT OF TAXES ESTINGUISHES LIEN.** Payment to the treasurer of prorated taxes for the current year, as provided in sections 39-3-108 and 39-3-109, together with payment of any other unpaid taxes and penalty interest or charges, shall extinguish the lien for taxes on such property, or a portion thereof; but if only a portion of any parcel, tract, or lot of property becomes legally exempt from general taxation and no taxes are collected at that time, the lien of taxes levied or to be levied shall attach to the remaining portion of said property. (L 64)

39-3-111. CONDEMNATION BY TAX EXEMPT AGENCY - TREASURER'S DUTIES. In all cases where an entire property, or a portion of any parcel, tract, or lot of property is likely to become legally exempt from general taxation through exercise of the power of eminent domain, the treasurer shall be joined as a party respondent in any such action, and upon joinder and notice of the proceedings, he shall assert a claim for the amount of any prorated taxes for the current year on such property, and all other unpaid taxes, penalty interest, or charges thereon with the clerk of the court in which the proceedings are filed. Upon institution of any such proceedings, the lien of general taxes levied and to be levied shall be transferred from the property acquired or sought to be acquired to any money awarded or to be awarded for the taking of such property. Nothing in this section shall require any treasurer to file a claim in any such proceedings involving acquisition of only a portion of any property, if he is satisfied that there is sufficient taxable property remaining after the taking of such portion to satisfy any lien for the amount of taxes payable on such portion taken. (L 64)

★ 39-3-112. TAXATION OF EXEMPT PROPERTY - TAXES NOT TO BECOME LIEN. (1) When any property which for any reason is exempt from taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user thereof shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property, except as provided in this subsection (1) and as provided in subsections (3), (4), and (5) of this section. (L 75)

(2) Taxes shall be assessed to such lessee or user of property and collected in the same manner as taxes assessed to owners of such property; except that such taxes shall not become a lien against the property. When due, such taxes shall be a debt due from the lessee or user to the board of county commissioners for the county where said property is located, and in the city and county of Denver to such other body as is authorized by law to levy taxes, and shall be recoverable by such body by direct action in debt on behalf of each governmental entity for which a tax levy has been made. (L 75)

(3) This section shall not vary in any manner the taxation of mines or oil and gas or oil shale or geothermal leaseholds and lands under articles 1 to 13 of this title. The valuation for assessment of mines or oil and gas or oil shale or geothermal leaseholds and lands shall be determined pursuant to articles 6 and 7 of this title. (L 75)

(4) (a) This section shall not apply to any property owned by a home rule or statutory county, city and county, city, or town, or by a territorial charter city, if such property is subject to payments in lieu of taxes under section 29-3-120, C.R.S. 1973 (L 76)

(b) This section shall not apply to any property owned by a home rule or statutory county, city and county, city, or town or by a territorial charter city, if such property was, before July 1, 1976, leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit; but such exemption shall not extend beyond the term of such lease or loan or option included in the agreement in effect before said date. (L 76)

(c) This section shall not apply to rights-of-way or easements acquired by public utilities or for access roads. (L 76)

(d) This section shall not apply to any property owned by a political subdivision of the state which is used in the provision of normal facilities, services, or operations authorized by constitution or statute to be provided by such political subdivisions. (L 76)

(5) This section is not applicable to lands used solely for agricultural purposes and improvements thereon. (L 75)

(6) The valuation for assessment of lands owned by the United States and used for recreational purposes shall be thirty percent of the fees paid by the user of said lands to the United States for the use thereof in the previous calendar year. (L 75)

(7) Nothing in this section shall be construed to apply to properties exempted by territorial charter. (L 75)

By: Bruce Wammack
John Kohler
Introduced: 5/22/80
Advanced: 5/22/80
Substituted: 6/12/80
Adopted: 6/12/80

ORDINANCE NO. 80-35

AN ORDINANCE LIMITING PROPERTY TAXES
TO FIVE MILLS

BE IT ORDAINED BY the Fairbanks North Star Borough Assembly that:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Code of the Fairbanks North Star Borough.

Section 2. Section 3.08.140 is amended by adding a new subsection to read:

Section 3.08.140 (B) Property taxes assessed or levied by the Fairbanks North Star Borough, inclusive of existing current bonded indebtness, and principal and interest payments thereon, but exclusive of any future bonded indebtness and principal and interest payments thereon, incurred, and passed by a majority of voters in any general or special election, after July 1, 1980, shall be limited to a maximum of five (5) mills.

Section 3. Effective date. This ordinance shall become effective on July 1, 1980, and shall remain in effect unless repealed by a majortiy of the assembly of the Fairbanks North Star Borough.

PASSED AND APPROVED THIS 12th DAY OF JUNE, 1980.

Presiding Officer

ATTEST:

Clerk of the Assembly



**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901

August 15, 1980

Terry L. Earley, State Assessor
Department of Community & Regional Affairs
Pouch B
Juneau, AK 99811

Re: TITLE 29 REVISIONS

Dear Terry:

Attached are copies of excerpts from title 29, chapter 53. I have included my recommended revisions and/or additions in the right column. Recommended deletions are shaded in the body of the text.

My work schedule has been such that I was unable to address this matter as quickly as I would have liked. I apologize.

Sincerely,

Mike

Michael W. Worley
Director of Assessments
Ketchikan Gateway Borough

MWW/jfs

RECEIVED
AUG 21 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS



**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901

# MEMORANDUM

TO: Russell W. Walker, Municipal Attorney

THRU: Judi Slajer, Borough Manager

FROM: Michael W. Worley, Director of Assessments

RE: Revisions to Title 29

DATE: August 14, 1980

I support the revision of AS 29.53.135 (see attached copy) as stated in your memorandum dated July 31, 1980.

Attached are my suggestions for further revisions of Chapter 53. Revisions are stated in the right margin, and deletions are highlighted in the body of the text.

**Sec. 29.53.020. Required exemptions.** (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a householder not exceeding $500 in value;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of the pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) After January 1, 1973 the real property owned and occupied as a permanent place of abode by a resident 65 years of age or over whose gross annual income totals less than $10,000 is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption; however, in the case of more than one party eligible for an exemption with

(Housekeeping)

If used by educational groups, the property must be used exclusively for classroom space.

(Housekeeping)

respect to the same property, the total combined gross annual income of the parties may not exceed $10,000. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560—44.62.570.

(f) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought and must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section, and in that respect may as one form of proof require authorization from the taxpayer to verify gross income level by reference to gross income shown in the latest state income tax return available for all or part of the assessment year for which an exemption is sought.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section.

(h) Nothing in (e)—(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in § 25 of this chapter. However, under (e)—(i) of this section only the amount of revenue lost to the municipality by reason of the exemption authorized in those provisions may be reimbursed to the municipality by the state.

(i) In (e)—(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes. (§ 2 ch 118 SLA 1972)

under (e) of this section

History of section. — See City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

This section was enacted pursuant to Alaska Const., art. IX, § 4. Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists, Sup. Ct. Op. No. 591 (File No. 1060), 462 P.2d 432 (1969).

Intent of constitutional convention. —The constitutional convention intended that only so much of the property used for religious purposes as was being used to produce income should be taxable, that such other parts should be exempt, and that a proration between taxable and nontaxable parts should be made. 1962 Op. Att'y Gen., No. 15.

Purpose.—The purpose of this section is to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment is largely irrelevant. McKee v. Evans, Sup. Ct. Op. No. 740 (File No. 1382), 490 P.2d 1226 (1971).

tioned in this section, is not subject to valuation by first class cities for the purposes of AS 14.17.010 et seq., to the extent that it is exempt from taxation. 1962 Op. Att'y Gen., No. 18.

Exclusive employment of occupants of properties sought to be taxed was such as to bring these properties within the exemptions provided in subsections (b)(1) and (b)(2) for residences of ministers owned by religious organizations, or property used for "solely charitable purposes" or "religious education." North Pac. Union Conference Ass'n of Seventh Day Adventists v. Harmon, 5 Alaska L.J. No. 11, p. 228 (Nov., 1967).

The providing of recreational facilities, such as accommodations for campers, is a charitable use of the property. Matanuska-Susitna Borough v. King's Lake Camp, Sup. Ct. Op. No. 472 (File No. 857), 439 P.2d 441 (1968).

Ordinance exempting from local taxation any class of real or personal property.—A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen., No. 1.

Electric cooperative operating under arrangement with federal agency is not exempt.—A nonprofit cooperative is not an agency of the United States government simply by virtue of an "arrangement" with the Rural Electrification Administration pursuant to 7 USC §§ 901—915, and therefore immune from local taxation. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

There is no statutory authority exempting the property of Chugach Electric Association from taxation by the city of Anchorage and the Anchorage independent school district. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

Exemption of property on federal land inapplicable to Railroad Reserve. — The doctrine that property located upon federally owned land is immune from local taxation is inapposite where it is not shown that the Railroad Reserve is "federal property" or under the exclusive jurisdiction of the federal government. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

Sec. 29.53.025. Optional exemptions and exclusions. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

See § 29.53.020.(a)(2)

(Housekeeping)

(C) historic sites, buildings and monuments.

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

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

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act. (§ 2 ch 118 SLA 1972)

**City may not exempt property without express authority.**—The authority of a municipal corporation to allow exemptions of particular property from taxation, unless expressly conferred by law, has very generally been denied. Valentine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929).

**Ordinance exempting from local taxation any class of real or personal property.**—A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen., No. 1.

**Valuation of full and true value not precluded.** — The fact that first class cities may choose the tonnage valuation of ships for the purposes of taxation does not preclude them from making a valuation of full and true value for the purposes of taxation. It necessarily follows that boats and vessels should be valued at full and true value for the purpose of AS 14.17.010 et seq. 1962 Op. Att'y Gen., No. 18.

**Rules applicable to second class cities.**—The rules applicable to boats and vessels in first class cities apply equally to those under the jurisdiction of second class cities. 1962 Op. Att'y Gen., No. 18.

Sec. 29.53.030. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is fixed at $200 for each 20 acres or fraction of 20 acres. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value. (§ 2 ch 118 SLA 1972)

Replace with local Severance tax on all resources (timber, fill, minerals, etc.)

**Sec. 29.53.110. Assessment notice.** (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing. (§ 2 ch 118 SLA 1972)

**Sec. 29.53.120. Corrections.** (a) A person receiving an assessment notice shall advise the assessor of errors or omissions in the assessment of his property. The assessor may correct errors or omissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board. (§ 2 ch 118 SLA 1972)

**Sec. 29.53.130. Appeal.** (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city. (§ 2 ch 118 SLA 1972)

**Taxpayer may contest valuation.**—Under this section a taxpayer may contest valuation before a board of trustees meeting as a board of equalization. Yakutat & S. Ry. v. City of Yakutat, 16 Alaska 18, 227 F.2d 9 (9th Cir. 1955).

**Determining portion of property devoted to purposes of organization.**—Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970).

within 30 days of the effective date of the notice.

(b)If the property owner disagrees with the assessed value, the assessor shall review the assessment and inform the property owner of his findings allowing 10 days for appeal to the board. If the assessed value changes, the assessor shall send a revised notice to the property owner.

be allowed 10 . . . the notification described in §29.53.120(b above, to

**Sec. 29.53.135. Board of equalization.** The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, or it may delegate this authority to a board appointed by it for that purpose. The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business. The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance adopt rules for the membership and conduct of the board (§ 2 ch 118 SLA 1972)

not fewer than three members.

**Borough assembly as administrative body.** — When the borough assembly functions as a board of equalization or adjustment, it acts as an administrative, not a legislative, body. 1965 Op. Att'y Gen., No. 7.

When the borough assembly sits as an administrative body, whether as a board of equalization or adjustment, the weighted vote may not be used. 1965 Op. Att'y Gen., No. 7.

**Sec. 29.53.140. Hearing.** (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed or proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1.

(f) An appellant may appeal to the superior court for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial. (§ 2 ch 118 SLA 1972)

**Scope of review.** — The superior court will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. The superior court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of evaluation. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970); Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

**When valuation or assessment violates due process.**—The valuation and assessment of property for taxes does not contravene the due process clause of the 14th amendment unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer's property rights. Twentieth Century Inv. Co. v. City of Juneau, Sup. Ct. Op. No. 28 (File No. 42), 359 P.2d 783 (1961).

**Sec. 29.53.150. Supplementary assessment rolls.** The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. (§ 2 ch 118 SLA 1972)

**Erroneous omissions from assessment roll do not invalidate all taxes.** —The omission of property from an assessment roll, through error of judgment or of law, will not invalidate all taxes, thus practically putting an end to the operations of government. Valencine v. City of Juneau, 36 F.2d 904 (9th Cir. 1929).

Sec. 29.53.155. Manifest errors discovered on the assessment roll may be corrected by the assessor and an adjustment made to the roll subsequent to its certification.

**Sec. 29.53.160. Tax adjustments on property affected by a natural disaster.** (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law. (§ 2 ch 118 SLA 1972)

**Sec. 29.53.170. Tax levy and rate.** (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of general ordinances, but the rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest. (§ 2 ch 118 SLA 1972)

**Sec. 29.53.180. Rates of penalty and interest.** (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 10 per cent may be added to all

date of repurchase, together with delinquent taxes assessed and levied as though it had continued in private ownership.

(b) After termination of the right of redemption there is no right to repurchase property held for, or devoted to, a public purpose. (§ 2 ch 118 SLA 1972)

Payment of taxes constitutes an application to repurchase property from foreclosure. Jameson v. Wurtz, Sup. Ct. Op. No. 2[illegible] (File No. 431), 396 P.2d 68 (1964).

Sec. 29.53.380. Proceeds of tax sale. Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

Sec. 29.53.385. Payment of taxes upon public utilization. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

Sec. 29.53.390. Refund of taxes. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight per cent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred. (§ 2 ch 118 SLA 1972)

, or if in the absence of suit, the borough assembly determines that judgment for the recovery of the taxes would be obtained if legal proceedings were brought, the amount of the taxes shall be paid to the taxpayer

## Article 3. City Property Tax.

Section
400. Power of levy
405. Differential tax zones
410. Limited property taxing power for second class cities

Sec. 29.53.400. Power of levy. Home rule and first class cities within boroughs may levy a general property tax. A property tax,

**Sec. 29.53.050. Tax limitation.** (a) No municipality may levy and tax for any purpose in excess of three per cent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding [illegible] a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58. (§ 2 ch 118 SLA 1972; am § 4 ch 1 FSSLA 1973; am § 5 ch 159 SLA 1975)

Needs to be changed to $1,500 to be consistent with § 29.53.045.

**Effect of amendments.** — The 1973 amendment, effective January 1, 1974, added subsection (b).

The 1975 amendment, effective June 26, 1975, in subsection (b), inserted "(1)," "upon values which," and "exceed" in both the first and second sentences, deleted "either (1)" preceding "$1,000" in those sentences, and added the fourth sentence.

**Editor's note.** — Section 8, ch. 159, SLA 1975, contains a severability clause.

**Alaska Statutes 29.53.055 and 29.58.180(a) authorize taxes to pay for municipal bonds, independent of the limitations of this section or AS 29.53.045, and regardless of whether the bonds are in default or default is pending.** North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Alaska Statute 29.53.055, literally read, does not render this section and AS 29.53.045 meaningless. AS 29.53.055 applies only to debt financing. The limitations of this section and AS 29.53.045 apply to operating revenues. Merely because they do not also curb taxes to pay for bonds does not render them nullities. North Slope Borough v. Sohi Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

**Regulation denying credit against tax levied under AS 43.56 was invalid.** An emergency regulation which denied a credit against the tax levied by the state under AS 43.56.010(a) for property taxes collected by municipalities in excess of the limitations set forth in AS 29.53.045 and subsection (b) of this section was invalid since AS 43.56.010(d) mandates that all taxes paid under AS 29.53.045 are to be credited against the levy of AS 43.56.010(a). North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

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DEPT. OF COMMUNITY AND REGIONAL AFFAIRS



**OFFICE OF ADMINISTRATION**
**September 3, 1980**

**Terry L. Earley**
**State Assessor**
**Dept. of Community & Regional Affairs**
**Division of Local Government Assistance**
**Pouch B**
**Juneau, Alaska 99811**

**Dear Mr. Earley:**

The City of Valdez would like to submit a comment with regard to the current plans to revise Alaska Municipal Code - Title 29 as it pertains to property tax - specifically the Senior Citizen Property Exemption program.

During a recent council meeting it was suggested that the age limit to qualify for the Senior Citizen Property Tax Exemption program be reduced to something less than 65 - perhaps 62. Council felt this would be one means by which people who chose to retire earlier than 65 could be benefitted

Thank you for your consideration.

Sincerely,

CITY OF VALDEZ, ALASKA

Mark Lewis
City Manager

P. O. BOX 307 . . . VALDEZ, ALASKA 99686 . . . TELEPHONE (907) 835-4313

TO: The Honorable Lee McAnerney
Commissioner
Department of Community
& Regional Affairs

DATE: August 14, 1980

FILE NO:

TELEPHONE NO:

FROM: Ernst W. Mueller
Commissioner
Department of Environmental
Conservation

SUBJECT: Designation of "Village"

Thank you for your letter of August 13 concerning the use of the term "City" rather than "Village" for small rural incorporated communities. A term I find even more offensive is the word "bush" as a substitute for "rural."

I fear, however, that "village" may be with us a long time. AS 46.07.080(2) reads:

> "'village' means an unincorporated community which has between 25 and 600 people residing within a two-mile radius, or a second class city." (Emphasis added)

We have tried to encourage the Legislature to revise this language; perhaps we can ask them to replace "village" with a term such as "eligible rural community."

cc: Tim Bergin

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AUG 15 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

# MEMORANDUM State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Lee McAnerney
Commissioner

DATE: August 20, 1980

FILE NO:

THRU: Lawrence H. Kimball, Jr.
Director/Community Planning

TELEPHONE NO: 465-4750

FROM: David Dye
Planner III
Division of Community Planning

SUBJECT: Title 29 Revisions

As requested, this memo is a list of suggestions and comments for revision of Title 29 of the Alaska Statutes. Some of these comments are products of the consensus viewpoint of the staff. Some are the products of a particular staff member's concern and experience with a given provision. Several otherwise meritorious suggestions do not appear in this memo because the provisions to which they are addressed are located in other titles and could not easily be integrated into Title 29 or they are primarily a matter of DCRA's jurisdiction vis a vis other State agencies. It is my feeling that these issues must be dealt with separately in order to avoid the appearance that our Department is attempting to restructure its statutory authority under the guise of revising Title 29 or construing the mandate of SCR 66 in an excessively broad fashion.

Many of the suggestions concern policy questions which are sure to be debated extensively as the revision process continues. I do not feel it is appropriate, at this point, to offer statutory drafts implementing these policy considerations. In some cases, a mere substitution, addition, or clarification is all that is suggested and these are presented with more specificity than questions with broader policy implications. In one or two instances, a model draft of a new provision is offered as a guide where it is appropriate to do so.

Other suggestions were modified or eliminated because, after some reflection, I felt that Title 29 already adequately addressed the question or that the suggested change would have unanticipated and unwanted consequences. Given that I was not guided by the divine revelation in excerising my editorial license, I invite other staff members to continue to advocate revisions I have not favored or overlooked.

General Consideration

Title 29 provides a framework for municipal authority and function in Alaska. The relationships among the entities it creates are complex and intertwined. Therefore, the language of the statute is necessarily complex and requires a certain sophistication and studied familiarity to master. This is perhaps unavoidable given the striking diversity of conditions in Alaska. However, the burden of using this complex blueprint falls unevenly on smaller communities. Larger urban communities usually possess the technical and professional resources to deal with Title 29's requirements and options. Many smaller communities do not.

Because of this lack of expertise and resources some basic concepts are not well understood and some functions are performed badly or not at all by these small municipalities. It is ironic that many larger municipalities have home rule status which relieves them of the burden of conforming to most of the finer details of Title 29 while most smaller communities must do so.

If Title 29 is to serve as both a mandate and as a guide, it will be most effective where it is clearest and most straightforward. A primary goal of revision should be to clarify, define and simplify to the greatest extent possible. To do so comprehensively would require a great deal of work but would undoubtedly be worth the effort if the result were better local government.

On the other hand, there are areas which would benefit from a bit more complexity. Wherever a public body, commission, or board performs a discretionary or quasi-judicial duty there should be standards, guidelines, criteria, and legislative intent spelled out with some specificity. Too often these entities do not understand the necessity of procedural regularity and therefore do not function at an acceptable level of competence and evenhandness.

Chapter 18, Article 4-Development Cities

The development cities statute should be eliminated or, in the alternative, thoroughly restructured in light of the experience gained in the few abortive attempts at implementing its provisions. The case for elimination of the development cities law has been convincing laid out in prior DCRA analyses. The following is a lengthly quote from an April 20, 1976 intra-Division memo:

> The Development City law has been a failure. As of this date, this statute has been applied to only one area, notorious Lost River, and that project fizzled and then went "dud". A stunning indication of the value of the Development City law is found in the fact that it was substantially instigated, according to an Anchorage Times editorial (January 31, 1975), by the very group sponsoring its most egregious failure, Lost River.
>
> Once a petition is offered for development city, a great deal of State authority is set in motion, but no development city petitions other than Lost River have or will be forthcoming because development cities are usually undesirable or impractical public and private investments. Let me elaborate on this point.
>
> Building a community from scratch--and that is what a development city is essentially--is a very costly proposition to the public purse. The more costly it becomes, the more controversial and the less willing the State and public are to commit public funds to

to finance the proposed city's service and facilities requirements. Remember how nearby Nome jealously questioned the potentially great expenditure of State and Federal energy and financial resources for Lost River.

Lost River was bound to a State policy--which should also apply to future development city proposals--that State fiscal support of a development city will be forthcoming only if the development city first demonstrates economic feasibility without State subsidies. Considering the nature of the kind of development most likely to foster a development city proposal this is impossible. Most will be based on single industry natural resource development, be it mining like Lost River, or possibly lumbering and associated wood processing or activities supporting onshore or offshore oil and gas development. Absent the creation of a diversified regional economy, a development city isolated in the bush has virtually no potential for attracting further permanent industrial growth and only limited possibilities for commerical growth. Thus, the city collapses when the natural resource upon which it is founded becomes depleted.

Spending public funds on a community bound for extinction is not a sound investment unless the economic returns to the public substantially exceed public investment costs. Substantial public investment can cause a development city to generate a regional economy attracting more lasting industrial and commerce development, especially through State and federal investment for a regional transportation network--i.e., for airport, port and/or highway transportation facilities. However, even with such public investment, there is no guarantee that the regional economy created will be self-sustaining without continued substantial public investment. Bethel, a regional center created by substantial federal and State investment in public services and facilities, cannot sustain its regional economy without ever constant and substantial federal and State subsidy.

The development city will not only be fiscally infeasible from the State's point of view, but also as a functioning municipality. Lost River, which should fairly well exemplify any new city built from the ground up in the hinterlands, was hardly an attractive prospect in the municipal bond market. Its assessed valuation was extremely low while required bonded indebtedness was astronomically high. Not
a good bond investment. Projected municipal expenditure for community development in Lost River was reported as extremely high due to the high construction and maintenance cost characteristic of bush Alaska. On the other hand, expected revenue was extremely

low, attributable to the usual absence of other revenue-producing industrial and commercial operations in a single-industry city, and a low public ability-to-pay taxes, since an unusually large share of individual and family consumer expenses in remote high cost-of-living Alaskan settlements are required for the purchase of necessities. Under these foregoing circumstances, municipal fiscal health would be the exception and not the rule for a development city.

A development city will have just as hard a time becoming a socially viable community. The Bethel magneticism syndrome is a premier problem. A new community situated in the middle of the bush and chockfull of services and facilities of a high-quality never before experienced in a region could, and probably would, create an in-migration of bush citizens. The phenomenon of in-migration from rural to urban areas has been discussed and analyzed about the world for years and as of yet no one has formulated a workable, humane solution to the tremendous physical, social and governmental problems and pressures it creates in the receiving urban settlement. Bethel says it all.

Natural resource cities cannot seem to hold their workforce, having a high labor turnover and, resultantly, a high turnover of families whose continued presence is the prime ingredient for community stability. Faro, a development city (mining) in the Yukon is geographically the closest example of this instability. It was well designed and provided every essential amenity. Today, visitors and many of its former residents remark that Faro is a tedious place lacking the community spirit and cohesiveness that inexplicably only organic community development can provide. Only close to genius planning can create a brand new development city with the vitality and stability natural to communities created and evolving organically. Tapiolas, however, are exceptional and almost more a result of fortuity of circumstances than of deliberate planning.

The private sector has not exactly been flooding the Local Boundary Commission with petitions for development city incorporation. Private reluctance to jump on the bandwagon of the Development City concept is based on a good capitalist economic sense and the company-town mentality.

First, most conventional industrial development will not locate in the bush away from the established markets and amenities and thus reassuring to developers in existing cities. Second, past experience reveals that those kinds of natural resource ventures, large or small, most likely to be candidates for development city treatment

> want to avoid association with any kind of municipal organization whether a development city or a regular municipality. Go it alone is the ethic, with the principal developer providing the facilities and services to the employees of the operation. Look to Prudhoe Bay, Thorne Bay and Red Bay as examples of this company-town mentality. The principal developer knows he can provide needed services for his development if he so wishes to assume the obligation. He does not have the same degree of assurance where these services are promised by a newly created municipal entity with no experience or demonstrated financial or functional capability in providing essential services supportive of industrial activity and concommitant residential and commercial build-up. The company town reaction will probably extend to any new industrial settlements arising as a consequence of offshore oil and gas development occurring well away from existing municipalities of any consequence. (Memo from Sid Wolf, Senior Planner to Kevin Waring, Directory Division of Community Planning, April 20, 1976).

The case against development cities is reinforced by the experience gained from the proposed development city of Afognak. The developer of Afognak was an ANCSA village corporation with large holdings of timber lands located within the boundaries of the proposed city. Also located within the boundaries were timber lands owned by other village corporations, permanent logging camps, and up to eighty private landowners. These various groups protested the formation of the development city and the local boundary commission finally disapproved the incorporation petition. It was argued that the development of timber land other than those held by the city's developer might be subject to land use controls designed to inhibit competition. Private land holders complained that the composition of the City Council during the development stage denied them representation and that the council meetings would not be public. They also argued the City might use its power to issue revenue bonds excessively and that there was no voter approval as a check on this power. Due to the particular status of ANSCA lands, it was feared that the ultimate liability for bonding for other municipal indebtedness would fall on the private non-Native landholders. Objections were also raised to what was perceived as a massive and unjustified State subsidy to private industry.

In retrospect, it has been argued that the Afognak case was a misapplication of the development cities statute. Perhaps the better viewpoint is that the statute was not designed to anticipate the variety of conditions to which its general application would make it susceptible. It is clear that the statute was intended primarily for the Lost River type of situation i.e., a reasonably compact development located in an isolated and virtually unpopulated area with no diversity in land ownership and no competing development. Given the complex land ownership pattern created by ANCSA, the large amount of land required for some types of resource development and the somewhat random pattern of rural population

it can be anticipated that future development cities, if any, have a good chance of facing the same problems as Afognak. Some of these problems could be ameliorated by restructuring the statute but others are likely to remain as latent political questions.

Perhaps the best framework for judging the development cities law is the utilitarian propective. To date no development city exists and no serious proposal is on the horizon. The statute books are thick enough without special interest legislation which even the special interests have not found useful.

Chapter 33, Article 4-Planning, Platting and Zoning

Section 29.33.070 (b)(2). The present language of this provision was adopted by amendment in 1979. DCRA is on record as favoring the language of this provision as it existed prior to its 1979 amendment. The department was concerned that allowing a borough to delegate planning authority to a city within the borough may lead to gaps and inconsistency in planning. This is still a valid objection. The previous language allowed a borough to delegate only administrative and enforcement responsibilities to a city within the borough. This was a reasonable and efficient arrangement which struck a balance between the need for areawide continuity and the need for local responsibility. The Department should therefore recommend a return to the pre-1979 statutory language.

Section 29.33.080 (b)(4). The term "official" map needs to be defined as it has a technical meaning which is not apparent by reference to common usage. An official map is a document adopted by the legislative body of the community. It pinpoints the location of future streets and other public facilities. The official map serves as notice on developers that the municipality intends to acquire certain specified property(it is not however, a comprehensive or general plan). (A good discussion of official maps is contained in Principals and Practice of Urban Planning, International City Managers Association, Wash., D.C., 1968).

Section 29.33.080 (f). Among other things, paragraph (f) requires that "the commission shall establish, subject to approval by the assembly, rules and regulations for the conduct of its meeting." The assembly is not required to adopt these rules and regulations by ordinance. The wording of paragraph (f) should be changed to require the adoption of these rules and regulations by ordinance. In the alternative, a new section could be added to Title 29 which requires that the rules and regulations of all municipal boards, commissions, and departments be codified and published. Either of these changes would increase public access to these rules and regulations and thereby help to insure procedural regularity in the performance of administrative and quasijudical functions.

Section 29.33.090. This section should be rewritten to eliminate the use of the term "zoning" and a broader term such as "land use regulation"

or "land use management" should be substituted. Euclidian zoning, whereby land is divided into use restricted districts, has not always proved to be the best or most appropriate method for regulating community development in Alaska, particularly in rural communities. "Permit" and "performance standards" systems are examples of devices used in other parts of the country to accommodate the needs for flexibility in planning. The use of the broader concept of land use regulation would include traditional zoning but would not limit communities to this device. It would also help to avoid the rather narrow and inflexible interpretion given to zoning powers by some courts.

Enabling legislation should be added to section 29.33.090 for the transfer of development rights. This land use device has evolved in recent years as a way to accomodate extensive use of community police powers to zone for open space or to preserve historic buidlings with the right of property owners to the reasonable use of their property. Other devices such as comprehensible regulation, eminent domain and acquisition of conservation easements accomplish the same public goal but require large expenditures of public funds.

The transfer of development rights system creates zones where development is greatly restricted for some public purpose. The owners of the restricted property are given the power to sever the right to develop from the rest of the fee in the land to transfer (sell) that right to an adjacent or remote parcel of land. The receiving property is no longer limited by the bulk and density requirements of its zone and may be over-developed in an amount equal to the transferred right.

The use of this device could be an important tool in shaping attractive and functional communities while at the same time allowing appropriate development to the greatest extent possible. A good discussion of this concept along with model enabling legislation can be found in: Rose, "A Proposal for the Separation and Marketability of Development Rights as a Technique to Preserve Open Space," 2 Real Estate Law Review 635 (Winter, 1974.).

Section 29.33.150.245. Paragraph (a) of section 29.33.150 should be rewritten to explicity state that all subdivisions are required to be platted and that these plats must be recorded except where the requirement is waived in specified circumstances. Chapter 15 of Title 40 of the Alaska Statutes concerning subdivisions and dedications should be integrated into Title 29.

Section 29.33.170. The waiver provisions of section 29.33.170 should be modified and a new section added authorizing short subdivisions and short plats. Under present waiver provisions, a large tract of land could be successively subdivided into four or less parcels without ever

triggering the platting requirements. Short plat authority would avoid this result by requiring simplified plats and summary approval for small subdivisions. A model short plat and short subdivision statute is set out below:

> Section 29.33. . The assembly or council may adopt regulations and procedures for the summary approval of short plats and short subdivisions or revisions thereof. Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filling of the short plat for record in the office of the recorder: provided, that regulations shall contain a requirement that land in short subdivisions may not be further divided in any manner [within a period of five years] without filing of a final plat.
>
> Section 29.33. . Definitions 1) "Short subdivision" is the division of land into four or less lots, tracts, parcels, sites, or subdivisions for the purpose of sale or lease. 2) "Short plat" is the map or representation of a short subdivision.

If the provisions of AS 40.15 relating to subdivisions and dedication, were integrated into Title 29 a new section should be added as follows:

> Section 29.33. . Purpose: The purpose of this chapter is to regulate the subdivision of land to promote the public health, safety, and general welfare in accordance with standards established by the State to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewage, parks and recreation area, sites for schools and school grounds and other public requirements; to provide for proper ingress and egress; and to require uniform momumenting of land subdivision and conveyancing by accurate legal description.

Chapter 41-Powers of Third Class Boroughs

Section 29.41.010. This section should be rewritten to specifically include or exclude all or part of the provisions of Chapter 48 (powers applicable to all municipalities) with particular attention paid to Section 29.48.010 and Section 29.48.260.

The last sentance of paragraph (a) of Section 29.41.010 states that: "Area wide excerise of powers other than education and tax assessments and collection is not authorized." Paragraph (b) states that a third class borough may, under certain circumstances, excerise any power excerised by a third class borough but only on a service area basis. Are third class boroughs prohibited, except on a service area basis, from:

aquiring, using, and disposing of real property; the power to sue and be sued; or the power to expend funds for the good of the municipality? The literal application of section 29.41.010 would seem to limit the excerise of these and other general municipal powers to service areas created especially for the purpose.

Chapter 48 Article I-General Powers

Section 29.48.010. Sub-section (9) of this section allows the disposal of real and personal property for purposes authorized under this or other law. Unlike section 29.48.260, this provision requires no procedural safeguards nor does it require that such action be done by ordinance.

Sub-section (9) should also be rewritten to allow for land exchanges between municipalities and private persons in certain circumstance which will occur as a result of the implementation of section 14 (c)(3) of ANSCA. Under section 14 (c)(3) municipalities will receive 1280 acres of land to be used for future municipal expansion. Several municipalities will not be able to select appropriate land in or near the municipality because most or all of the available land has been conveyed to private persons pursuant to section 14 (c)(1). It would be advantageous for a municipality to be able to exchange some of this inconveniently located land for parcels more suited to municipal purposes. Procedural safeguards should be built in to guard against improper exchanges.

Section 29.48.020. This section should be placed in another chapter. Chapter 48, in which this section is located, is entitled "Powers Applicable to all Municipalities". This section deals with powers of second class boroughs in areas outside cities and not with municipalities in general. It should be placed in another chapter.

Chapter 48 Article 4-Miscellaneous Provisions

The provisions of Section 29.48.260 relating to disposal of municipal properties could be improved by several additions and changes as outlined below:

The term "municipal purpose" in subsection (a) should be defined, or in the alternative, standards or criteria for determing when municipal land is no longer required for municipal purposes should be added to this section.

Certain procedural requirements are specified in subsection (c). The authorized methods for sale of municipal land are auction or by opening of sealed bids. Adding authority for disposal by lottery at fair market value, or some lesser figure set by the municipal legislative body, would give municipalities a fair and reasonable way to distribute land

to persons of low or moderate income. The State has used this method for some time and there is no apparent reason why it would not be appropriate for municipalities. Another provision of sub-section (c) requires voter ratification of any ordinance for the sale, lease or disposition of real property or interest of real property valued at $25,000 or more. The ravages of inflation has made this provision unnecessarily burdensome to municipalities. In today's market, this provision could require voter ratification for the sale of one lot in some urban municipalities. An appropriate figure would be two to four times the present figure.

Sub-section (d) exempts municipal lands acquired from the State from the procedural requirements of subsection (c). The policy behind this provision is not apparent from reading the statute. It has been suggested that the purpose of this provision is to facilitate the transfer of excess municipal to private ownership, particularly for residential use. If this indeed is the policy behind this subsection, it should be rewritten to exempt transfers for specific purposes regardless of the source of the land. Many municipalities have or will soon receive land from non-State sources (Townsite Trust land, section 14(c)(3) ANCSA land, etc.) which may be equally appropriate for transfer to residential or other private use. It doesn't make much sense to require all the procedural steps of subsection (c) if this land is to be disposed for the same purpose as State land.

The Alaska Supreme Court has recently interpreted sub-section (e) in the case of Libby v. Dillingham. After considering competiting in terpretations of this paragraph, the court said that municipal land leased to "benefical new industries" must comply with the procedural requirements of paragraph (c) of the same section. As a result of the Libby decision, communities cannot now negotiate the lease or sale of municipal property to industries which they wish to attract into the community without first engaging into an elaborate competitive bid procedure. This provision should be rewritten to specifically exclude these kinds of transactions from the requirements of paragraph (c).

Many rural communities have expressed the desire to make residential land available to local residents but fear that under present land disposal procedures much of the land would pass to wealthy non-residents who are able to pay a higher price for the land. A new provision should be written which allows for preferances to certain classes of people (e.g. heads of household, non-owners of residential property, etc.) to insure that municipalities have some control over this problem. By listing which classes of preferences are appropriate, guidance would be given to communities so that they would not attempt to exclude classes of people protected by State or Federal law. This is especially important since many communities have expressed an interest in using durational

residency requirements for land disposal preference purposes without realizing that such preferences are clearly unconstitutional. At the time of this memo, the Zobel case has not been decided by the Alaska Supreme Court. The outcome of that case may have broad implications for all classes of preference rights. Therefore, any proposed system of preference rights should be carefully reviewed in light of the final holding in the Zobel case.

One type of preference right deserves particular attention because of the inequities created by the application of section 14 of ANCSA. Section 14 (c)(1) of the Act requires that village corporations reconvey those lands occupied prior to Dec. 18, 1971 as a primary place of residence, primary place of business, subsistence campsite or headquarters for reindeer husbandry. After these claims are satisfied, section 14(c)(3) requires the village corporation to reconvey 1280 acres of land for future expansion to any municipality located in the village or, if no municipality exists, to the State in trust for a future municipality. Unfortunately conveyance of land to the various village corporations has not proceeded in the expeditious manner envisioned by ANCSA. It has been over eight years since the passage of the Act and the process of conveyance if far from complete. As a result community expansion and new development has continued in the traditional fashion from Dec. 18, 1971 to the present. Most of this expansion has occurred with the tacit or express permission of the community. However, the village corporations will not be able to convey title to land occupied after Dec. 18, 1971.

Much of this occupied land will eventually be conveyed to municipalities under section 14(c)(3) and many of these communities have expressed a desire to convey those lands occupied after Dec. 18, 1971 to present occupants. However, there is no provision in Title 29 allowing them to do so. These occupants, many of whom have made expensive improvements such as houses or businesses on the land, will have to compete for the land under the present land disposal provisions of section 29.48.260.

A new sub-section should be added to section 29.48.260 which would permit a municipality, if it so chooses, to grant these occupiers a preference right to acquire land they have substantially improved. Such a provision would avoid the injustice of denying the legitimacy of traditional land practices in rural Alaska and the hardships of forefiture which will inevitably fall on many families and small businesses.

The following is a tenative draft of a new sub-section designed to implement this policy:

> Section 29.48.260( ). Notwithstanding the provisions of (c) of this section, the assembly or council may by ordinance establish a formal procedure for the disposal of land received pursuant to

section 14(c)(3) of the Alaska Native Claims Settlement Act (P.L. 92-203,85 Stat.688) to any person who substantially improves the land prior to the date on which title is conveyed to the municipality. The amount of land disposed to any person shall not exceed an amount necessary for the reasonable use and enjoyment of the improvements. The ordinance shall require notice of intent to dispose of the land in the manner provided in (c)(2) of this section. Upon written request submitted prior to disposal, the assembly or council shall hold a hearing and issue written findings of fact to resolve disputed claims. The ordinance shall provide a right of appeal to the Superior Court if filed within 60 days of a hearing. Disposal may be without or with consideration not to exceed fair market value of the land prior to improvement. Expenses, if any, for notice appraisal and survey shall be paid by the grantee.

Chapter 78 General Provisions

This chapter contains the "definitions" section of Title 29. This section should be expanded to include the terms specifically mentioned in this memo and any other terms which, upon review and reflection, are suspectable to an ambiguous or technical meaning.

Index

The present index is inadequate. Many topics are not adequately cross referenced or are not mentioned at all. A careful revision and update would be extremely useful.

cc: Veronica Clark

**CITY OF UNALASKA**
P.O. BOX 89
UNALASKA, ALASKA 99685
581-1251
"Capital of the Aleutians"




September 22, 1980

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Ms. Cook:

There are two aspects of Title 29 revision which I wish to comment upon.

First, I urge consideration be given to the American Law Institute's (1975) Model Land Development Code which represents a major improvement over the Hoover-era model upon which the present provisions of Title 29 governing the conduct of local planning are based. I particularly urge that the Code's recommendations concerning the division of responsibility between State and local planning responsibilities be considered.

Second, there are other statutes which can be interpreted to impose duties upon general purpose units of local government which are not specifically tied to Title 29. I have in mind, in particular, Chapter 35 of Title 46, the Alaska Coastal Management Program. This program and any similar program enacted in the attempt to attain consistency should be accompanied by a definitive tie to Title 29 which establishes an affirmative obligation on the part of local governments to exercise their substantive powers if this is the intent of the Legislature. Otherwise, Title 29 should indicate that it is the complete statement of the substantive duties and powers of municipalities.

Sincerely,

CITY OF UNALASKA PLANNING DEPARTMENT

Richard Careaga, AICP
Director



# CITY OF NOME

P.O. BOX 281 - NOME, ALASKA 99762
TELEPHONE (907) 443-5242

September 22, 1980

Tamara Brandt Cook
Div. of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

Dear Ms. Cook:

RE: TITLE 29 Review

I have had one general problem with Title 29. As City Manager in Dillingham, Kodiak and now Nome, it seems obvious that Title 29 has been organized and written for governments who have an attorney that interprets each provision.

Many times one refers to Title 29 and needs an attorneys interpretation to understand what it means. This is not practical in a smaller city because of the cost and the amount of time it takes to get an opinion.

More specifically, I am referring to references to boroughs that apply to first class cities. This is very confusing because it's hard to understand when borough statutes apply. First class cities should be set out specifically to end the confusion.

There are a number of specific problems I'd like to bring to the Policy Advisory Groups attention.

29.23.040. Majority elections. The 40 per cent runoff election should be thoroughly considered if allowed to remain in the Statutes.

Article 3. Recall. These provisions should also be researched and grounds 29.28.140 should be made more clear.

Chapter 33. Areawide Borough Powers & Duties. 29.33.010 Scope. From this point on, Boroughs are given too much power. To be more specific, the fact that a borough plans for a city is a disaster in my experience. How can a city possibly exist as a city and not have control over its destiny? In Kodiak, while I was the manager, the Borough continually attempted to manage the City through its planning powers. This caused creation of service areas (another issue) and confusion where the City was to extend its services. City planning must be a responsibility of the government that

**is going to implement the projects planned for. In the case of Kodiak, I personally had to attend each planning commission and assembly meeting to make certain the City's interests were considered. Since the City Council had no real influence over the assembly or the planning commission, it became an unbelievable political struggle that wound up in Court. In this case, the City's taxpayers footed the bill for both attorneys since the majority of the tax base was inside the City.**

**The conflict with the Borough and the City regarding Borough powers adjacent to a City is a similar issue. In the case of Kodiak, the Borough wanted to establish a water, sewer and road service area that would utilize the City's water and sewer system and possibly contract for road service. This was their attempt to stop the City from annexing an area immediately adjacent to the City that needed to do something about those services. The competing aspects of this caused undue hardship and strains on the political as well as the social systems on the island. As far as I was concerned, the whole problem was the result of Chapter 38. Borough Powers and Duties in the Area Outside Cities. This chapter actually allowed the establishment of another taxing entity that was going to increase the cost of services to the users in the service area. It also made it more difficult for the city to plan for use and expansion of its facilities and equipment.**

The conflicts described above are in direct conflict with Article X, Local Government of the Constitution of the State of Alaska.

> Section 1. Purpose & Construction. The purpose of this article is to provide maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions.

If the system of using Boroughs is to continue and expand into the Unorganized Borough, then the items I have mentioned, plus others will have to be straightened out.

I believe that 29.48.150. Ordinance. Procedure should be redone to clarify the number of times an ordinance should be voted upon. The question has come up a number of times.

Thank you for the opportunity to make suggestions regarding the Title 29 revisions. I am quite interested in these items as well as what others are suggesting and would like to be kept fully informed as to the Groups deliberations.

Sincerely,

Ivan L. Widom
City Manager

cc: Mayor & City Council



**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Marvin Yoder, Interim Borough Manager

FROM: M. Westfall, Revenue Collector

RE: Title 29 Review

DATE: September 2, 1980

I have reviewed the material relating to the review of Title 29 and approve and support those portions pertaining to chapter 53 of this title.

A few other changes which might be considered are listed below:

1. Sec. 29.53.025 the classification of boats for purposes of taxation by tonnage should be changed to more realistic amounts.

2. Sec. 29.53.060 include the words having a situs within the taxing district after the word property. Many property owners believe that property not within the taxing district on January 1 of the taxing year is free of tax. Boats and airplanes are commonly removed from the taxing district during the first month of the year to avoid taxation.

3. Sec. 29.53.320 change person to receive redemption monies from clerk to tax collector who has in his/her possession the records of assessment and taxation, applied penalties, interest & costs.



**Issue Paper for Title 29 Meeting**

**Frederick McGinnis, Deputy Commissioner Dept. Health and Social Services**

For some time, the DHSS has been decentralizing and regionalizing the administration of health and social services programs. The general thrust of this has been that each program action should be taken at the lowest level of the departmental organizational structure that has staff with the requisite knowledge to effectively accomplish it. It would be a logical evolutionary extension of that concept if authority were statutorily delegated to recognized political subdivisions of the State to allow them to administer those health and social services programs which they possess, or could develop, the capability to handle.

In general, if those DHSS programs which receive Federal financial participation were statutorily delegated to political subdivisons, they would be Federally mandated to comply with the same program administration standards and regulations as DHSS does. The DHSS would still be held fully accountable by the Federal government for each of its Federally supported programs. The DHSS would have to continue as the "single State agency" authorized to receive Federal funds and would disburse them, along with State matching funds, to political subdivisions to cover the costs of the programs they administer. The DHSS would be required to supervise and conduct formal audits of the Federally supported programs administered by political subdivisions. In turn, the DHSS would continue to be subject to monitoring and formal audit by the Federal government with respect to its Federally supported programs.

At the present time, eighteen States have delegated to political subdivisions the Administration of their AFDC and Medicaid programs. In the parlance of Federal regulations, these States have State supervised, locally administered, AFDC/Medicaid programs. The States in this category are: Alabama, California, Colorado, Georgia, Indiana, Maryland, Minnesota, Montana, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, Virginia, Wisconsin and Wyoming.

Of the remining thirty-two States, twenty-one, including Alaska, directly administer their AFDC/Medicaid programs through regionally located offices staffed by State employees. Eleven of the thirty-two States directly administer their AFDC/Medicaid programs through direct State/Federal funding and line supervision of the programs and staffs of separately identifable public assistance staffs in political subdivisions. States in the latter category are Illinois, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Mexico, Oklahoma, Pennsylvania, Tennessee and West Virgina. Under the Federal regulations, all thirty-two of these States, including Alaska, have what are termed "State administered" AFDC/Medicaid programs.

DHSS monitorhip and audit of fully State funded health and social services programs and projects administered by political subdivisions is currently practiced as a sound public administration measure. It would seem to be a logical presumption that DHSS supervision and audit would be continued statutorily in any delegation by the Legislature of health and social services programs to political subdivisions. From the standpoint of efficiency and to avoid any confusion, it would be practical if the Legislature were to require similar supervisory and audit requirements by DHSS over both Federally supported and fully State funded programs that are delegated to political subdivisions.

Perhaps needless to say to this knowledgeable group, there are substantial legal ramifications that must be fully taken into account with respect to delegation of powers to administer Federally financed DHSS programs to political subdivisions. Failure to legislate the delegation within the parameters of Federal law and regulations could jeopardize Federal funding and result in the loss of substantial amounts of Federal funds. The DHSS leadership is hopeful that if the proposed amendments to the municipal code are to include any delegation of health and social services programs to political subdivisions that there will be full coordination between the Alaska Legislative Concil, attorneys of the Department of Law who work with DHSS legal matters, and DHSS program directors.

## AFDC/Medicaid Programs

| | State Supervised/ Local Government Agency Administered | | State Administered |
|---|---|---|---|
| Alabama | X | | |
| Alaska | | | X |
| Arizona | | (No Medicaid program) | X |
| Arkansas | | | X |
| California | X | | |
| Colorado | X | | |
| Connecticut | | | X |
| Delaware | | | X |
| District of Columbia | | | X |
| Florida | | | X |
| Georgia | X | | |
| Hawaii | | | X |
| Idaho | | | X |
| Illinois | | (Counties operate as local welfare offices for State) | X |
| Indiana | X | | |
| Iowa | | | X |
| Kansas | | | X |
| Kentucky | | (Counties operate as local welfare offices for State) | X |
| Louisiana | | (Parishes operate as local welfare offices for State) | X |
| Maine | | | X |
| Maryland | X | | |
| Massachusetts | | | X |
| Michigan | | (Counties operate as local welfare offices for State) | X |

| | State Supervised/ Local Government Agency Administered | State Administered |
|---|---|---|
| Minnesota | X | |
| Mississippi | (Counties operate as local welfare offices for State) | X |
| Missouri | (Counties operate as local welfare offices for State) | X |
| Montana | X | |
| Nebraska | X | |
| Nevada | | X |
| New Hampshire | | X |
| New Jersey | X | |
| New Mexico | (Counties operate as local welfare offices for State) | X |
| New York | X | |
| North Carolina | X | |
| North Dakota | X | |
| Ohio | X | |
| Oklahoma | (Counties operate as local welfare offices for State) | X |
| Oregon | | X |
| Pennsylvania | (Counties operate as local welfare offices for State) | X |
| Rhode Island | | X |
| South Carolina | X | |
| South Dakota | | X |
| Tennessee | (Counties operate as local welfare offices for State) | X |
| Texas | | X |
| Utah | | X |
| Vermont | | X |
| Virginia | X | |

| | State Supervised/ Local Government Agency Administered | State Administered |
|---|---|---|
| Washington | | X |
| West Virginia | (Counties operate as local welfare offices for State) | X |
| Wisconsin | X | |
| Wyoming | X | |

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

**HAINES BOROUGH**
P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

January 6, 1980

Palmer McCarter
Director, Division of Local Government Assistance
Community and Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Palmer:

During the course of the revision of Title 29 I have noticed that the third class borough seems to be at odds with 29.33.310 Elections (for School Boards). This section states that all board members are elected at large. The provision that school zones may be established in accordance with section 100 of chapter 33 was repealed in 1972. As you know, in a third class borough, the borough assembly is the school board and the borough assembly may legitimately be composed of members elected by and from established districts. This is the case in the Haines Borough. Hence, school board members are not elected at large.

It occurs to me that perhaps the statement in 29.41.020 that the assembly in a third class borough is the school board actually supercedes 29.33.310. However, if this is a possible intrepretation I still believe the status of the third class borough school board members ought to be recognized in 23.33.310.

The Title 29 Revision Commission is recommending that 29.33.310 be re-worded as:

> School Boards. Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large.

I believe that the statute would be more complete if the phrase "except those members who are also members of the third class borough assembly" were added to the last sentence.

I would appreciate your thoughts on this subject.

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

xc: Tam Cook, Legislative Affairs

SUMMARY OF

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.18.180
(Gerald L. Sharp)
**Organizational grants under this section appear to be inadequate.**

AS 29.18.330
(Gerald L. Sharp)
**The resident training and hire preference should be examined for constitutionality.**

AS 29.23.025(e)(9)
(Marjorie Gorsuch)
Clarify what happens to the reapportionment order if a reapportionment ordinance has not been approved by the voters.

AS 29.23.029
(Marjorie Gorsuch)
There should be additional provisions for judicial review and relief.

AS 29.23.031
(Marjorie Gorsuch)
There should be additional provisions for judicial review and relief.

AS 29.23.040
(Gerald L. Sharp)
(et.seq.) The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualificiations of officers as these relate to the mayor, council, and assembly members should be uniform as between a city and a borough.

AS 29.23.050
(Allan E. Tesche)
The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

AS 29.23.060(a)
(Gerald L. Sharp)
This section implies that there may be no special meetings if <u>any</u> member is not notified.

AS 29.23.060(d)
(Gerald L. Sharp)
Some consideration should be give to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

SUGGESTIONS - TITLE 29 REVISION

AS 29.23.060(d)
(Allan E. Tesche)
Circumstances, other than financial interests, which allow a member to abstain should be better defined.

AS 29.23.070
(Gerald L. Sharp)
This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.070 &
(City of St. Mary's)
(& 29.43.040) The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

AS 29.23.080
(Gerald L. Sharp)
This section should be checked to determine whether it tracks with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.080
(Allan E. Tesche)
The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

AS 29.23.130(B)
(Allan E. Tesche)
Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

AS 29.23.150
(Allan E. Tesche)
(& 29.23.470) Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

AS 29.23.170
(Allan E. Tesche)
This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto.

AS 29.23.170(cont'd)
(Allan E. Tesche)
For instance, if the mayor vetos a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

AS 29.23.200
(Allan E. Tesche)
The three year residency requirement here is also probably invalid.

AS 29.23.210
(Gerald L. Sharp)
Does this require four votes on a procedural motion? This language should parallel the similar provisions for boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions.

AS 29.23.210
(Allan E. Tesche)
As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

AS 29.23.250
(Allan E. Tesche)
Another probably invalid three year residency requirement.

AS 29.23.270
(Allan E. Tesche)
This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

AS 29.23.310
(Gerald L. Sharp)
Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)
(Gerald L. Sharp)
Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360
(Gerald L. Sharp)
My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

SUGGESTIONS - TITLE 29 REVISION

AS 29.23.370
(Gerald L. Sharp)
I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to service two different masters, the legislative body, and the chief administrator.

AS 29.23.395
(Gerald L. Sharp)
(Through .401) This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470
(Gerald L. Sharp)
I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480
(Gerald L. Sharp)
I suggest that the adoption of an ordinance at the very next meeting after the repeal of manager plan is expecting too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540
(Gerald L. Sharp)
The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school board's budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. Also, it appears that this section would permit a person working in the grants section of the Department of C&RA to serve on an assembly or a council.

AS 29.23.555
(Allan E. Tesche)
This section has been superceded by AS 39.50.

AS 29.23.570
(City of St. Mary's)
This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570.

SUGGESTIONS - TITLE 29 REVISION

AS 29.25.110
(Richard W. Garnett, III)(Allan E. Tesche)
Clarify application of public records law to municipality.

AS 29.28.
(Bruce Aronson)
Once a sufficient petition has been accepted, members of the council should not be able to resign and be re-appointed to the council.

AS 29.28.
(Bruce Aronson)
Statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition.

AS 29.28.
(Bruce Aronson)
A transition period should be provided by statute to allow a person recalled to service for a while after the recall election has been certified to allow a government to continue to operate.

AS 29.28.015
(Gerald L. Sharp)
I question why the mayor in a manager-type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030
(Gerald L. Sharp)
It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the State of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.040
(Richard W. Garnett, III)
More specificity as to whether recall may be based on "political" factors.

AS 29.28.070(b)
(Richard W. Garnett, III)
Service area initiatives are potential problems; could lead to "Balkanization" of municipalities.

SUGGESTIONS - TITLE 29 REVISION

AS 29.28.070(b)
(Richard W. Garnett, III)(Allan Tesche)
Standardize use of "general" and "regular" as to elections to avoid uncertainty as to required number of signatures.

AS 29.28.080(a)
(Gerald L. Sharp)
This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the

AS 29.28.080(a)(cont'd)
(Gerald L. Sharp)
initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.090(b)
(Richard W. Garnett, III)
Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

AS 29.28.110
(Gerald L. Sharp)
This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

AS 29.28.130
(Bruce Aronson)(Lee Sharp)
Change provision so that all officials would be subject to recall after six months in office. The six month grace period would not apply if a person is re-elected to the same office.

AS 29.28.130
(Allan E. Tesche)
(Et. seq.) Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28.070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

AS 29.28.140
(Bruce Aronson)
Grounds for recall are too narrow.

SUGGESTIONS - TITLE 29 REVISION

AS 29.28.140
(Gerald L. Sharp)
This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting.

AS 29.28.140(cont'd)
(Gerald L. Sharp)
They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.

AS 29.28.150
(Bruce Aronson) (Lee Sharp)
A recall petition should be required to contain the mailing address of each person who signs it and a separate petition should be filed for each person sought to be recalled. Statement of grounds should be limited to 200 words.

AS 29.28.160
(Gerald L. Sharp)
Either the clerk of the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170
(Gerald L. Sharp)
I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60? If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be give an additional ten days for their sloppiness or inadequate performance.

AS 29.28.180
(Bruce Aronson)
A new petition should not be filed sooner than six months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.28.190
(Elsie O'Brien)
Add a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.

AS 29.28.200(c)
(Gerald L. Sharp)
If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name is removed from the recall ballot, may he then be reappointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?

AS 29.28.210
(Gerald L. Sharp)
If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?

AS 29.28.250
(Jack Chenoweth)
Include a provision somewhere by which a state officer has authority to appoint municipal voters to fill elected city or borough offices when the number of members drops below the number required to produce a quorum.

AS 29.28.250
(Gerald L. Sharp)
What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS.29.33.
(Allan E. Tesche)
The current language of this chapter, as it incorporates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restructive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

AS 29.33.
(Allan E. Tesche)
Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.33.010
(Gerald L. Sharp)
Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in it's Lafayette decision.

AS 29.33.050
(Gerald L. Sharp)
While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read " and shall establish, maintain, and operate".

AS 29.33.070
(Allan E. Tesche)
It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

AS 29.33.070
(Allan E. Tesche)
(Through 29.33.245) Serious thought should be given to the purpose of the planning, platting, and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

AS 29.33.080(e)
(Gerald L. Sharp)
Consideration should also be give here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

AS 29.33.085(b)
(Gerald L. Sharp)
The requirement that the commission present new recommendations on a comprehensive plane very two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it soes not appear that there is any question as to the validity of an ordinance which is adopted pursuant to a comprehensive plan which has not been reviewed for more than two years.

AS 29.33.085(b)(cont'd)
(Gerald L. Sharp)
Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.110(b)(1)
(Gerald L. Sharp)
I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works.

AS 29.33.110(b)(1)(cont'd)
(Gerald L. Sharp)
The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)
(Gerald L. Sharp)
It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance", or "requests...".

AS 29.33.120
(Gerald L. Sharp)
It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)
(Gerald L. Sharp)
I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150
(Gerald L. Sharp)
It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.33.150(b)
(Gerald L. Sharp)
(& 29.33.169(c)) These sections need to be revised out of the code.

AS 29.33.170(a)(1)
(Gerald L. Sharp)
I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.

AS 29.33.190
This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.190
(Allan E. Tesche)
This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which hs not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even

AS 29.33.190(cont'd)
(Allan E. Tesche)
though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

AS 29.33.200
(Gerald L. Sharp)
This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

AS 29.33.240
(Gerald L. Sharp)
I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vests in a municipality upon vacation.

**SUGGESTIONS - TITLE 29 REVISION**

AS 29.33.250
(Allan E. Tesche)
Presumably the transfer required is one from all cities exercising the power rather than from a city.

AS 29.38.
Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

AS 29.41.
(Bruce Aronson) (Lee Sharp)
Eliminate third class boroughs. Re-examine idea.

AS 29.48.
(Richard W. Garnett, III)
Consider need for APUC regulation of municipality owned utilities.

AS 29.48.010
(Gerald L. Sharp)
I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I believe some consideration should be given to whether or not there should be a catch-all grant clause.

AS 29.48.010(cont'd)
Gerald L. Sharp
Also, something should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.030
(Bruce Aronson)
There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what type of enforcement services a city must provide.

AS 29.48.030
(Palmer McCarter)
Clarify whether "health and hospital power" is one or two separate local powers.

AS 29.48.030(b)
(Allan E. Tesche)
(& 29.48.035(b)&(c)) These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code. Moreover, AS 29.48.030 and .35, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

AS 29.48.030(b)(cont'd)
(Allan E. Tesche)
(& 29.48.035(b)&(c)) Reference to powers granted to second class boroughs to construct and maintain Local Service Road and Trails under AS 19.30.251 should be made in this section. Reference to the power granted to local governments to regulate use of public streets, alleys, and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

AS 29.48.030(a)(12)
(Allan E. Tesche)
The term transportation "system" used in this section should be defined.

AS 29.48.033
(Gerald L. Sharp)
Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

AS 29.48.050
(Gerald L. Sharp)
I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.070
(Gerald L. Sharp)
(& 29.48.080 & 48.090) The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)
(Gerald L. Sharp)
Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

**AS 29.48.110**
**(Gerald L. Sharp)**
**AS 29.48.110 should be changed to make it clear that a municipality may establish more than a single historic district.**

AS 29.48.130(5)
(Richard W. Garnett, III)
No need to require ordinance for routine fund transfers.

AS 29.48.150(a)
(Richard W. Garnett, III)
Majority required to set ordinance for hearing. Should be less.

AS 29.48.160(b)
(Gerald L. Sharp)
If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.170
(Richard W. Garnett, III)
Need some procedure for enacting municipal regulations.

AS 29.48.190(b)
(Gerald L. Sharp)
This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and before a capitol improvement.

AS 29.48.190
(City of St. Mary's)
Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except through lengthy procedures to amend the budget.

AS 29.48.190 (cont'd)
(City of St. Mary's)
The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the original appropriation.

AS 29.48.200
(Gerald L. Sharp)
The fine limitation and imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

AS 29.48.210
(Gerald L. Sharp)
This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide bases.

AS 29.48.220
(City of St. Mary's)
The audit requrement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class.

AS 29.48.220(cont'd)
(City of St. Mary's)
The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million.

AS 29.48.250
(Gerald L. Sharp)
Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260
(Richard W. Garnett, III)
Vote on sale of property over $25,000 is unduly burdensome.

AS 29.48.260
(Gerald L. Sharp)
I believe the exemption which is set forth in (d) should be expanded to encompass any land which the municipality disposes of.

AS 29.48.260
(City of St. Mary's)
I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's.

AS 29.48.260(cont'd)
(City of St. Mary's)
First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak English from participating in auctions.

AS 29.48.260(cont'd)
(City of St. Mary's)
The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities shou'i have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

AS 29.48.260
(Allan E. Tesche)
Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

AS 29.48.270(b)(c)
(Gerald L. Sharp)
These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

AS 29.48.310
(Gerald L. Sharp)
(& 29.48.320, & 330) Although these sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.
(Allan E. Tesche)
Should be ameded to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years.

AS 29.53.(cont'd)
(Allan E. Tesche)
An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

AS 29.53.010
(Richard W. Garnett, III)
Permit exemption of all personalty or of various classes.

AS 29.53.010
(Gerald L. Sharp)
Again the problem of how this is to apply to unified units of government; also, this section should be changed to permit the use of areawide revenues on a non-areawide bases.

AS 29.53.020
(Clara M. Eccles)
Extend property tax exemption to include disabled veterans of any age.

AS 29.53.020(a)(1)
(Gerald L. Sharp)
Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

AS 29.53.020(a)(3)
(Gerald L. Sharp)
A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps hospital, which are used in this section. Aslo, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt;

AS 29.53.020(a)(3) (cont'd)
(Gerald L. Sharp)
for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.025(b)(1)
(Richard W. Garnett, III)
Clarify "delegation" of powers to service areas.

AS 29.53.030
(Gerald L. Sharp)
This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

AS 29.53.060
(Gerald L. Sharp)
Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.080
(Ribert H. Ziegler, Sr.)
Assessors should not be allowed to have access to sale price of property by requesting this information from buyers or sellers.

AS 29.53.135
(Gerald L. Sharp)
This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to exempt use.

AS 29.53.135
(Allan E. Tesche)
The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

AS 29.53.150
(Gerald L. Sharp)
A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

AS 29.53.180
(Gerald L. Sharp)
This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.415
(Gerald L. Sharp)
(& 29.53.440) Something needs to be added to these sections to take care of problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.58.
(Ben T. Delahay
A new section should be added authorizing that an ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

AS 29.63.
(Ben T. Delahay)
The chapter on service areas should be clarified; there is too much authority in the assembly to handle decisions in the service area which should be made by the people paying the taxes in the area.

AS 29.63.
(Bruce Aronson)
Community councils should be advisory only by statute and money from the state for service areas ought to be appropriated for the city, not the local council.

AS 29.63.090(e)
(Richard W. Garnett, III)
Clarify "delegation" of powers to service areas.

AS 29.63.090
(Elsie O'Brien)
Loans by borough to service area should be subject to prior approval by voters within the service area.

AS 29.63.090
(Allan E. Tesche)
The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

AS 29.68.
((Bruce Aronson)
Statutes should be changed so that cities are not able to annex territory without providing services to the annexed area and so that people living outside cities who are receiving services pay for them.

AS 29.68.010(cont'd)
(City of St. Mary's)
The delay in time between the decision of the Local Boundary commission and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

AS 29.68.010
(City of St. Mary's)
The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative section has begun.

AS 29.73.020
(Gerald L. Sharp)
This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.

AS 29.78.101(16)
(Richard W. Garnett, III)
Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

**General Revision Suggestions - Title 29**

AS 29
(Tanana Chiefs Conference, Inc.)
Do not create new forms of local government in the unorganized borough, but rather recognize the traditional governments currently operating.

(Tanana Chiefs Conference, Inc.)
Allow local government to contract for the providing of state services, so that programs can be administered locally.

(Tanana Chiefs Conference, Inc.)
Coordinated regional planning should be done by existing local governments on a voluntary basis through the formation of consortiums of existing governments. These would be allowed to jointly exercise authority outside of their local boundaries.

(Tanana Chiefs Conference, Inc.)
Reduce municipal liability by raising the standard of municipal tort liability for only those official acts involving, "wanton and willful" conduct rather than mere negligence. Municipal ordinances and regulations should be assimilated into state law to allow state prosecution of local violations.

(Tanana Chiefs Conference, Inc.)
Alternatives for fuller local participation in the unorganized borough in state action:

1. A community or consortium must agree to agency actions/plans affecting the community. In the absence of consent, the agency would have to show, in a locally neutral administrative hearing, that the best interest of the state requires the action/plan.

2. Communities or consortiums produce regional plans with which state agencies must comply or get a waiver from the community or proceed through a local neutral hearing.

3. Agencies could be required to have local plans/actions approved after a local hearing by a local hearing officer.

**SUGGESTED CHANGES TO TITLE 29**

From Ben T. Delahay (City Attorney, Kenai)

1. I would note that when I was with the Borough several million dollars were saved the Borough by issuance of refunding bonds, but this was complicated because in order to take advantage of differentiation of interest rates, the banks had to have a prompt response. This is hardly the type of thing that I consider appropriate under an emergency ordinance (AS 29.48.160), and it really should not be as difficult to pass as an emergency ordinance. The indebtedness has already been approved by the voters and incurred, and the only question is refunding at a proper time to take advantage of market conditions to lower cost to the taxpayer. I would suggest a new section in AS 29.58 authorizing that an ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

2. I believe the chapter on service areas, (AS 29.63) could also stand a lot of clarification. My experience in this Borough would indicate that section has many unwise provisions that should be modified - there is too much authority in the Assembly to handle the decisions in the service area which should be made by those in the service area paying the taxes.

From Richard W. Garnett III (Attorney, Anchorage)

1. 29.28.070(b) - Service area initiatives are potential problems; could lead to"Balkanization" of municipalities.

2. Same - Standardize use of "general" and "regular" as to elections to avoid uncertainty as to required number of signatures.

3. 29.28.090(b) - Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

4. 29.28.040 - More specificity as to whether recall may be based on "political" factors.

5. 29.48.130(5) - No need to require ordinance for routine fund transfers.

6. 29.48.150(a) - Majority required to set ordinance for hearing. Should be less to give minority a chance to make it's case.

7. 29.48.170 - Maybe need some procedure for enacting municipal regulations.

8. 29.48.260 - Vote on sale of all property over $25,000 may be unduly burdensome.

9. 29.53.010 - Why not permit exemption of all personalty or various classes.

10. 29.53.025(b)(1) - Special treatment for boats.

11. 29.63.090(e) - Reference to "delegation" of powers to service areas needs clarification.

12. 29.78.101(16) - Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

13. Public Records - Clarify application of public records law, section 09.25.110 to municipality.

14. Home Rule - More clear criteria for application of non-title 29 provisions to home rule. (Maybe require inclusion in AS 29.13.10 laundry list).

15. APUC - Consider need for APUC regulation of municipality owned utilities.

16. 29.18 - Clarify rights to VUU land vis a vis state classification under AS 38.

17. 29.41 - Consider need for third class borough.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

For an Act entitled: "An Act relating to senior citizen exemption from motor vehicle property tax; and providing for an effective date."

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

* Section 1. AS 29.53.020(h) is amended to read:

(h) Except as provided in (g) of this section, nothing in (e) - (1) [(i)] of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

(j) One motor vehicle owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax established under AS 28.10.431(b).

(k) The state shall pay a borough or city for tax revenues lost to it under (j) of this section. The payment shall be an amount equal to the tax levied under AS 28.10.431(b) for each vehicle for which a senior citizen exempt affidavit form, as prescribed by the Department of Public Safety, Division of Motor Vehicles, is submitted.

(l) The Department of Community and Regional Affairs shall adopt regulations to implement the provisions of (g), (j), and (k) of this section.

* Sec. 3. AS 29.10.411(d) is repealed.

* Sec. 4. This Act is retroactive to January 1, 1980.

Note: This replaces a suggestion already submitted to the policy group.



# CITY OF NOME

P.O. BOX 281 - NOME, ALASKA 99762
TELEPHONE (907) 443-5242

September 22, 1980

Tamara Brandt Cook
Div. of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

Dear Ms. Cook:

RE: TITLE 29 Review

I have had one general problem with Title 29. As City Manager in Dillingham, Kodiak and now Nome, it seems obvious that Title 29 has been organized and written for governments who have an attorney that interprets each provision.

Many times one refers to Title 29 and needs an attorneys interpretation to understand what it means. This is not practical in a smaller city because of the cost and the amount of time it takes to get an opinion.

More specifically, I am referring to references to boroughs that apply to first class cities. This is very confusing because it's hard to understand when borough statutes apply. First class cities should be set out specifically to end the confusion.

There are a number of specific problems I'd like to bring to the Policy Advisory Groups attention.

29.28.040. Majority elections. The 40 per cent runoff election should be thoroughly considered if allowed to remain in the Statutes.

Article 3. Recall. These provisions should also be researched and grounds 29.28.140 should be made more clear.

Chapter 33. Areawide Borough Powers & Duties. 29.33.010 Scope. From this point on, Boroughs are given too much power. To be more specific, the fact that a borough <u>plans</u> for a city is a disaster in my experience. How can a city possibly exist as a city and not have control over its destiny? In Kodiak, while I was the manager, the Borough continually attempted to manage the City through its planning powers. This caused creation of service areas (another issue) and confusion where the City was to extend its services. City planning must be a responsibility of the government that

**is going to implement the projects planned for. In the case of Kodiak, I personally had to attend each planning commission and assembly meeting to make certain the City's interests were considered. Since the City Council had no real influence over the assembly or the planning commission, it became an unbelievable political struggle that wound up in Court. In this case, the City's taxpayers footed the bill for both attorneys since the majority of the tax base was inside the City.**

**The conflict with the Borough and the City regarding Borough powers adjacent to a City is a similar issue. In the case of Kodiak, the Borough wanted to establish a water, sewer and road service area that would utilize the City's water and sewer system and possibly contract for road service. This was their attempt to stop the City from annexing an area immediately adjacent to the City that needed to do something about those services. The competing aspects of this caused undue hardship and strains on the political as well as the social systems on the island. As far as I was concerned, the whole problem was the result of Chapter 38. Borough Powers and Duties in the Area Outside Cities. This chapter actually allowed the establishment of another taxing entity that was going to increase the cost of services to the users in the service area. It also made it more difficult for the city to plan for use and expansion of its facilities and equipment.**

The conflicts described above are in direct conflict with Article X, Local Government of the Constitution of the State of Alaska.

> Section 1. Purpose & Construction. The purpose of this article is to provide maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions.

If the system of using Boroughs is to continue and expand into the Unorganized Borough, then the items I have mentioned, plus others will have to be straightened out.

I believe that 29.48.150. Ordinance. Procedure should be redone to clarify the number of times an ordinance should be voted upon. The question has come up a number of times.

Thank you for the opportunity to make suggestions regarding the Title 29 revisions. I am quite interested in these items as well as what others are suggesting and would like to be kept fully informed as to the Groups deliberations.

Sincerely,

Ivan L Widom

Ivan L. Widom
City Manager

cc: Mayor & City Council

**CITY OF UNALASKA**
P.O. BOX 89
UNALASKA, ALASKA 99685
581-1251
"Capital of the Aleutians"




September 22, 1980

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Ms. Cook:

There are two aspects of Title 29 revision which I wish to comment upon.

First, I urge consideration be given to the American Law Institute's (1975) Model Land Development Code which represents a major improvement over the Hoover-era model upon which the present provisions of Title 29 governing the conduct of local planning are based. I particularly urge that the Code's recommendations concerning the division of responsibility between State and local planning responsibilities be considered.

Second, there are other statutes which can be interpreted to impose duties upon general purpose units of local government which are not specifically tied to Title 29. I have in mind, in particular, Chapter 35 of Title 46, the Alaska Coastal Management Program. This program and any similar program enacted in the attempt to attain consistency should be accompanied by a definitive tie to Title 29 which establishes an affirmative obligation on the part of local governments to exercise their substantive powers if this is the intent of the Legislature. Otherwise, Title 29 should indicate that it is the complete statement of the substantive duties and powers of municipalities.

Sincerely,

CITY OF UNALASKA PLANNING DEPARTMENT

Richard Careaga, AICP
Director

**Agenda Suggestions**
**from the Title 29 Working Group**
**to the Title 29 Policy Group**

1. **Are unified municipalities home rule or general law? This needs to be clarified.**

2. **We recommend that AS 29.08.050 Transition be repealed as out of date.**

3. **We recommend that the statute concerning REAAs be expanded to include procedures for integrating REAAs into newly organized boroughs.**

4. AS 29.18.180. Organization Grants. The dollar amounts of the organizational grants are inadequate. We recommend the amount be tripled.

5. AS 29.68.290 Nomination of charter commission candidates. Should a legislative body be authorized to make appointements to the charter commission in case of vacancies on the commission because of a failure to elect enough people?

6. AS 29.68.440. Powers of a unified municipality. What is a unified municipality?

7. Should the percentage requirements for signatures on petitions be lowered?

8. AS 29.68.500 Methods of dissolution. The section regarding the methods of dissolution are confusing, in that the two methods outlined involve substantially the same processes.

9. AS 29.13.050 Initiative and Referendum. This section should be clarified so that Home Rule municipalities are not bound by the procedures set out in the statute.

10. We need a more precise way of dealing with inconsistencies between Home Rule and state enactments.

11. AS 29.13.100 Limitation of home rule powers. This "laundry list" of limitations on Home Rule needs to be reviewed. Should there be cross-referencing to the home rule provisions in other statutes?

12. Chapter 18. Development cities. The chapter on development cities should either be reviewed and improved or deleted.

13. Chapter 23. Municipal Officers and Employees. This chapter should have provisions for dealing with the public records of municipalities. Municipalities should have a public records policy such as "except as provided by ordinance, all records shall be public."

14. Should municipalities be allowed to set residency requirements for voters? Should the three year residency requirement for elected officials which municipalities are permitted to set be lowered to one year in view of Castner v. City of Homer, specifically upholding one year requirements?

15. We feel there should be alternate methods for majority requirements of the votes of municipal assemblies.

16. AS 29.23.021 Assembly composition and apportionment. We feel there should be a greater delineation between composition and reapportionment.

17. There should be provisions for emergency situations arising when there is a lack of a quorum.

18. AS 29.48.130 (a) This should be amended to make possible budget transfers and supplemental appropriations by resolution instead ordinance.

19. What should mayoral veto powers encompass?

20. How are planning responsibilities to be divided between cities and boroughs?

21. We recommend that the sections of chapter 23 dealing with the involvement of young people in local government be repealed.

9/19/80

9/17/80
JES:jes

SUGGESTED REVISIONS - TITLE 29

Sec. 29.28.140. Grounds (for recall)

This section differs from AS 15.45.510 which provides grounds for recall of State officials; there could be an argument made for consistency between the two:

| Municipal grounds for recall<br>AS 29.28.140 | State grounds for recall<br>AS 15.45.510 |
|---|---|
| 1) misconduct in office | 1) lack of fitness |
| 2) incompetence | 2) incompetence |
| 3) failure to perform prescribed duties | 3) neglect of duties |
| | 4) corruption |

Sec. 29.28.150. Petition (for recall)

Should be rewritten to include a requirement of the name and office of the person (singular) to be recalled and a clarification that if more than one official is considered for recall a petition for each individual must be circulated.

Sec. 29.28.190. Submission (of recall petition)

The present wording is too vague with the use of the word "immediately" and should specify a specific time frame, i.e. 10 days

Sec. 29.48.035 (14). Regulatory powers (of municipalities)

"building, housing and related codes, which may be provided by cities within cities. . ." needs rewording (cities within its own boundaries?)

Sec. 29.48.037. Extraterritorial jurisdiction (of municipalities)

(b) states that a city can protect its watersheds and enforce such protection outside its boundaries ONLY upon the approval, by ordinance, of the municipality where the watersheds are located. This poses a problem when a city tries to exercise the protection of its water supply which lies outside the city limits but within the organized borough and where the borough is not actively involved in any such protection but refuses to allow the city to exercise such. If a borough has, in effect, veto power over the city's action in this regard, the borough government should be required to be actively involved in the exercise of such protected activity itself.

Drafted by Johnna Shanley

AS 29.33.070(b)

If a first class or home city is located more than 25 miles from the boundary of the b_ough seat, the planning, platting and zoning responsibilities within the city may be exercised by the city after a city ordinance providing for the exercise thereof is approved by a majority of the electors within the city voting on the question at a regular or special election.

or by Council ordinance

9/19/8

AS 29.48.050(d)

For purposes of AS 29.48.050 - .070 a public utility which is not regulated as to rates and services by the Alaska Public Utilities Commission shall not be considered as regulated by AS 42.05.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

**SUGGESTED CHANGES TO TITLE 29**

**From Elsie O'Brien (Houston City Clerk)**

1. **AS 29.28.190, recall provisions:**
   **Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.**

2. **AS 29.63.090, service areas within boroughs:**
   **The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.**

3. **General observation: would like greater information within the text of the volume. (This may not be possible because of the strict format relating to what may be annotated. However, perhaps CRA should receive an amount so that each year for small cities a loose-leaf form of Title 29 may be prepared to update which carries changes in law, applicable commentary, case decisions, AG opinions, etc., supplied by the Dept. on a quarterly basis.)**

From Senator Robert H. Ziegler, Sr.

1. I don't much like AS 29.53.080. What privately contracting parties sell or pay for property need not necessarily reflect f.m.v. Alaskan assessors are supposed to assess at 100% of true value. Ergo, if they can examine and inspect properties, why can't they appraise without involving the records of the buyer/seller? (I've lost this argument before!)

From Jack Chenoweth (Staff Counsel, Legislative Affairs)

1. Give some thought to inclusion of a provision somewhere by which a state officer -- governor, CRA commissioner or what have you -- enjoys authority to appoint municipal voters to fill elected city or borough offices when the number of incumbent members of city council council or borough assembly drops below the number required by law or charter to produce a quorum. For example, if the 5 members of the Juneau assembly are recalled, it may be that the four remaining cannot function as an assembly even to the point of filling a vacancy or calling for an election to fill the vacancy. Other quirks in charter provisions could operate to preclude councils or assemblies from operating if there are "mass" resignations or wholesale removals.

**From Marjorie Gorsuch (House Committee on Community & Regional Affairs)**

1. **Section 9 AS 29.23.025 (e) outlines the procedures to be followed if a reapportionment ordinance has not been approved by the voters after the assembly has determined that reapportionment is necessary. The law does not address what happens to the order--is it voted on by the people? Can the order be appealed? Is administrative or judicial review provided for?**

2. **In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.**

From Clara M. Eccles (Anchorage)

1. I'm interested in SB 154 "Extending property tax exemption to include disabled veterans of any age." (Note: SB 154 did not pass last regular session.)

From Bruce Aronson (Ombudsman's Office)

1. AS 29.28.130 is unclear as to whether an official may be subject to recall within 6 months of being re-elected. It would seem that the original intent of this section was to protect rookies rather than encumbants. Recommendation: all officials may be recalled after 6 months have been served in office. The 6 month grace period would not apply if a person is re-elected to the same office.

2. The grounds for recall listed in AS 29.28.140 are too narrow in scope. Since the grounds stated in recall petitions need not be proven, people are forced to name one of the three listed grounds even when the real reason behind the petition bears little relation to it.

3. AS 29.28.150 should be changed so that it is clear that a recall petition can seek to recall only one named official. A separate petition should be filed for each offical sought to be recalled. A petition should be required to contain the mailing address of each person who signs it.

4. AS 29.28.180 should be changed so that a new petition may not be filed sooner than 6 months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

5. There has been a fear that once a sufficient petition has been submitted and accepted, members of the council could resign and be re-appointed to the council. The statutes should preclude this possibility.

6. The statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition, not on the state election.

7. It is unclear whether a person recalled is removed from his office at once after the election has been certified, without any transition period. Some sort of transition period should be provided by statute to allow a government to continue to operate when a majority has been recalled from office.

8. Eliminate third class boroughs. There is no need for them now that REAAs have been established. If a borough is organized, it should assume minimal responsibilities, such as land use planning.

9. There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what types of enforcement services a city must provide. This will never be done voluntarily on a local level because the state currently provides free police services. A statute should identify the types of local problems which the state troopers will not pursue, such as dog control.

10. There is a problem with local control of service areas. Community councils are getting direct support form the state and this creates mini-municipalities within the municipality which sets up the service area. The resulting overlapping jurisdiction causes confusion as to policy and citizens cannot determine who to deal with regarding particular problems. The councils should be advisory only by statute and money from the state ought to be appropriated for the city, not the council.

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From Palmer McCarter (C & RA)

1. Clarify whether "health and hospital power" is one or two separate local powers.

2. Adopt uniform definitions of "municipality," "borough," and use the terms consistently throughout the title.

3. Clarify the use of the terms "general" and "regular" election. Use the term "general" election to refer to state, not local elections.

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## AS 29: Revisions Needed

29.08

Although an attempt has been made in this Chapter to classify the various kinds of Alaskan municipalities, more recent amendments to Title 29 and unification of several cities and boroughs have resulted in confusion over definitions of "cities", "boroughs", and "municipalities". It is not clear, for instance, whether the unified Municipality of Anchorage is a city, a borough, or unified municipality or all three forms of government within existing provisions of AS 29.

29.13.100

The Code should contain a uniform system for designating statutes that expressly apply to home rule municipalities and all such statutes should be consistently cross referenced.

29.23.050

The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

29.23.060(d)

Circumstances, other than financial interests, which allow a member to abstain should be better defined.

29.23.080

The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

29.23.130(B)

Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

29.23.150 and AS 29.23.470

Both require assembly appointmet of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

29.23.170

This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto. For instance, if the mayor vetos a line

item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

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Another probably invalid three year residency requirement.

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This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

29.23.555

This section has been superceded by AS 39.50.

29.33.070-245

Serious thought should be given to the purpose of the planning, platting and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

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This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which has not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even though that person may be the owner of record only by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

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Presumably the transfer required is one from all cities exercising the power rather than from a city.

29.33 and 29.38

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities)?

29.48.030(b) AS 29.48.035(b) and (c)

These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code.

Moreover, AS 29.48.030 and .035, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

29.48.030(a)(12)

The term transportation "system" used in this section should be defined.

29.48.260

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

29.53.135

The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

29.53

Should be amended to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years. An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

29.63.090

The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

8.60.050-100

Regulation of junk yards in this section should be cross-referenced to those sections of Title 29. relating to areawide planning, platting and zoning powers.

9.25.110-120

It is unclear whether public records statutes apply at all to municipal government. If it is the intention of the Legislature to apply the public records laws of AS 9.25.110-120 to cities and boroughs, then those sections should be amended accordingly with an appropriate cross references to Title 29.



# MEMORANDUM

State of Alaska

TO: Debbie Behr, Special Assistant
Office of the Commissioner

DATE: August 15, 1980

FILE NO:

TELEPHONE NO: 465-3082

SUBJECT: Comments on Amendments to State Statutes re: Local Government

FROM: V. L. Iverson, Director
Division of Administrative Services

The subject of local control by political subdivisions over selected DHSS programs does appear to be proper for consideration by the special legislative committee on revision of the State Municipal Code.

I'm sure you are aware that it is essential to distinctly separate statutorily delegated local government control of DHSS programs from contractual arrangements with private, non-profit entities to implement DHSS programs. The latter system presents numerous legal problems with respect to at least those programs that are partially Federally funded. As we all know, on the other hand, many States for many years have successfully operated their health and social services programs through statutory delegation of powers to local political subdivisions.

per call Debbie Behr

would like issue raised of giving local control of health programs to local govt by allowing DESS to have statutory authority to delegate implementation of programs to the local govt

Alan Korhonen
7-9-80

Ben Iverson

02-001A(Rev.10/79)

# Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

BOROUGH ATTORNEY'S OFFICE


July 30, 1980

Lee McAnerney, Commissioner
Department of Community & Regional Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

As you, Phil Smith of Rural CAP and Ginny Chitwood of the Alaska Municipal League recently requested, I am happy to enclose a list of revisions the Legislature and its Policy Committee may wish to consider in connection with revision of AS 29. Let me emphasize this is only a partial list of areas where AS 29 may be improved.

Cordially,

Allan E. Tesche

Allan E. Tesche
Borough Attorney

er

Enclosure


RECEIVED
AUG - 1 1980
DEPT. OF COMMUNITY AND REGIONAL AFFAIRS

29.08

Although an attempt has been made in this Chapter to classify the various kinds of Alaskan municipalities, more recent amendments to Title 29 and unification of several cities and boroughs have resulted in confusion over definitions of "cities", "boroughs", and "municipalities". It is not clear, for instance, whether the unified Municipality of Anchorage is a city, a borough, or unified municipality or all three forms of government within existing provisions of AS 29.

29.13.100

The Code should contain a uniform system for designating statutes that expressly apply to home rule municipalities and all such statutes should be consistently cross referenced.

29.23.050

The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

29.23.060(d)

Circumstances, other than financial interests, which allow a member to abstain should be better defined.

29.23.080

The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

29.23.130(B)

Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

29.23.150 and AS 29.23.470

Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

29.23.170

This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto. For instance, if the mayor vetos a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

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As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

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Another probably invalid three year residency requirement.

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This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

29.23.555

This section has been superceded by AS 39.50.

29.28.070(b)

Reference to "last general election" in this subsection is unclear; considerable confusion has existed in the past over whether the term refers to the last state or municipal election.

29.28.130 et seq

Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

29.33.070--245

Serious thought should be given to the purpose of the planning, platting and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

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Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities)?

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These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code.

Moreover, AS 29.48.030 and .35, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very lease confusing and perhaps unnecessary.

Reference to powers granted to second class boroughs to construct and maintain Local Service Roads and Trails under AS 19.30.251 should be made in this section.

Reference to the power granted to local governments to regulate use of public streets, alleys and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

29.48.030(a)(12)

The term transportation "system" used in this section should be defined.

29.48.260

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of lanc offered for sale and the date upon which such valuations must be based. Moreover,

**the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.**

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**The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.**

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# City of St. Mary's

P.O. Box 163
ST. MARY'S, ALASKA 99658

July 29, 1980

Department of Community and Regional Affairs
Pouch B
Juneau, Alaska 99811

Re: Recommendations for changes in Title 29
To Title 29 Policy Committee

Gentlemen:

At the request of Mayor Paukan I am submitting the following comments on some of the provisions of Title 29 that the City would like to see changed. The provisions I have commented upon are those that have proved somewhat troublesome during my duration as City Manager. There are no doubt many other provisions that require change.

29.23.570 VACANCIES: This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570

29.23.070 and 29.43.040 PLANNING, PLATTING AND ZONING The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

29.48.190 BUDGET AND CAPITAL PROGRAM Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except though lengthy procedures to ammend the budget. The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the orignial appropriation.

29.48.220 POST AUDIT The audit requirement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million

29.48.260 MUNICIPAL PROPERTIES I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's. First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak english from participating in auctions. The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

I can see no reason for subjecting leases of City land to the same requirements that attach to sales of city land. This unduly restricts the City's ability to make land available for new businesses.

It is not clear whether the exception developed in subsection (e) is free from the requirements of prior appraisal and public auction or sealed bid.

29.68.010 LOCAL BOUNDARY COMMISSION The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative session has begun. The delay in time between the decision of the Local Boundary Comm'n. and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

I am delighted to see the efforts to review Title 29. I hope it produces some beneficial results. I trust these comments will prove helpful.

Sincerely,

CITY OF ST. MARY'S

Timothy E. Troll
City Manager

RECEIVED
AUG - 4 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

DILLINGHAM, ALASKA 99576
HOME PHONE 842-5302

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
PHONE 465-3738 OR 3739
HOME PHONE 789-7897

HOUSE MAJORITY LEADER
VICE CHAIRMAN JUDICIARY COMMITTEE
MEMBER, RULES COMMITTEE
MEMBER, SPECIAL COMMITTEE
ON SUBSISTENCE

House of Representatives

August 26, 1980

Mr. Palmer McCarter, Director
Division of Local Government Assistance
Department of Community & Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Sir:

It has come to my attention that the second class cities and unincorporated village governments in the Bristol Bay Region will experience severe problems in meeting the September 20, 1980 deadline for mailing completed State Revenue Sharing applications to qualify for the $25,000 minimum entitlement provided for in the new law revising the State Revenue Sharing Program. It has further come to my attention that applications were only recently mailed to general law municipalities and that applications for traditional governing councils have yet to be mailed.

The September 20th time deadline is further compounded by the problem that many of the villages in our region are currently unaware of the provision in the new law which provides state aid to eligible governments recognized under the Alaska Native Claims Settlement Act. Another very real problem is the frequency of mail delivery service, which is sporatic at best, to many of the villages in the more remote areas.

A lot of work on the part of rural legislators went into FCCHB 192 reforming the State Revenue Sharing Program to include state aid to unincorporated governments and the $25,000 minimum entitlement provision for small rural municipalities with no tax base.

With the September 20th deadline for mailing applications just around the corner, it appears that many local governments that could take advantage of the new State Revenue Sharing program will be unable to do so. I would encourage your department to strongly consider extending the deadline to allow more local governments desperately in need of such monies to have the time to properly complete the application process.

Thank you.

Very sincerely,

Nels A. Anderson Jr.

Nels A. Anderson, Jr.

cc: Senator George Hohman
Rep. Bill Parker
Sen. Arliss Sturgulewski
Governor Hammond
Commissioner Lee McAnerney, CRA
TUNDRA TIMES
TUNDRA DRUMS

OK

copy title 29 committee

CITY OF MC GRATH
P.O. BOX 57 MC GRATH, ALASKA 99627
PHONE (907) 524-3825

August 26, 1980

Arliss Sturgulewski, Senator
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

Dear Senator Sturgulewski,

Back at the beginning of the summer, I attended a meeting called by the Division of Community Planning. It was a "loose meeting" in that the agenda was flexible and covered many areas and concerns. Somewhere in the meeting, we touched upon the changes proposed by the Community & Regional Affairs Committees. If I am not mistaken, everyone agreed that the committees were on the right track especially in regards to the establishment of service areas following REAA boundaries.

Well, it seems that those of us living in the "bush" know more about what happens in Juneau than some of the state employees living and working there. For example, the Dept. of Health & Social Services just unveiled a plan whereby the communities of Holy Cross, Anvik, Shageluk and Grayling which are all in the Iditarod Area School District, REAA 11, will now receive there public health nurse services from Bethel. Ms Lois Bergerson decided that those people would be better served from Bethel than McGrath. Was there any local input from those communities? Was any consideration given to the fact that those people are Athabascans and not Yupiks? Did anyone think to explore the logic behind the boundaries of REAA 11? The answer to all three questions is no. However, Ms Bergerson is adamant that the changes will take effect on Sept. 1 irregardless of any protests.

It is my firm hope that when the Legislature convenes in January, that the Community & Regional Affairs Committees will reintroduce the same package of bills.

Sincerely,

Robert S. Juettner
City Administrator

8/29/80 Advised Bob I waived hiring to committee → Jim Cooke – Please copy AS 29 Renewal. Committee incl ex-officio + Dept HSS + Fran Ulmer

**OFFICE OF THE MUNICIPAL ATTORNEY**
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
P. O. BOX 7300
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

September 11, 1980

State of Alaska
Legislative Affairs Agency
Pouch Y - State Capitol
Juneau, Alaska 99811

Attn: Tamara Brundt Cook
Legislative Counsel

Re: Title 29 Review

Dear Tamara:

Please find enclosed herewith further comments received from the Revenue Collector for the Ketchikan Gateway Borough which we would appreciate being distributed to the committee members and technical staff for consideration incident to the above-referenced review.

Your courtesy and cooperation are very much appreciated.

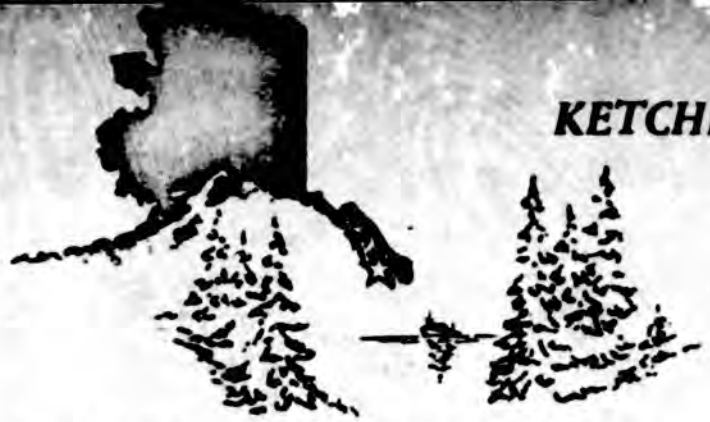
Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure



**KETCHIKAN GATEWAY BOROUGH**
344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Marvin Yoder, Interim Borough Manager

FROM: M. Westfall, Revenue Collector

RE: Title 29 Review

DATE: September 2, 1980

I have reviewed the material relating to the review of Title 29 and approve and support those portions pertaining to chapter 53 of this title.

A few other changes which might be considered are listed below:

1. Sec. 29.53.025 the classification of boats for purposes of taxation by tonnage should be changed to more realistic amounts.

2. Sec. 29.53.060 include the words having a situs within the taxing district after the word property. Many property owners believe that property not within the taxing district on January 1 of the taxing year is free of tax. Boats and airplanes are commonly removed from the taxing district during the first month of the year to avoid taxation.

3. Sec. 29.53.320 change person to receive redemption monies from clerk to tax collector who has in his/her possession the records of assessment and taxation, applied penalties, interest & costs.



On the Title 29 revision --

Give some thought to suggesting inclusion of a provision somewhere by which some state officer -- governor, CRA commissioner or what have you -- enjoys authority to appoint municipal voters to fill elected city or borough offices when the number of incumbent members of city council or borough assembly drops below the number required by law or charter to produce a quorum. For example, if the 5 members of the Juneau assembly are recalled, it may be that the four remaining cannot function as an assembly even to the point of filling a vacancy or calling for an election to fill the vacancy. Other quirks in charter provisions could operate to preclude councils or assemblies from operating if there are "mass" resignations or wholesale removals. It may be a provision that will never be used, but it may be one that should be on the books just in case.....

JC

**AREAS OF AS 29 (MUNICIPAL CODE) REQUIRING ATTENTION**

**DICTATED 7/29/80 BUT NOT READ**

**BY GERALD L. SHARP**

---

**The use of the word election throughout the code should be examined with the eye to eliminating all those references to "general" election where it was meant to refer to a municipal election. Where a state general election was meant, the word "state" should be added.**

AS 29.08.010, 29.13.010 and 100, and 29.78.010(1)(2)(8)

A careful reading of the code indicates that a unified unit of home rule local government is not a municipality. Under these sections, it is not a home rule municipality. If this was the intent, it should be clarified in the definitions. Along this same line, all sections which apply to home rule boroughs and home rule cities should be reviewed to determine whether they should also apply to unified units.

AS 29.08.020

An interpretive guide should be provided for the court so that it does not seize upon this section to revive Dillon's Rule.

AS 29.13.100

The effect of the phrase "acting otherwise than as provided" should be examined to determine whether this phrase means that a home rule municipality may do neither more nor less than is prescribed for home rule municipalities. See the Whitson case.

AS 29.18.130

We should probably address REAA's under this section.

AS 29.18.140(a)(b)

This section implies that a newly incorporated city or borough may succeed a home rule or previously incorporated general law city or borough. Was this meant?

**AS 29.18.180**

**Organizational grants under this section appear to be inadequate.**

AS 29.18.330

**The resident training and hire preference should be examined for constitutionality.**

AS 29.23.060(a)

**This section implies that there may be no special meetings if** any **member is not notified.**

AS 29.23.060(d)

Some consideration should be given to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

AS 29.23.070

This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.080

This section should be checked to determine whether it tracts with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.040 et. seq.

The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualifications of officers as these relate to the mayor, council, and assembly memebers should be uniform as between a city and a borough.

AS 29.23.210

Does this require four votes on a procedural motion? This language should parallel the similar provisions for

**boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions.**

AS 29.23.310

**Reference within this section to repeal Section 100 should be corrected.**

AS 29.23.340(d)

**Perhaps this section should be clarified to permit the board to set rates.**

AS 29.23.360

My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

AS 29.23.370

I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps, there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to serve two different masters, the legislative body, and the chief administrator.

AS 29.23.395 through .401

This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470

I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480

I suggest that the adoption of an ordinance at the very next meeting after the repeal of a manager plan is expecting

too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540

The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school boards budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. (Sour grapes on my part, perhaps.) Also, it appears that this section would permit a person working in the grants section of the Department of Community and Regional Affairs to serve on an assembly or a council.

AS 29.28.015

I question why the mayor in a manager type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030

It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the state of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.080(a)

This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.110

This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

AS 29.28.130

This section should be clarified to indicate whether a re-elected official may be recalled within six months within of his second election.

AS 29.28.140

This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting. They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.

AS 29.28.150

Some thought should be given to clarifying this section to require that the name of each elected official appear on a separate petition and not be on the same petition with any other elected official. The statement of the grounds should also be limited to 200 words.

AS 29.28.160

Either the clerk or the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170

I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60. If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be given an additional ten days for their sloppiness or inadequate performance.

AS 29.28.200(c)

If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name

**is removed from the recall ballot, may he then be reappointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?**

AS 29.28.210

If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?

AS 29.28.250

What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS 29.33.010

Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in its Lafayette decision.

AS 29.33.050

While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read "and shall establish, maintain, and operate."

AS 29.33.080(e)

Consideration should also be given here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

AS 29.33.085(b)

The requirement that the commission present new recommendations on a comprehensive plan every two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it does not appear that there is any

question as to the validity of an ordinance which is adopted pursuant to a comprehensive plan which has not been reviewed for more than two years. Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.110(b)(1)

I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works. The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)

It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance," or "variances from the terms of the zoning ordinance," or "requests....".

AS 29.33.120

It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)

I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150

It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

AS 29.33.170(a)(1)

I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.

AS 29.33.150(b) and AS 29.33.160(c)

These sections need to be revised out of the code.

AS 29.33.190

This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.200

This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

AS 29.33.240

I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vest in a municipality upon vacation.

AS 29.41.010

Perhaps the idea of third class boroughs should be re-examined.

AS 29.48.010

I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I

believe some consideration should be given to whether or not there should be a catch-all grant clause. Also, something should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.030

This may be the appropriate section to deal with the Lafayette antitrust problems. Under subsection (b), someone to check to determine whether the reference to the Alaska Transportation Commission makes sense in the light of SB 577 (sorry, I do not have the bill with me as I dictate this).

AS 29.48.033

Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

AS 29.48.050

I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.070, .080, and .090

The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly be adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)

Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110

AS 29.48.110 should be changed to make it clear that a

**municipality may establish more than a single historic district.**

AS 29.48.160(b)

If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.190(b)

This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and be for a capital improvement.

AS 29.48.200

The fine limitation and the imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

AS 29.48.210

This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide basis.

AS 29.48.250

Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260

I believe the exemption which is set forth in (d) should be expanded to incompass any land which the municipality disposes of.

AS 29.48.270(b)(c)

These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

AS 29.48.310, 320, and 330

Although these three sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights Card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.010

Again the problem of how this is to apply to unified units of government; also, this section should be changed to permit the use of areawide revenues on a non-areawide basis.

AS 29.53.020(a)(1)

Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

AS 29.53.020(a)(3)

A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps, hospital, which are used in this section. Also, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt; for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.030

This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

AS 29.53.060

Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.135

This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to the exempt use.

AS 29.53.150

A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

AS 29.53.180

This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.415 and .440

Something needs to be added to these sections to take care of the problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.73.020

This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.

**More grist for the Title 29 mill:**

**Elsie O'Brien (Houston city clerk) to Arliss Sturgulewski**

(1) AS 29.28.190, recall provisions --

Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain

(2) AS 29.63.090 -- service areas within boroughs

The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.

General observation with respect to Title 29 -- would like greater information within the text of the volume. (This is probably not possible because of the strict format relating to what may be annotated. However, perhaps CRA Department should receive an amount so that each year, for small cities, a loose-leaf form of Title 29 may be prepared or updated which carries changes in law, applicable commentary, case decisions, AG opinion texts, etc. supplied by the Dept on a quarterly basis. -- The cities could reimburse for the service, or for a portion of it.)

8/7 JC

June 3, 1980

Clara M. Eccles
3005 Willow Street
Anchorage, Alaska 99503

Dear Mrs. Eccles:

Thank you for your letter in which you inquire about the status of SB 154 which would amend Title 29 to include disabled veterans of any age. Many property tax exemption bills were entered into this session of the legislature. In considering these bills, a number of inequities were apparent. For example, if disabled veterans are a group given special exemption, what about the equity question of other disabled people in the state? A major policy question arises when you begin to consider exemptions for special groups of people rather than on a need basis. For these reasons and others, a number of the tax exemption bills will not be moved from the Senate Community and Regional Affairs Committee, which I chair this session.

Because of your interest, I am sending you a copy of a letter I have sent to Dave Walsh, President of the Alaska Municipal League, pointing out some of the above issues, and others that are involved in any consideration of property tax changes. I'm also enclosing a copy of a report done by the Department of Community and Regional Affairs. Mr. Walsh has agreed that the Alaska Municipal League will take a look at the issues raised in consideration of the property tax exemptions and report back to the next session of the legislature. As I have interest in this issue, I would be very happy to have you contact me after the session is over. My Anchorage number is 279-4939.

At the present time a free conference committee is considering an increase in the longevity bonus. Several of the senators are concerned over making any changes to the longevity bonus with the exception of increases in the amount. They feel that amendments to the law might well cause court challenges as to the validity of the longevity bonus. I do feel confident that there will be an adjustment in the amount of the bonus prior to the end of the session.

Kindest personal regards,

Arliss Sturgulewski
Senator, District 10-H

Enclosure

3005 Willow St.
Anchorage, Ak. 99503
May 14, 1980

Arliss Sturgulewski
Pouch V
Juneau, Ak. 99502

Dear Mrs. Sturgulewski:

I'm interested in SB 154 "Extending property tax exemption to include disabled veterans of any age." How about those of us who are disability. I understand the residents of Kenai already have this but anytime I've mentioned it to Anchorage senators it's always too early or too late in the session. Too me there's no such thing. SB 427 seems to have something similar in mind but wasn't introduced until this year.

I am also interested in what progress has been made in SB 39 Re: length of stay in Ak for eligibility for longevity bonus, and 2d HCSSB-71. In the House HB-15 is of interest to me.

In this area Handicapped and Disabled is quite a different matter and what applies to one doesn't very often include the other.

Thanks for your interest.

Sincerely,

Clara M. Eccles

Clara M. Eccles

# Alaska State Legislature

## House of Representatives

**Committee on**

**Community & Regional Affairs**

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

June 12, 1980

TO: Mr. Billy Barrier
FROM: Marjorie Gorsuch MG
RE: FCCSHB947

Being aware that you will be involved in the revision of Title 29, as per the requirements of CSSCR66 which directs the Alaska Legislative Council to review the Municipal Government statutes, I want to call your attention to an area of law, enacted by the Eleventh Legislature as FCCSHB947, which you will want to address during the course of your revision. In the haste of the last days of legislative activity, the following omissions went unnoticed when the Free Conference version of the bill was adopted.

Section 9 AS 29.23.025 (e) outlines the procedures to be followed if a reapportionment ordinance has not been approved by the voters after the assembly has determined that reapportionment is necessary. The law does not address what happens to the order--is it voted on by the people? Can the order be appealed? Is administrative or judicial review provided for?

In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.

Both the draftsman, Jack Chenoweth, and Ginny Chitwood of the Municipal League which will be involved in the revision of Title 29 are familiar with the problems in the Free Conference law and would be able to answer any questions.

Eliminate 3rd class
boroughs -

Aronson -

Call Bruce Aronson
about recall sec.
title 29 - Ombudsmans
Office - 4971 —

Jack Chenoweth

Bruce Aronson per call 8/9/80

1) Eliminate 3rd class boroughs. No need for them now that we have REAAs. Should assume minimal responsibilities, such as land use planning if borough is established

2) Should be a clear statutory statement as to when city rather than state must provides local police service and what kinds. This will never be [illegible] locally because state will [illegible] do it [illegible] to local [illegible] state troopers will not [illegible].

3) [illegible] direct support [illegible] state, [illegible] municipalities [illegible] municipalities [illegible] [illegible] policy [illegible] who is [illegible]. [illegible] be advisory only by statute. [illegible] from [illegible]

4) [illegible] so that [illegible]

MEMORANDUM State of Alaska
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Palmer McCarter PJM
Director

DATE: November 6, 1980

FILE NO:

TELEPHONE NO:

FROM: Terry Earley TE
State Assessor

SUBJECT: School Bond Guarantee Fund

Attached is our annual memo that must go to the Governor's Office no later than December 1. As in the past this memo states that no sum is required to implement the school bond guarantee fund.

It is my understanding that this fund has never been used and, in fact, for the last four years our memo has been identical.

That lack of use coupled with the requirement in the statute that would allow a home rule city to exceed its authorized bonded indebtedness as defined in its home rule charter, seems to make this a less than desireable statute. I personally feel that deletion of this section is something the Title 29 review committee should consider.

Attachment

Lee - Please sign attached memo and forward to the Governor's office. Per Terry's suggestion, I am sending a copy of this memo to Tam Cook, legal counsel who can transmit our concern to the technical and policy groups of the T29 revision committee.

Thanx
PJM

ck Petersburg -
Municipal Attorney - 101-55 1212

772-4425

02-001A(Rev.10/79)

# MEMORANDUM State of Alaska

**DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS**

TO: The Honorable Jay S. Hammond
Governor

DATE: November 17, 1980

FILE NO:

TELEPHONE NO:

FROM: Lee McAnerney, Commissioner
Department of Community &
Regional Affairs

SUBJECT: Chapter 137, SLA 1974
An Act Relating to Home
Rule City Bonded Indebtedness
Incurred for School Constructic

Chapter 137, SLA 1974, permanently codified as AS 29.58.345-350, establishes within the Department of Community & Regional Affairs a school bond guarantee fund, the purpose of which is "to further guarantee and provide an additional pledge of payment of . . . bonds issued" to pay costs of school construction. The bond guarantee is applicable only as to home rule cities levying and collecting property taxes for schools and is operative only as to those home rule cities incurring bonded indebtedness for school contruction where the anticipated bond issue requires the city to exceed limits on authorized bonded indebtedness which have been defined in the municipality's home rule charter.

By Section 350(f) of the Act, annually, not later than December 1, the Commissioner of the Department of Community & Regional Affairs must certify to the Governor that sum which is necessary to bring the fund created current to the requisite "debt service reserve".

Since, to our knowledge, no home rule cities have issued bonds necessitating additional requirement on the school bond guarantee fund, I wish to certify that no sum is required to implement the school bond guarantee fund.

— Dirch Nelson —
Assessor — Rupert E. Brier
in Juneau

— Paul Dillon —

02-001A(Rev 10/79)

**ALAKANUK CITY COUNCIL**
**ALAKANUK, ALASKA 99554**

To Members of the Title 29 Revision Committee; FROM:Terry Cook and
Recommended changes, wording, and questions: Alakanuk City Council.

USING TITLE 29 WORK DRAFT COPY:

page 48-line 14; define and spell out AS44.62.310

page 62-line 22; change(Four affirmative)to A majority number of

page 63-line 20; add (.) ,but does not change the term of the seat he was elected to.

page 66-line29; insert or between ", as"

page 67-line 20; add at the end of the sentence(;)of the city;

page 70-line 29; change (general) to regular

page 71-line 14,15; recommended to read: a copy of an annual audit if revenues or expenditures exceed $ _____ or statement of annual income and expenditures;

page 71-line16; add(;)if taxes are assessed or levied;

page 72-line 10; should state by what reasons for "removal from office."

*page 73-line 15; Can a municipallity regulate private or co-operative utility if not owned by the municipallity?

page 74-line 23; needs rewording as to how many affirmative votes are needed to adopt an emergency ordinance.

page 75-line 10; insert after the word "sold" ,distributed or made available to the public.

page 76-line 8; the limits should be raised

page 76-line 10; add after "cost" (.)or at no charge as determined by assembly or council.

page 77-line 6; add to read: elections by ordinance and

*page 78-line 5; what happens if there are 3 top candidates that are tied with less than a majority vote? Suggested wording: two or more

page 78-line 20; add at the end of the sentence(.)and authorize the results to be certified.

*page 78-line 24; should this read(more)less ?

page 79-line 19; add a new section: 29.30.105 PETITION EXEMPTION. The governing body may put a question on the ballot without a petition.

*page 83-line 9; Can "misconduct in office" be defined?

*page 85-line 6--14; if all members are recalled or there is not a quorum left, how can a special election be called for?

*Denotes a question

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554



Recommended changes, wording, and questions:

page 90-line 13; add after word "contracts" or make agreements

page 95-line 16; change (duces tecum) to plain English!!!!

page 94-line 4,5; change (spread upon) to _____

page 97-line 11; change ($25,000) to $100,000

page 99-line 9; add after word "municipallity" if revenues or expenditures exceed $ _____

page 99-line 10; add after word "audit" if revenues or expenditures exceed $ _____ or if less than $ _____ a statement of annual income and expenditures.

page 109; Repeal sections 29.39.060(Sec.29.43.100), 29.39.070(Sec.29.43.105 and 29.39.080(Sec.29.43.110).

page 115; Sec.29.42.080 the regulations should be adopted by ordinance so that the public has a fair hearing in matters that can affect them

page 116-line 26; add after word "street" as long as it is not an easement across another's private property.

page 122-line 17; change ($500) to $5,000 in value.

TO: Technical Group

FROM: Melissa Aber Fouse
Secretary, Title 29 Commission MAF

SUBJECT: SB 582

We are sending you SB 582 on the request of Lee Sharp who plans to make this subject an item of discussion at the next Technical Committee meeting.

LAA 15

Original sponsor: Rules Committee by request

Offered: 5/12/80
Referred: Finance

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 582

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the assessment, levy and collection of property taxes on transient aircraft; and providing for an effective date."

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

* Section 1. AS 44.25.020 is amended by adding a new paragraph to read:

(5) assess the value of transient aircraft in accordance with AS 29.53.038.

* Sec. 2. AS 29.53 is amended by adding a new section to read:

Sec. 29.53.038. TRANSIENT AIRCRAFT. (a) The Department of Revenue shall assess the value of transient aircraft that is not exempt from property taxes under AS 29.53.162(c). The Department of Revenue shall determine the value of aircraft assessed under this section at its full and true value and shall determine the value of the aircraft as of January 1 annually.

(b) The Department of Revenue may require by notice each person having ownership or control of an interest in aircraft assessed under this section to submit a return in the form prescribed by the Department of Revenue, based on values existing on January 1 of each year. The Department of Revenue by written notice may require a person to provide additional information within 30 days of the notice.

(c) The Department of Revenue may investigate aircraft on which a return has been filed or on which no return has been filed. In either case, the department may make its own valuation of the aircraft, which is prima facie evidence of full and true value. An employee or agent of

the Department of Revenue may enter an aircraft as necessary for the investigation during reasonable hours and may examine appropriate records. When requested by an employee or agent of the Department of Revenue, the owner of the aircraft shall furnish to the employee or agent reasonable assistance required for the investigation. If refused entry, the Department of Revenue may seek a court order to compel entry. For the purpose of the investigation, the owner of the aircraft or his representative may be required to present himself for examination under oath by the Department of Revenue.

(d) The Department of Revenue shall prepare annually the assessment roll for taxation of transient aircraft by municipalities. The assessment roll shall contain

(1) a description of all aircraft assessed under this section;

(2) the assessed value of the aircraft;

(3) the names and addresses of persons owning aircraft assessed under this section.

(e) On or before March 1 of each year, the Department of Revenue shall send to each owner of aircraft named in the assessment roll a notice of assessment, showing the assessed value of the aircraft. Notice of assessment is effective on the date of mailing.

(f) The Department of Revenue shall send to each municipality levying a property tax a copy of the notice of assessment on aircraft which is assessed under this section.

(g) A municipality or an owner of aircraft receiving an assessment notice may object to the assessment by advising the Department of Revenue in writing of the objections to the assessment within 20 days of the effective date of the notice.

(h) The Department of Revenue shall provide by regulation for notices of appeals to interested persons and municipalities.

(i) Following an objection, the Department of Revenue may adjust the assessment and the assessment roll. An adjustment based on an objection from a municipality or an owner of aircraft shall be made within 30 days of the effective date of the notice of assessment.

(j) After a ruling by the Department of Revenue on an appeal made under (g) of this section, the municipality or the owner of aircraft may appeal to the State Assessment Review Board. The appeal must be filed in writing within 50 days of the effective date of the notice of assessment. The State Assessment Review Board shall provide by regulation for notices of appeals to interested persons and municipalities.

(k) The State Assessment Review Board shall hear appeals filed under (i) of this section. A majority of the State Assessment Review Board constitutes a quorum required to transact business under this section. The State Assessment Review Board shall provide by regulation for notices of hearings to interested persons and municipalities. If an appellant fails to appear at the hearing, the State Assessment Review Board may proceed with the hearing in his absence. The appellant bears the burden of proof at a hearing under this subsection.

(l) The only grounds for adjustment of assessed value is proof of unequal, excessive or improper valuation or valuation not determined in accordance with the standards set out in this section, based on facts stated in a written appeal timely filed or proved at the hearing.

(m) The State Assessment Review Board shall certify its determination of an appeal to the Department of Revenue within seven days of the hearing.

(n) A municipality or an owner of aircraft may appeal to the superior court for, and is entitled to, trial de novo of the action of the State Assessment Review Board.

(o) No later than June 1 of each year, the Department of Revenue

shall certify the final assessment roll.

(p) The Department of Revenue shall include aircraft omitted from the assessment roll on a supplementary assessment roll, using the procedures set out in this section for the original assessment roll.

(q) In this section, "transient aircraft" means

(1) aircraft with a gross operating weight of more than 12,500 pounds used in commerce by an air carrier to furnish transportation to the public for compensation, hire or lease;

(2) equipment included in aircraft described in (1) of this subsection; and

(3) ground cargo handling and containerization equipment which can be transported in aircraft described in (1) of this subsection and which is so transported.

* Sec. 3. AS 29.53 is amended by adding a new section to read:

Sec. 29.53.162. LEVY AND COLLECTION OF PROPERTY TAX ON TRANSIENT AIRCRAFT. (a) A municipality may levy and collect property tax on transient aircraft only under this section.

(b) A municipality may levy a property tax on transient aircraft by applying the rate of levy, determined under AS 29.53.170(b), to a value for all transient aircraft under the same ownership determined by

(1) adding the value of all transient aircraft owned by the same taxpayer; and

(2) multiplying the value determined under (1) of this subsection by the ratio of the number of landings of transient aircraft owned by the taxpayer in the municipality levying the tax during the year preceding the assessment year to the total number of landings of all transient aircraft owned by the taxpayer.

(c) A municipality may, by ordinance, classify transient aircraft and exempt certain classes of transient aircraft from levy and collection

of a property tax under this section.

(d) In this section, "transient aircraft" means

(1) aircraft with a gross operating weight of more than 12,500 pounds used in commerce by an air carrier to furnish transportation to the public for compensation, hire or lease;

(2) equipment included in aircraft described in (1) of this subsection; and

(3) ground cargo handling and containerization equipment which can be transported in aircraft described in (1) of this subsection and which is so transported.

* Sec. 4. Notwithstanding any other provisions of AS 29.53, an assessment return on transient aircraft filed with a municipality under AS 29.53.070 for the 1980 assessment year is valid for determining the tax due for that assessment year. If two or more municipalities levy a property tax on transient aircraft under AS 29.53 for the 1980 assessment year, the owner of the aircraft may ask the commissioner of revenue to determine the tax due to each municipality. Upon receipt of the request of the taxpayer, the commissioner of revenue shall apportion the tax due by applying to the assessment of transient aircraft reported to a municipality under AS 29.53.070 the amount determined under AS 29.53.162, added by sec. 3 of this Act.

* Sec. 5. Notwithstanding any other provision of AS 29.53, an assessment return on transient aircraft filed with a municipality under AS 29.53.070 for an assessment year before 1980, is valid for determining the property tax due to that municipality for that prior assessment year.

* Sec. 6. Sections 1 - 3 of this Act take effect January 1, 1981.

* Sec. 7. Sections 4 - 7 of this Act take effect immediately in accordance with AS 01.10.070(c).

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

distribution of previous year assessed values in the state."

As the rest of the section was not affected by the amendments, it is not set out.

**Editor's note.** — Section 1, ch. 13, SLA 1973, provides: "Notwithstanding the provisions of AS 29.53.020(f), for the 1973 assessment year the filing date for application for the exemption granted under AS 29.53.020(e) is extended to March 15, 1973."

**Strict construction.**

The courts must narrowly construe statutes granting tax exemptions. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Burden of showing eligibility for exemption.** — A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Exclusive use for nonprofit religious, etc., purposes must be shown.** In order to qualify for an exemption, the taxpayer must show not benefits, but exclusive use for nonprofit religious, charitable, cemetery, hospital or educational purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

When the property in question is used even in part by nonexempt parties for their private business purposes, there can be no exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Actual use rather than owner's use should be analyzed in determining eligibility for an exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Office space rented to doctors engaged in private practice.** — Office space in a building partially used exclusively for nonprofit hospital purposes, rented to doctors engaged in the private practice of medicine by a nonprofit charitable and religious corporation, was not exempt from taxation. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

While the use of office space by doctor-tenants in conducting their private practices does provide incidental benefits to the adjacent hospital, the office space is not used exclusively for hospital purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

**Sec. 29.53.025. Optional exemptions and exclusions.** (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

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

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting;

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the

**structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.**

**(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later. (§ 2 ch 118 SLA 1972; am § 2 ch 1 FSSLA 1973; am § 1 ch 33 SLA 1975; am § 1 ch 111 SLA 1976; am § 1 ch 262 SLA 1976; am § 1 ch 95 SLA 1977)**

**Effect of amendments.** — The 1973 amendment, effective January 1, 1974, added the second sentence of subsection (a).

The 1975 amendment, effective July 1, 1976, added subsection (e).

The first 1976 amendment added paragraph (3) of subsection (c).

The second 1976 amendment, effective June 25, 1976, added paragraph (28D) of subsection (b).

The 1977 amendment added subsections (f) and (g).

**Sec. 29.53.035. Farm or agricultural lands.** (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight per cent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

November 18, 1980

TO: TITLE 29 TECHNICAL AND POLICY COMMITTEES

FROM: ALASKA ASSOCIATION OF MUNICIPAL CLERKS JoAnne Shanley V. P.

SUBJECT: TITLE 29 REVISIONS

We respectfully submit the following comments:

1) Sec. 29.30.040. We support the drafted changes as recommended by the Technical Committee, dated October 10, 1980, with the following amendment to (b):

> "(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of and registered in the precinct, district, or service area in which he votes."
>
> Explanation: Those voting on the issue are residents of the specific area and thus will have to live with the outcome of the election; requiring registration in the precinct, district or service area will hopefully eliminate some of the problems and the time demanded in trying to prove residency; such a procedure will give the Canvass Board clearer direction.

2) Regarding new AS 29.30.110 and .230, the AAMC feels it is within the scope of responsibilities of the clerks to provide an acceptable petition format; however, we object to being burdened with any of the responsibility of composing any type of initiative, referendum or recall statement. We feel that the newly-proposed sections are unclear in this regard and request that clarification of our position be considered.

3) AAMC strong supports the language as proposed in AS 29.30.050 regarding elections which gives the municipalities the option to provide for runoff elections by ordinance.

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

RESOLUTION NO:

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE'S TITLE 29 REVISION COMMITTEE DECLARING A POLICY AND POSITION ON NATIVE VILLAGE AND TRADITIONAL TRIBAL GOVERNMENTS ENTERING INTO MUTUAL AND CO-OPERATIVE AGREEMENTS OVER GOVERNMENTAL AND JURISDICTIONAL MATTERS WITH THE STATE OF ALASKA

WHEREAS, THE LEGISLATURE HAS DETERMINED that there exists in the State several communities which have Na-village and/or traditional tribal governments; and,

WHEREAS, THE LAW AND CUSTOMS OF THESE GOVERNMENTS include defined notions of democracy, liberty and the exercise of personal rights consistent with the State and Federal consitutions; and,

WHEREAS, THE PRESENT ECONOMIC BASE OF THE STATE is based on a non-renewable resource which holds the promise of short life, absent renewable economic diversification; and,

WHEREAS, STOCKS PRESENTLY OWNED BY SHAREHOLDERS OF ANCSA REGIONAL AND VILLAGE CORPORATIONS will be recalled and sold to the general public in the year 1991; and,

WHEREAS, BASED ON THE PAST HISTORY OF ALASKA'S ECONOMIC GROWTH PATTERN, it would not be unreasonable to project similiar economic impact occuring through the unwarranted exportation of job/employment opportunities and local dollars resulting from an outside invasion of private non-State interests in 1991; and,

WHEREAS, THE ANCSA REGIONAL AND VILLAGE CORPORATIONS by 1991 will be a substantial and sizable component of the State's economic base which will be seriously threatened by private non-State interests and entrepeneurships without the ability or accessibility for recognition and mutual and co-operative interaction by the State with Native village and traditional tribal government over jurisdictional and governmental matters.

NOW, THEREFORE, BE IT RESOLVED by:

THE POLICY AND POSITION ON NATIVE VILLAGE AND TRADITIONAL TRIBAL GOVERNMENTS ENTERING INTO

City of Saxman
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Ketchikan, Alaska 99901
(907) 225-4166

MUTUAL AND COOPERATIVE AGREEMENTS OVER JURISDICTIONAL AND GOVERNMENTAL MATTERS WITH THE STATE OF ALASKA WILL PROMOTE THE EFFICIENT AND APPROPRIATE DEVELOPMENT OF THE STATE RESOURCES AFTER A SHORT DURATION OF NON-RENEWABLE RESOURCE ECONOMIC ACTIVITY.

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RESOLUTION NO:

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE'S TITLE 29 REVISION COMMITTEE DECLARING A POLICY AND POSITION ON THE 1979 LOCAL GOVERNMENT STUDY AND THE FINDING OF THE LOCAL GOVERNMENT SYMPOSIUM, HELD AUGUST 4-5, 1979, AS A CONSISTENT POLICY STATEMENT WHICH IDENTIFIES AND ESTABLISHES MAXIMUM LOCAL SELF-GOVERNMENT THROUGH FEDERAL AND STATE PROGRAM DECENTRALIZATION OF FUNDING AND UNIFICATION OF LOCAL EFFORTS FOR EFFECTIVE AND EFFICIENT UTILIZATION OF OPTIMIZED AND FUNCTIONALIZED COMMUNITY RESOURCE DEVELOPMENT AND THE ELIMINATION OF DISINCENTIVES AND BARRIERS WHICH DEPRIVE LOCAL NATIVE VILLAGES OF OPTIMAL AND FUNCTIONAL ASSURANCE OF THE BASIC COMMUNITY AND TRIBAL RIGHTS FOR LIMITED SOVEREIGNTY, SELF-GOVERNMENT, SELF-DETERMINATION AND SELF-SUFFICIENCY AND THE COOPERATIVE EFFORTS OF AND THE COORDINATION WITH OTHER ENTITIES OUTSIDE OF THE TRADITIONAL NATIVE VILLAGE AND COMMUNITY

WHEREAS, TITLE 29 OF THE ALASKA STATE STATUTES is urban designed and needs to adapt governmental structures and processes to rural needs and conditions; and,

WHEREAS, THE ALASKA STATE CONSTITUTION provides for maximum local self-government and local participation, however, legislative provisions and actions appear to abridge the privileges and immunities of these constitutional provisions; and,

WHEREAS, DECENTRALIZATION OF SERVICE DELIVERY through intergovernmental cooperation is mandated through appropriate federal legislative and administrative provisions and actions with the intent of providing a more economical and efficient method of providing services, promoting participation on the community, not area, level, and establishing unification of local efforts for the optimal and functional assurance of maximum local self-government; and,

WHEREAS, THE URBAN ORIENTED MUNICIPAL GOVERNMENT STRUCTURES of Title 29 lack appropriate optimal and functional assurances of demographic characteristics integral within the systematic isolationism it promotes of Native Villages and Communities with respect to not only identifying geo-

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graphic characteristics, but, also, political, economic, cultural and social isolationism; and,

WHEREAS, DECENTRALIZATION AND COORDINATION OF FEDERAL AND STATE PROGRAMS will not be optimized nor functionalized unless the State recognizes the need to provide recepticles for service delivery on the community, again not area, level through legislative provisions and actions for planning and zoning on the community, not area, wide basis through the maximized maintenance of local self-government, slef-determination and self-sufficiency on the local community level; and,

NOW, THEREFORE, BE IT RESOLVED by:

THE POLICY AND POSITION OF THE 1979 LOCAL GOVERNMENT STUDY AND THE FINDINGS OF THE LOCAL GOVERNMENT SYMPOSIUM, HELD AUGUST 4-5, 1979, DECLARES AND RECOGNIZES A CONSISTENT POLICY AND NEEDS STATEMENT WHICH IDENTIFIES AND ESTABLISHES MAXIMUM LOCAL SELF-GOVERNMENT THROUGH FEDERAL AND STATE PROGRAM DECENTRALIZATION OF FUNDING AND UNIFICATION OF LOCAL EFFORTS FOR THE EFFECTIVE AND EFFICIENT UTILIZATION OF OPTIMIZED AND FUNCTIONALIZED COMMUNITY RESOURCE DEVELOPMENT AND THE ELIMINATION OF DISINCENTIVES AND BARRIERS WHICH DEPRIVE THE LOCAL NATIVE VILLAGES OF OPTIMAL AND FUNCTIONAL ASSURANCE OF THE BASIC COMMUNITY AND TRIBAL RIGHTS FOR LIMITED SOVEREIGNTY, SELF-GOVERNMENT, SELF-DETERMINATION AND SELF-SUFFICIENCY AND THE COOPERATIVE EFFORTS OF AND THE COORDINATION WITH OTHER ENTITIES OUTSIDE OF THE NATIVE VILLAGE AND COMMUNITY.

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Ketchikan, Alaska 99901
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RESOLUTION NO:

A RESOLUTION OF THE TITLE 29 COMMITTEE FOR THE ALASKA MUNICIPAL LEAGUE 30th ANNUAL LOCAL GOVERNMENT CONFERENCE DECLARING A POLICY AND POSITION ON THE PROPOSED ALASKA STATE STATUTES, TITLE 29, MUNICIPAL GOVERNMENT, REVISIONS MUST REFLECT THE ABILITY, AND NOT INABILITY, OF LOCAL COMMUNITIES TO REACH AND MAINTAIN THE BASIC SOCIAL AND FOUNDATIONAL GOAL OF THE STATE OF ALASKA: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT, THROUGH DELIBERATE AND EQUITABLE STRENGTHENING OF THE ADMINISTRATIVE AND LEGISLATIVE POLICIES AND PROCEDURES AS CONTAINED AND EFFECTED BY THE ALASKA STATE STATUTES AND AS IMPLEMENTED BY AND PROVIDED THROUGH THE STATE OF ALASKA IN FEDERAL AND STATE PROGRAMS AND SERVICES PROVIDING TO RECIPIENT COMMUNITY AND AREA APPLICANTS IN A CURRENT AND DECENTRALIZED MANNER THEREBY ENHANCING AND ENCOURAGING THE REALIZATION OF SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT

WHEREAS: SUBSTANTIAL ECONOMIC AND SOCIAL HARDSHIP is predominant within the rural and suburban communities of the State; and,

WHEREAS: EFFECTIVE AND EFFICIENT PROVISIONS designed with deliberate and equitable strength will enhance and encourage the ability of rural and suburban communities to exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of municipal government subject to the Alaska State Constitution, yet not found in the present provisions of Alaska State Statutes, Title 29, Municipal Government, for the self-actualization of maximum local self-government; and,

WHEREAS: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT as an optimal and functional goal of the State of Alaska can only be reached and maintained through a current and decentralized administration of Federal and State programs and services concentrated at the local community level in order to provide the impetus through community participation and public/private financial lever-

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aging to appropriately and efficiently combat substantial economic and social hardship and alienation; and,

WHEREAS: DOMINANT URBAN CENTERS WITHIN THE STATE by demonstrating their ability for reaching and maintaining maximum local self-government must support and continue to exemplify this goal by further enhancing and encouraging the proposed Alaska State Statutes, Title 29, Municipal Government, revisions to reflect this needed intent for the continued and consistent viability and longevity of the State of Alaska; and,

WHEREAS: THE EFFECTIVE MANAGEMENT IN AN INTERGOVERNMENTAL CONTEXT is one which excercises and enjoys the legal and political competence and institutional capacities of maximum local self- government and meshes these capacities with those being cooperatively managed or shared from the Federal side; and,

WHEREAS: MAXIMUM LOCAL SELF-GOVERNMENT STRATEGIES require an unprecedented level of intergovernmental interaction, which the various elements of government having specific responsibilities to discharge relative to local government and its constituencies cannot adroitly address the mutual problems inherent in the United States and the State of Alaska self-government approaches without optimal and functional assurance of broad based community participation.

NOW, THEREFORE, BE IT RESOLVED by the Title 29 Committee for the Alaska Municipal League 30th Annual Local Government Conference:

THE POLICY AND POSITION ON THE PROPOSED ALASKA STATE STATUTES, TITLE 29, MUNICIPAL GOVERNMENT, REVISIONS MUST REFLECT THE ABILITY, AND NOT INABILITY, OF LOCAL COMMUNITIES TO REACH AND MAINTAIN THE BASIC SOCIAL AND FOUNDATIONAL GOAL OF THE STATE OF ALASKA: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT, THROUGH DELIBERATE AND EQUITABLE STRENGTHENING OF THE ADMINISTRATIVE AND LEGISLATIVE POLICIES AND PROCEDURES AS CONTAINED AND EFFECTED BY THE ALASKA STATE STATUTES AND AS IMPLEMENTED BY AND PROVIDED THROUGH THE STATE OF ALASKA IN FEDERAL AND STATE PROGRAMS AND

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SERVICES PROVIDING TO RECIPIENT COMMUNITY AND AREA APPLICANTS IN A CURRENT AND DECENTRALIZED MANNER THEREBY ENHANCING AND ENCOURAGING THE REALIZATION OF SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF- GOVERNMENT.

Mailed 27 Oct 80


# CITY OF MC GRATH

P.O. BOX 57 MC GRATH, ALASKA 99627
PHONE (907) 524-3825


Tom - Please copy Policy members Technical Com + Mike W. Thanks Arliss S.

October 1, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson St.
Anchorage, Alaska 99504

Dear Senator Sturgulewski,

I am sorry that I did not have the chance to speak to you or make a presentation at the Title 29 Revision Committee meeting on Monday. An illness in the family made me late and an airplane necessitated my leaving before noon. However, I was very pleased by what I witnessed. The discussions on the transfer of land and planning and zoning were very relavent to what we are presently facing. I heard only a portion of Dr. McGinnis' presentation and it upset me. If the Dept. of Health & Social Services is advocating that the second class cities should assume the responsibility for AFDC and Medicaid payments, they should be taken out and shot! Mike Wallerie was making several good points about what it is to be an Alaskan Native and the relationship between the individual and the rest of the community. The Department's plan would be doomed to failure in several communities around the state. This in turn would have other disasterous consequences for other small, second class cities.

Since I was unable to make my planned presentation, I would like to address my remarks to you. I will only be addressing small, second class cities. First, there are two major influences upon the small second class cities. They are their size and remoteness and the fact that the unorganized borough is over organized. I had hoped that Mike Wallerie would touch on this point but he didn't. The committee must realize that eventhough our communities are small that life is very complex in the "bush". A small second class cities must supply a seven member city council, a board of directors for the local ANSCA corporation, at least one advisory school committee (in many instances there are several standing educational committees such as JOM, Indian Ed. etc for the REAA and, if there is a BIA elementary school another set of committees), several members for the Native Village Council or IRA Council and members for other important local committees as well as representatives to regional organizations such as the regional corporation, regional housing authorities, fishand game advisory commissions, and State boards and committees.

Because of the small population and the over organization of the second class cities, it becomes extremely difficult to find qualified people to fulfill all the positions whether voluntary or for pay. This in turn results in lack of service being

performed or offered by the second, class cities. The fact that there are so many second class cities whi ch are not functioning is an indication that the system needs to be simplified. I would offer the committee two recommendations. First, acknowledge that entity which is functioning most efficiently in the community whether it is an IRA Council, a Native Village Council, a community organization or association whatever. The State would be recognizing these organizations as providers of services. They would not have the power to enact ordinances or police functions. As a reciepient of State funds, these organizations would have to assure the State that services are being delivered in a non-discriminatory mannar. The new revenue sharing program does this to some extent. The desired result of this course of action would be the demise of second class cities which do not function, and a simplification of life in the "bush". Second, I would recommend the creation of home rule, second class cities. These cities would not be responsible for the local educational program nor would they be required to have a minimum population of 400. This would allow local communities to evolve a form of local government which is more compatible with local conditions. I acknowledge the fact that developing a charter is difficult and time consuming. However, I feel that it would go a long way to bridge the cultural gap in small, second class cities.

Finally, I would ask the committee to look at the relationship of the small second class cities to the executive branch of the State. Article X, Section 6 makes the legislature responsible for providing services to the unorganized borough through a maximum of local participation and responsibility. In fact, it is the executive branch which provides the services but withouth any local input. The recommendations developed by the C&RA Committees especially the development of service areas along REAA boundaries would simplify things greatly. However, there needs to exist both a means of making local concerns know to the executive branch and a means of recourse for local concerns which are impacted upon by executive branch executive decisions.

I want to thank you for the opportunity to sound off. Furthermore, I apologize for all the typing errors as I ran out of correcting ribbons for my typewriter.

Sincerely,

Robert S. Juettner
City Administrator

Sent
29 OCT 80
MAF

October 21, 1980

Senator Arliss Sturgulewski
Alaska State Senate
2957 Sheldon Jackson St.
Anchorage, AK 99504

Dear Senator Sturgulewski:

I am writing to you in your capacity as a member of the policy adviscry group for the rewrite of Title 29. In that regard, several weeks previous the Kodiak City Council directed me to determine the level of interest among the home rule communities located within second class boroughs toward addressing the dual responsibilities of those governments. I have enclosed for your review a copy of the letter received back from the City of Palmer voicing their support for a coalition at the Alaska Municipal League to address these problem areas.

I understand that in your capacity on this advisory group board your input would be balanced by those representatives of boroughs who are also on the panel. However, your background in local government management provides a knowledge of the parameters of the problem we are trying to address.

As Mr. Curtis, Manager of Palmer, indicates in his correspondence, communities such as Anchorage, Juneau and Sitka have within these past several years resolved their dual government relationship problems by unifying. This is of course not the only answer. For many of the smaller communities the problem still remains. We would hope that you will be able to assist us by providing some input to your advisory group relative to our concerns. The communities will be requested to meet during the Alaska Municipal League to formulate specific ideas toward the end of clearly

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defining the relationship between home rule cities and second class boroughs. I will keep you advised of the progress of our coalition and wish to offer at this time our appreciation for your concern and interest in our problem.

Respectfully yours,

CITY OF KODIAK

Gordon W. Ryan

GORDON W. RYAN
City Manager

GWR/yb

Enclosures

cc: Palmer McCarter, Local Government Assistance

CITY OF PALMER
COUNCIL-MANAGER GOVERNMENT
P.O. BOX 1368 • PHONE (907) 745-3271
PALMER, ALASKA 99645

Recd 10/20/

October 17, 1980

Mr. Gordon W. Ryan
City Manager
City of Kodiak
P.O. Box 1397
Kodiak, Alaska 99615

Dear Gordon,

Your letter of September 17, 1980 was received and presented to the Council at their regular meeting of October 14, 1980. I would like to report that our Council wholeheartedly supports your initiatives in this matter of first class and home rule cities within second class boroughs. We are all aware of the gradual erosion of authority away from cities toward boroughs and will enthusiastically join with you and hopefully the other cities in this endeavor.

I will not in this letter attempt to get into specifics of problem areas in Title 29 but would like to suggest a formation of the coalition and the outright commitment of the individual cities involved to put some time and effort into this. Apparently the timeframe is extremely short as the Commission must have a document prepared and presented to the Legislature within the first thirty days of the new Legislative session. If the formation takes place at the AML meeting in November at Fairbanks, there will not be many days left. It would seem that if each city would appoint a person of knowledge and experience, i.e. manager, attorney, clerk, to attend one or two general meetings we could pick out specifics for rewrite and the writing of the new legislation and perhaps prepare resolutions for the adoption by the Council of the various communities as back-up and forward these a.s.a.p. to the Policy Advisory group. We would then have to be prepared to have a representative to care for them to defend our positions. This will not be an easy thing.

I think our Councils must understand that we have lost most of the support from the population areas, particularly Anchorage, which has half of the votes in the State of Alaska, along with Juneau and Sitka who have solved their problems by unification. This was not done without bitter struggles between their original cities and boroughs. In other words, the problems still exist for the remainder of us and I personally do not feel that unification is the solution to all of the problems. A further point to emphasize is that the Alaska Municipal League is severely watered down with boroughs and unified governments to where we cannot expect much support.

I will attempt to help expedite our feelings by sending a copy of this letter to each of the cities you have indicated correspondence with in your letter.

Looking forward to seeing you soon, I remain,

Sincerely,

William E. Curtis
City Manager
City of Palmer

WEC/car

cc: City of Ketchikan
City of Fairbanks
City of Kenai
City of Seward
City of North Pole

**NANA DEVELOPMENT CORPORATION, INC.**
4706 HARDING DRIVE. ANCHORAGE. ALASKA 99503
TELEPHONE (907) 248-3030

November 11, 1980

Mr. Palmer McCarter, Director
Division of Local Government Assistance
Department of Community & Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Palmer:

Recently I had a discussion with Bert Griest concerning the requirement of AS 29.48.260 that a municipal corporation must dispose of real estate by public auction or sealed bids.

As you know, a number of villages, including several in the NANA region, are in the process of developing new housing. In several of these communities, the only lots suitable for construction of new homes are located outside the patented townsites on land that is selected and will eventually be conveyed to ANCSA corporations. Since new housing units are needed now, the Regional Housing Authorities understandably want to proceed with construction of homes in advance of transfer of ownership of the lots. By itself, this does not present any difficulty provided the permission of the ANCSA corporation and the interim land manager, (in most cases the BLM), is obtained. The problem arises later when BLM grants title and a reconveyance of the lots is requested by the owners of the new homes.

The Settlement Act amendments in the D-2 bill contain a provision whereby a Native corporation may transfer land to a shareholder for the purposes of constructing a family dwelling and not have that distribution of land be treated as a taxable distribution of assets. However, that method of granting title is not prefered by all ANCSA corporations. The ideal method, in our judgement, is to include these lands within the 1280 acres reconveyed to the municipal corporation. But a difficulty arises when the municipality seeks to reconvey title to the home owner. State law requires a public auction or sealed bid procedure since these lots were not occupied in 1971 and there is no requirement that they be reconveyed directly by the village corporation pursuant to Section 14 (c) of ANCSA.

It may be appropriate to bring this to the attention of the committee working on amendments to Title 29, provided my understanding of what the statute requires is correct. I expect you will know whether the committee is already aware of the problem. If an amendment is needed, it seems to me, a waiver provision similiar to AS 29.48.260 (d) would work. In this instance, waiver from the auction and bid requirements need only be available to a municipality reconveying land received from a ANCSA corporation if the reconveyance is to grant a village resident title to his homesite, and perhaps for other public purposes.

Best regards.

Sincerely,

Don Argetsinger
Vice President

DA/mt

cc The Honorable Arlis Sturgulewski - Alaska State Senate
Jack Chenoweth - Legislative Counsel
Bert Griest




CITY OF KENAI
"Oil Capital of Alaska"
P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535


November 10, 1980

Mrs. Marilyn Dimmick
P. O. Box 151
Ninilchik, Ak 99639

Re: Title 29 Provision

Dear Marilyn:

You mentioned the other day that I had sent you a list of some changes which I believe should be made in the revision of Title 29, but I do not remember getting the letter off nor the changes suggested.

Therefore, I am suggesting that an amendment be made to AS 29.33.050 (copy attached) as follows:

> "The area within the boundaries of an organized [EACH] borough constitutes a borough school district which shall [AND] establish[ES], maintain[S], and operate[S] a system of public schools on an area-wide basis with such authority and responsibility in the organized borough as provided in AS 14.14.060."

I believe the original intent of this statute was merely to set up boundaries of a school district which should be autonomous under the direction of an elected school board except for the fiscal and other responsibilities given to the borough under the provisions of AS 14.14.060 (copy attached) and subject to such directions as provided by the state in Title 14.

Unfortunately the wording that now exists implies that the borough itself has responsibility for the school district even though AS 14.14.060 gives only limited powers to the borough and places full operational authority in the elected school board. The result has been that every time a suit has been brought against the school district the borough has been joined in this suit at considerable expense of time even though the suit may be on teachers' salaries or something else for which the borough has

no responsibility. For instance AS 14.09.010 (copy attached) provides for the department to provide for transportation of pupils and grants authority to school districts to enter into contracts for operation of transportation systems, to report to the department, and to receive reimbursement from the state for operation of the transportation system. Yet in Kenai Peninsula Borough v. State, 532 P.2d 1019, 1024, 1026 (1975) (copy attached), the Supreme Court denied any liability of the state for an accident occuring due to the transportation system and stated that "the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with Carver." In fact, the borough had no control whatsoever over this contract which was a contract of the school district as recognized by the Court when it stated, "The bus was not owned by the state, and Carver entered into the contract with the borough school district, not the state." [emphasis supplied] The suit, however, was brought against the borough and there was no effort to show non-responsibility - evidently because the insurance company who represented the borough also represented the school district and would have been responsible in any case.

The borough has also been put to the loss of time and expense in suits over teachers' salaries and other negotiations for which the borough has no authority and no responsibility. IN KPEA v. Kenai Peninsula Borough School District and Kenai Peninsula Borough, 572 P.2d 416 (1977), the trial court first ruled that the defendants should negotiate on certain items and later reversed itself to restrict the order to the school district, but refused to grant summary judgment to the borough and was upheld by the Supreme Court, which then refused appeal by the borough (since no judgment had been taken against it), denied borough's petition for certiorari, and then violated its own rules (Civil Rule 54(b)) by entertaining appeal by the school district on judgment against less than all the parties without an express determination that there was no just reason for delay and express direction for entry of judgment. In view of the two cases cited, it is obvious that any relief from responsibility without authority will have to come from the legislature.

Although the borough may be responsible for failures to act properly in areas in which it has authority over the school

system which may or may not be shared by the school district, certainly in the area of operations the school district is autonomous from the borough and there should be no responsibility in those areas on behalf of the borough.

Sincerely,

Ben

Ben T. Delahay
City Attorney

BTD/md

Enclosures

cc: Ted Berns
Anchorage Municipality Attorney

Russ Walker
Attorney for City of Ketchikan
and Ketchikan Gateway Borough

**chapter on an areawide basis, both inside and outside cities within their boundaries.**

**(b) No city, whether home rule or not, may exercise an areawide power conferred in, or assumed by means of §§ 250—290 of, this chapter once that power is being exercised by a borough. (§ 2 ch 118 SLA 1972)**

**Borough may not regulate sale and use of fireworks.**—A borough's acquisition of the areawide health function does not give it authority to regulate the sale and use of fireworks. 1965 Op. Att'y Gen., No. 12.

## Article 2. Assessment and Collection of Taxes.

Section
30. Assessment and collection

**Sec. 29.33.030. Assessment and collection.** Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 53 of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city. (§ (§ 2 ch 118 SLA 1972)

## Article 3. Education.

Section
50. Education

**Sec. 29.33.050. Education.** Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. (§ 2 ch 118 SLA 1972)

**Constitution requires pervasive state authority in field of education.** — The constitutional mandate of Alaska Const., art. VII, § 1, for pervasive state authority in the field of education could not be more clear. First, the language is mandatory, not permissive. Second, Alaska Const., art. VII, § 1, not only requires that the legislature "establish" a school system, but also gives to that body the continuing obligation to "maintain" the system. Finally, the provision is unqualified; no other unit of government shares responsibility or authority. Macauley v. Hildebrand, Sup. Ct. Op. No. 741 (File No. 1550), 491 P.2d 120 (1971).

**And such authority is not diminished by delegating certain educational functions to local boards.**—That the legislature has seen fit to delegate certain educational functions to local boards in order that Alaska schools might be adapted to meet the varying conditions of different localities does not diminish constitutionally mandated state control over education under Alaska Const., art. VII, § 1. Macauley v. Hildebrand, Sup. Ct. Op. No. 741 (File No. 1550), 491 P.2d 120 (1971).

**A newly incorporated borough assumes administrative responsibility for a state-operated school** within its boundaries immediately after incorporation. 1963 Op. Att'y Gen., No. 23.

The law provides that the organized borough shall provide, establish, maintain, and operate the schools within its boundaries. Ownership of state-operated schools must be conveyed by the state to the local school district as soon as possible after incorporation. The transfer of direct administration of these schools should be made shortly after incorporation, prior to the beginning of the next fiscal year, and as quickly as is consistent with continuity of

**not to exceed $50,000. The bond shall be conditioned on the officer's honest and faithful disbursement and accounting of all money that may come into his official custody. The bond shall be filed with the clerk of the school board. This section does not apply to an officer who has been bonded under AS 29.23.520. (§ 1 ch 98 SLA 1966; am § 21 ch 53 SLA 1973)**

**Effect of amendment. — The 1973 amendment substituted "29.23.520" for "07.25.060" at the end of the fourth sentence.**

**Legislative committee report. — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.**

**Sec. 14.14.050. Annual audit.** (a) The school board in each school district shall, before October 1, of each year, provide for an audit of all school accounts for the school year ending the preceding June 30. To make the audit the school board shall contract with a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the district. One certified copy of the audit shall be filed with the commissioner and one certified copy shall be posted in a public place at the principal administrative office of the district.

(b) The audit shall conform in form to requirements established by the commissioner. The commissioner shall withhold all payments of state funds after November 15 to a school district which fails to file a certified copy of the audit with the department.

(c) The commissioner may provide for a reaudit or an audit check in a school district if in his judgment it is necessary to substantiate the reported expenditures.

(d) The school board shall not make the audit if an audit which satisfies the requirements of this section and which is filed and posted as required by this section, is made according to AS 29.48.220. (§ 1 ch 98 SLA 1966; am § 22 ch 53 SLA 1973)

**Effect of amendment.** — The 1973 amendment substituted "29.48.220" for "07.29.150" at the end of subsection (d).

**Legislative committee report.** — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

**Sec. 14.14.060. Relationship between borough school district and borough.** (a) The borough assembly may by ordinance require that all school money be deposited in a centralized treasury with all other borough money. The borough administrator shall have the custody of, invest and manage all money in the centralized treasury. However, the borough assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibility of a centralized treasury.

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

accounting. However, the assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibilities of the accounting system.

(c) The borough school board shall submit the school budget for the following school year to the borough assembly by April 1 for approval of the total amount. Within 30 days after receipt of the budget the assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within 30 days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is automatically approved. By May 31, the assembly shall appropriate the amount to be made available from local sources from money available for the purpose.

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

(e) The borough school board is responsible for the design criteria of school buildings. To the maximum extent consistent with education needs, a design of a school building shall provide for multiple use of the building for community purposes. Subject to the approval of the assembly, the school board shall select the appropriate professional personnel to develop the designs. The school board shall submit preliminary and subsequent designs for a school building to the assembly for approval or disapproval; if the design is disapproved, a revised design shall be prepared and presented to the assembly.

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

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

(h) School boards within the borough may determine their own policy separate from the borough for the purchase of supplies and equipment. (§ 8 ch 118 SLA 1972)

**Applied** in Arco Pipe Line Co. v. North Slope Borough, Superior Court, 3th Jud. Dist., C.A. No. 73-336 and C.A. Nos. 73-294 to 73-306 (1973).

**History of public education in Alaska.** — See Booten v. Alaska State-Operated School Sys., Sup. Ct. Op. No. 1154 (File No. 2157), 536 P.2d 793 (1975).

involving his pecuniary interest unless the member has disclosed that interest to the board and the remaining members have approved the member's participation in the voting. (§ 2 ch 124 SLA 1975)

**Sec. 14.08.141. Regional resource centers.** A regional educational attendance area or any other school district in the state may participate in regional or statewide resource centers which may be established by the department. Services provided by a resource center include, but are not limited to accounting, payroll and other fiscal services, media services, instructional support services, bilingual-bicultural educational services, in-service and staff development services, student services, diagnostic services, school management and training services and school board member training. Funds for the operation and administration of a regional resource center shall be provided by the department. (§ 2 ch 124 SLA 1975)

**Sec. 14.08.151. Land and buildings.** — The ownership of land and buildings used in relation to regional eductional attendance area schools shall remain vested in the state, and use permits shall be given to the regional school boards. (§ 2 ch 124 SLA 1975)

## Chapter 09. Transportation of Pupils.

Section
10. Transportation of pupils
20. Transportation for nonpublic school students

**Sec. 14.09.010. Transportation of pupils.** (a) The department may provide for the transportation of pupils who reside a distance from established schools, and in order to accomplish that purpose may

(1) require school districts to enter into contracts with the department for the administration, supervision, operation or subcontracting of the operation of transportation systems for students to and from the schools within their service area;

(2) require all school districts, transportation contractors and other recipients of state transportation funds to submit to the department an annual report, which includes a financial statement and other operational data required by the department;

(3) permit school districts to (A) establish supplementary systems of student transportation for students ineligible to utilize transportation facilities paid for by the state, (B) charge fares or fees for the supplementary transportation systems, and (C) use local tax funds to pay, in whole or in part, the cost of the supplementary system.

(b) Each school district mentioned in (a)(1) of this section is entitled to receive reimbursement from the state for the operation of the transportation system on a unit cost basis determined by the department.

**(c) The school board of a district, or the department for areas not within school districts, shall designate as hazardous those routes which cannot be safely traveled by children not served by school bus. The designation may recognize hazards that exist only part of the time and in these instances the designation shall be applicable only during the time the hazards are found to exist. The board or the department shall provide for the transportation of pupils on routes designated as hazardous. The additional cost of the transportation in a district shall be shared equally by the district and the department. Eligibility to receive school bus service on routes designated as hazardous shall not be subject to restrictions based on the minimum distance between established schools and the residences of pupils. (§ 1 ch 39 SLA 1966; § 1 ch 98 SLA 1966)**

**Revisor's note (1966).** — Chapter 39, SLA 1966, amended AS 14.10.070 by adding a (c). Chapter 98, SLA 1966, revised Title 14 and the wording of AS 14.10.070 became AS 14.09.010. Therefore (c) as added by ch. 39, SLA 1966, is included above as AS 14.09.010(c).

**Editor's note.** — Provisions similar to those contained in this section were formerly codified as AS 14.10.070 and derived from § 37-2-8(7), ACLA 1949; ch. 51, § 1, SLA 1957.

**Prior law.** — For cases construing former similar provisions, see Tapscott v. Page, 17 Alaska 507 (1958); Matthews v. Quinton, Sup. Ct. Op. No. 31 (File No. 48), 362 P.2d 932 (1961).

**Borough was not acting as an agent of the state in furnishing transportation of pupils.** Kenai Peninsula Borough v. State, Sup. Ct. Op. No. 1124 (File No. 2092), 532 P.2d 1019 (1975).

While the state did supervise the school transportation service insofar as it related to the funding provided by it and also had certain regulations in effect pertaining to the over-all safety of the transportation system, the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with a school bus owner to furnish transportation service for specified routes. Kenai Peninsula Borough v. State, Sup. Ct. Op. No. 1124 (File No. 2092), 532 P.2d 1019 (1975).

**Applied** in Girves v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1168 (File No. 2016), 536 P.2d 1221 (1975).

**C.J.S. reference.** — 78 C.J.S. Schools and School Districts § 146.

**Sec. 14.09.020. Transportation for nonpublic school students.** In those places in the state where the department or a school district provides transportation for children attending public schools, the department also shall provide transportation for children who, in compliance with the provisions of ch. 30 of this title, attend nonpublic schools which are administered in compliance with state law where the children, in order to reach the nonpublic schools, must travel distances comparable to, and over routes the same as, the distances and routes over which the children attending public schools are transported. The commissioner shall administer this nonpublic school student transportation program, integrating it into existing systems as much as feasible, and the cost of the program shall be paid from funds appropriated for that purpose by the legislature. (§ 1 ch 157 SLA 1972)

struction in question ought not to be given in United States district courts within their respective jurisdictions is not, without more, authority for declaring that the giving of the instruction makes a resulting conviction invalid under the Fourteenth Amendment. Before a federal court may overturn a conviction resulting from a state trial in which this instruction was used, it must be established not merely that the instruction is undesirable, erroneous, or even "universally condemned," but that it violated some right which was guaranteed to the defendant by the Fourteenth Amendment.[2]

Thus, the United States Supreme Court implied that if it were exercising the same supervisory power which, as a state supreme court we are required to exercise over a trial court, it might have held the jury instruction to be reversible error.

The majority opinion on rehearing in Galauska's case condemns the questioned instruction, stating:

> Such an instruction is subject to numerous infirmities. It interferes with the province of the jury to determine credibility of witnesses. It seems to conflict with the presumption of innocence. The instruction serves to raise doubt in the juror's mind as to his role and adds a confusing factor to jury deliberations. (footnotes omitted)

Despite these shortcomings, the majority holds the instruction to be harmless error under the circumstances of Galauska's trial. In Anthony v. State,[3] we reiterated the test for harmless error as previously enunciated in Love v. State[4] stating:

> Only if we can fairly say that the error "did not appreciably affect the jury's verdict" can we conclude that infringement of the right to the instruction was harmless.

Galauska's conviction depended on whether or not the jury believed Roger Peter's version of the incident. As I have indicated in my dissent to the original opinion in this case, I believe that Peter was an accomplice and that Galauska was entitled to his requested instruction that "the testimony of an accomplice ought to be viewed with distrust".[5] In the absence of giving that instruction, I fail to see how it can be said to be harmless error to instruct the jury over defendant's objection that Peter was presumed to speak the truth. Moreover, if we deem the instruction to be erroneous as indicated by the majority, there is no prohibition to its continued use when it is held to be harmless error in a case such as this, for it is hard to envision circumstances where the instruction would be more damaging. I accordingly would hold that the giving of the instruction under the circumstances here involved constituted reversible error.

2. 414 U.S. at 146, 94 S.Ct. at 400, 38 L.Ed.2d at 373.

3. 521 P.2d 486, 491 (Alaska 1974).

4. 457 P.2d 622, 632 (Alaska 1967).

5. The instruction is required by Alaska R. Crim.P. 30(b)(2).

**KENAI PENINSULA BOROUGH and the Home Insurance Company, Appellants,**

**v.**

**STATE of Alaska, Appellee.**

**No. 2092.**

Supreme Court of Alaska.

March 12, 1975.

Borough and its insurer which had made payment in settlement of suit for injuries sustained by motorist in collision with school bus brought suit for judgment declaring that state was required to indemnify borough. The Superior Court, Third Judicial District, Eben H. Lewis, J., ren-

dered judgment for state and borough appealed. The Supreme Court, Boochever, J., held that although state supervised the transportation of pupils insofar as it related to the funding provided by state and also had regulations in effect pertaining to safety of the transportation system, borough in transporting people did not act as agent for the state in either a compelled or voluntary capacity.

Affirmed.

1. Municipal Corporations ⇐54

Where political subdivisions are alleged to have acted as agents of the state, court will apply a much stricter [illegible] of agency than when other forms of [illegible]ties are utilized as to the type of control required to create liability on the part of the state.

2. Municipal Corporations ⇐54

Although state supervised transportation of students insofar as it related to the funding provided by state and state also had certain regulations in effect pertaining to the overall safety of the transportation system, borough in transporting students was not acting as agent for the state in either a compelled or voluntary capacity and state was not required to indemnify borough for settlement made with persons injured in collision with school bus. AS 14.09.010, 29.33.050; Const. art. 7, § 1.

3. Principal and Agent ⇐8

One may become a compelled agent or servant of another.

4. Indemnity ⇐15(7)
Principal and Agent ⇐23(3)

Fact that department of education regulations in effect at time of collision involving school bus provided that the commissioner "shall" direct school board to enter into contracts for transportation of pupils, whereas subsequent regulations specified that commissioner "may in his discretion" establish contracts did not establish that at time of accident the borough was a compelled agent of the state and that state was liable to indemnify borough. AS 14.09.010, 29.33.050; Const. art. 7, § 1.

Kenneth P. Jacobus, Anchorage, for appellants.

Sanford Gibbs, Anchorage, for appellee.

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

## OPINION

BOOCHEVER, Justice.

The seldom litigated question of when a political subdivision acts as an agent of the state so as to render the state liable for the acts of the subdivision is presented by this appeal.

On January 15, 1969, James Harman was injured and his wife was killed as the result of a collision with a school bus owned by Burton Carver and driven by Darrell Houston. Mr. Harman, individually and as administrator of the estate of his deceased wife, brought suit against the Kenai Peninsula Borough alleging that the bus driver was acting as agent of the borough at the time of the accident. The borough, in turn, tendered defense of the suit to the State of Alaska contending that in furnishing transportation for school pupils, the borough was acting as an agent of the state. The tender was refused. The borough then filed a complaint against the state seeking a declaratory judgment that the state must indemnify the borough for reasonable settlements, judgments, costs and attorney's fees resulting from the Harman suit.

The Harman case was settled for the sum of $125,000, and the Home Insurance Company, as insurer of the borough, contributed $50,000 to that settlement. The Home Insurance Company was then added as a party plaintiff in the declaratory judgment complaint.

In its answer, the state denied that the borough was its agent and set up other defenses. The agency issue, above, was tried

by the court, with the other issues being severed for subsequent disposition. The superior court rendered a judgment in favor of the state, and the borough has appealed.

Therefore, we are confronted with the single issue as to whether the trial court was correct in ruling that the borough was not an agent of the state in furnishing school transportation.[1]

The Alaska Constitution provides that "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State."[2] The legislature has specified that "[e]ach borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an area-wide basis . . . ."[3] The borough admits that in the gene.,[1] operation of the school system, it is exercising a delegated authority from the legislature, so that in the absence of facts not here involved, the state would not incur liability for personal injuries. With reference to the transportation function, however, it is the borough's contention that it was acting as a compelled agent of the state so as to entitle the borough to indemnity for any liability incurred.[4]

The borough bases this argument on AS 14.09.010, which provides in relevant part:

(a) The [D]epartment [of Education] may provide for the transportation of pupils who reside a distance from established schools, and in order to accomplish that purpose may

(1) require school districts to enter into contracts with the department for the administration, supervision, operation or subcontracting of the operation of transportation systems for students to and from the schools within their service area;

. . . . . .

(3) permit school districts to (A) establish supplementary systems of student transportation for students ineligible to utilize transportation facilities paid for by the state, (B) charge fares or fees for the supplementary transportation systems, and (C) use local tax funds to pay, in whole or in part, the cost of the supplementary system.

Relying on this statute, the borough rests its appeal on an attempt to draw a distinction between the delegation of the legislative function of furnishing school transportation and the creation of a relationship whereby the borough acts on behalf of the state as its agent in furnishing the service. The use of the words "may provide" is said to indicate that the transportation power is in the state, and the words "may require" are claimed to show that the state can compel the local school districts to act as state agents in exercising the pupil transportation function. However, admitting that the transportation power is in the state and that the state has compelled the school district to handle that function is not tantamount to agreeing that the district is acting as the state's agent in providing school transportation so as to impose liability on the state.

It is thus on the slippery distinction between a power delegated to a political subdivision and an agency relationship that the case turns. The borough points to the case of Pantess v. Saratoga Springs Authority[5] which discusses aspects of the distinction as follows:

Where the State assumes to act directly in the carrying out of its governmen-

1. In light of our ruling here, the other issues pertaining to the right to indemnity no longer require trial.

2. Alaska Const. art. VII, § 1.

3. AS 29.33.050.

4. In so arguing, the borough relies on Restatement (Second) of Agency § 224 (1957) which provides:

One compelled by law or duress to render services to another has power to subject the other to liability as if there were a master and servant relation.

5. 225 App.Div. 426, 8 N.Y.S.2d 103, 105 (1938).

tal function, even though it create and use a corporation for that purpose, it assumes responsibility for the conduct of its agent. Thus the State may choose to create and maintain a state system of parks, and thereby subject itself to liability for the negligence of its officers and employees (Court of Claims Act, § 12-a; Maltby v. County of Westchester, 267 N.Y. 375, 379, 196 N.E. 295); or, with like liability, it may provide for the imprisonment of young delinquents, and commit their custody to an authorized institution for the purpose. Paige v. State of New York, 269 N.Y. 352, 199 N.E. 617. But when the State delegates the governmental power for the performance of a state function, the agency exercises its independent authority as delegated, as does a city, and its responsibility for its acts must be determined by the general law which has to do with that class of agent and corporate activity, apart from liability on the part of the State. That is the case when the State delegates its state function of education to a school board, its public health function to a local board of health, when it delegates broader governmental functions to a county, city or village. In such instances, there is no authority for making claim against the State, but the agency exercising the delegated authority must respond for its own actionable conduct.

In *Pantess*, the Saratoga Springs Authority was established as a public corporation to develop the "Saratoga Cure" from the spring's water. Such development was expressly declared to be a part of the over-all public health policy of the state. However, the court held that, even though the Authority was an agency exercising governmental powers, "the performance of its functions [was] not so closely allied or held in such intimate relation to the health activities carried on by the State itself . . ." as to make it an agent of the state and thereby impose liability on the state to one scalded in taking the cure.[6]

The *Pantess* case, however, deals only with the results flowing from a determination of an agency relationship or a delegated function, not the distinction between them. We find great difficulty with elucidation of the distinction between a function delegated to a political subdivision so as to insulate the state from liability and the exercising of a function by a political subdivision as a part of the state. The basis of action by any agent is the authority delegated by his principal,[7] so that a delegation is involved in both relationships. The distinction would appear to be one of degree of control. If a political subdivision acts with a substantial degree of independence under authority delegated by the state, liability may not be imposed on the state as a result of such activity. If, on the other hand, an executive department specifically makes a political subdivision its agent to act on its behalf and subject to its control, it may be subjected to liability based on acts of the political subdivision.

Our examination of the sparse authority on this subject indicates that authorized

6. 8 N.Y.S.2d at 106. Significantly, the court relied on an analogy to the state school system, stating:

> These arguments are true in one degree or another, or in one manner or another, in the public school system of the State. The State determines the qualifications of teachers, and provides for their retirement in part with its own money, and even contributes to their salaries and the maintenance of the schools, and school property is commonly held by or reverts to the municipality within which the school is located. None of these considerations have been regarded by the courts as a basis of liability on the part of the State for the conduct of boards of education.

7. Restatement (Second) of Agency § 1 (1957) defines "agency" as:

> (1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.

The manifestation of consent by one person to another to act on his behalf is a delegation of authority. "Delegation" is defined in Webster's Seventh New Collegiate Dictionary (1971) as "the act of empowering to act for another".

activities of such subdivisions as municipalities and school districts are almost universally considered to be independent actions not subjecting the state to liability,[8] whereas when a state functions through use of some other type of agency or a private corporation, liability is more likely to ensue.[9] Thus, in imposing liability on the state for injuries to a juvenile placed in a private correctional institution, the New York Court of Appeals pointed out:

> The quasi penal institution in which the claimant was confined was a governmental agency to which the state had committed in part its function to care for wayward minors. But the institution did not thereby acquire a status equivalent to that of the civil divisions of the state.[10]

[1] We have had no case cited to us where liability was imposed upon the state for actions of a political subdivision such as a municipality or a school district.[11] Political subdivisions of a state are creatures of the legislature which prescribes and curtails their authority. They may be subjected to detailed requirements in the exercise of their statutory functions. Yet such legislative regulation has not been held to make the subdivision an agent of the state so as to impose liability. Nevertheless, we can envision situations which might arise where it is clear that the subdivision is acting on behalf of the state as its agent and under its control to such an extent as to impose liability. Where political subdivisions are involved, however, we shall apply a much stricter test than when other forms of entities are utilized as to the type of control required to create liability on the part of the state.[12] To apply such a test, we shall now review the factual context which confronts us in this appeal.

Under the authority of AS 14.09.010,[13] the Alaska Department of Education entered into a contract with the Kenai Peninsula Borough School District (referred to hereinafter as the borough) whereby the borough was to furnish or contract for the transportation of pupils living 1½ miles or more from the school, and the state was to pay a specified amount for each day transportation was furnished. In addition, the state agreed to pay two (2) percent of that amount to the borough as an administrative charge. The borough was authorized to furnish transportation to students living closer to the school provided that it paid the costs for such transportation without the right to state reimbursement. Any contracts entered into by the borough for school transportation were required to be

8. Gonzales v. State, 29 Cal.App.3d 585, 105 Cal.Rptr. 801 (1972); Pantess v. Saratoga Springs Authority, 225 App.Div. 426, 8 N.Y.S.2d 103, 105-06 (1938); *see* D. R. Smalley & Sons, Inc. v. United States, 372 F.2d 505, 178 Ct.Cl. 593 (1967), and Elen Memorial Park Assoc. v. United States, 300 F.2d 432 (9th Cir. 1962), which hold that a state is not an agent of the United States in performing functions under the Federal-Aid Highways Act, 23 U.S.C. § 101 et seq. (1958).

9. *See* Paige v. State, 269 N.Y. 352, 199 N.E. 617 (1936) (state use of a private institution as a reformatory). *see generally* State v. Abbott, 498 P.2d 712 (Alaska 1972); Johnson v. State, 69 Cal.2d 782, 447 P.2d 352 (1968).

10. Paige v. State, 269 N.Y. 352, 199 N.E. 617, 618 (1936) (citations omitted).

11. The borough cites Maltby v. Westchester County, 267 N.Y. 375, 196 N.E. 295 (1935), but in that case, the question was whether the Westchester County Park Commission was acting as an agent of the state or the county in entering into road contracts. It was not a case of the county itself acting on behalf of the state.

12. We do not consider applicable here the "enterprise" theory espoused in Fruit v. Schreiner, 502 P.2d 133, 141 (Alaska 1972) whereby losses to third persons incidental to carrying on an enterprise were held to be a cost of operation and to be borne by the enterprise, with the burden distributed among those benefited by the enterprise. Such a theory could apply with equal force to the borough and the state. Nor do we find pertinent the "relative nature of the work" test utilized in determining whether an injured workman was an independent contractor or an employee in the private industry context of Ostrem v. Alaska Workmen's Compensation Board, 511 P.2d 1061 (Alaska 1973).

13. Quoted in relevant part at page 4, *supra*.

approved by the Commissioner of Education as a condition for payment by the state, and subcontracts had to provide that the contractors furnish a complete accounting to the state on forms provided by it of all funds received by the contractor for any service. The borough agreed to furnish the state with such information as route maps, bus time and mileage schedules, driver, vehicle and pupil data, etc. as requested. The borough was to administer and supervise the transportation in accordance with the rules and regulations of the Alaska Department of Education.

In accordance with that contract, the borough entered into an agreement with Burton Carver to furnish transportation services for specified routes. The contract was executed on a form provided by the state, entitled Transportation Sub-Contract Form. The agreement was signed by Carver and by the President of the School Board indicating the approval of the board. At no place in the contract is there an indication that the borough was acting on behalf of the state as its agent, although there is provision for amendment by either the borough or the state Commissioner of Education "if in their judgment a reduction in required transportation services or lack of adequate transportation funds so requires". Liability insurance policies secured by the company were required to be filed with the state as a condition for payment of state monies. The transportation regulations of the Department of Education were made a part of the contract.

The principal, superintendent or teacher in charge of the school unit for which transportation service was provided was designated as the agent of the borough (not the state) for determining arrival or departure time of vehicles, general bus schedules and routing and giving general supervision to the conduct of the transportation operation. The borough had an employee designated as director of transportation who was to take care of the school district transportation and refer to the state Department of Education only matters requiring interpretation as to what was fundable. The state had nothing to do with the establishment of the bus routes and the times for student pickup. It merely reviewed the designated routes to assure that there was no duplicated mileage. The borough could provide for extended routes at its own expense. The school board would determine which of the proposals submitted for transportation services would be selected and would submit its recommendation to the state's Department for concurrence or rejection. Moreover, the borough had the option of furnishing the transportation by means of its own drivers and vehicles or entering into contracts for that purpose.

[2] We conclude that, while the state did supervise the transportation service insofar as it related to the funding provided by it and also had certain regulations in effect pertaining to the over-all safety of the transportation system,[14] the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with Carver.

The situation is closely akin to that existing on the federal-state level discussed in D. R. Smalley & Sons, Inc. v. United States.[15] The court in *Smalley* dealt with a suit by a contractor employed by the State of Ohio to work on highway construction projects as part of the Federal-Aid Highway System of interstate highways. For these projects, the United States would reimburse the State of Ohio to the extent of ninety (90) percent of the total cost of the project. The plaintiff's claim was based on the state's wrongful acts and omissions as a result of which the completion of the projects became consid-

14. 4 A.A.C., ch. 1, subch. 1, § 88.100 of (Register 24, July 1967).

15. 372 F.2d 505, 178 Ct.Cl. 503 (1967), cert. denied, 389 U.S. 835, 88 S.Ct. 45, 19 L.Ed.2d 97 (1967).

erably more expensive than originally anticipated. In seeking recovery from the United States, the plaintiff asserted that with regard to these projects, the State of Ohio was the agent of the United States.

> To support this claim, plaintiff points out that: the contracts were drafted pursuant to the regulations and requirements of defendant; the contracts were approved by defendant; the work was inspected and approved by defendant as it progressed; changes in plans were approved by defendant; the final completion of the work was inspected and approved by the defendant; and defendant agreed by the provisions of the law to pay the state (for the benefit of plaintiff) ninety per cent of the cost of the contracts.[16]

In language which applies with equal effect to the relationship between a state and its various political subdivisions, the court stated:

> The National Government makes many hundreds of grants each year to the various states, to municipalities, to schools and colleges and to other public organizations and agencies for many kinds of public works, including roads and highways. It requires the projects to be completed in accordance with certain standards before the proceeds of the grant will be paid. Otherwise the will of Congress would be thwarted and taxpayers' money would be wasted. These grants are in reality gifts or gratuities. It would be farfetched indeed to impose liability on the Government for the acts and omissions of the parties who contract to build the projects, simply because it requires the work to meet certain standards and upon approval thereof reimburses the public agency for a part of the costs.[17]

The court rejected the agency argument citing Eden Memorial Park Assoc. v. United States,[18] wherein the court stated:

> Moreover, analysis of the Federal-Aid Highways Act indicates that while close cooperation between the United States and the individual states was contemplated, the states or their agencies or officials were in no sense to become agents of the United States in projects authorized by that act.

The borough attempts to distinguish *Smalley* on the basis that the states may elect whether to construct highways under the Federal-Aid Highway Act whereas the borough was compelled to provide school transportation once the state Board of Education decided to require it. It contends that the involuntary nature of its undertaking of the function makes it a compelled agent of the state.

[3] We agree that one may become a compelled agent or servant of another. As noted previously, Section 224 of the Restatement (Second) of Agency (1957) states that "[o]ne compelled by law or duress to render services to another has power to subject the other to liability as if there were a master and servant relation". Similarly, one who volunteers services may be a servant of the one accepting services.[19] Whether one is a compelled or voluntary agent begs the question here involved, i. e., was the borough acting as an agent of the state in furnishing school transportation. It is not contended that the borough is an agent of the state in exercising the function of public education, yet it is compelled by law to maintain and operate a system of public schools on an areawide basis.[20]

We conclude that the borough was not acting as an agent of the state in furnishing transportation of pupils. Our conclusion is bolstered by the only case to rule

16. 372 F.2d at 507.

17. *Id.* (citations omitted).

18. 300 F.2d 432, 439 (9th Cir. 1962).

19. Restatement (Second) of Agency § 225 (1957).

20. AS 29.33.070. Macauley v. Hildebrand, 491 P.2d 120, 122 (Alaska 1971).

squarely on the relationship between a school district furnishing such transportation and a state. In Gonzales v. State,[21] the plaintiff brought suit against a school bus driver, the school district, the county and the State of California and other defendants for injuries suffered when the plaintiff was struck by a school bus. In seeking recovery against the state, the plaintiff contended that the school district was the agent of the state in employing the driver so as to make the driver an employee of the state. A California statute imposed liability only on the public entity whose employee caused the injury.

Thus, as in the Kenai case, for the state to be liable, the school district had to be found to be the state's agent. The court held:

> . . . Grace Erickson, at the times mentioned in the complaint and for the previous 19 years, was employed by the District as a bus driver; she was not employed by the State and did not drive or operate a bus owned or controlled by the State, at any time; . . . .
>
> . . . . . .
>
> State agencies, even though exercising a portion of the state's powers of government, are not the state or a part of the state; and may not act on behalf of the state unless authorized to do so by statute. . . . There is no statute conferring authority upon school boards, expressly or by implication, to employ an individual on behalf of the state.
>
> The fact the authority of a school district to operate buses, and the incidental authority to employ bus drivers, is derived from the State through its Legislature, does not support the conclusion a bus driver employed by the District is an employee of the State.[22]

Similarly, there is no Alaska statute or contract authorizing the borough to employ or contract with a driver *on behalf of the state*. The bus was not owned by the state, and Carver entered into the contract with the borough school district, not the state.[23]

[4] The borough makes an additional argument to the effect that a change in the Department of Education regulations made subsequent to the Harman accident indicates that under the former regulations, the borough acted as agent. The regulations in effect in 1969 provided in part that the "Commissioner of Education *shall* direct the school boards to enter into contracts for transportation of pupils who reside a distance of 1½ miles or more from the school,"[24] whereas the current regulation specifies that the Commissioner "*may* in his discretion" establish contracts with districts to provide for transportation of students.[25] The borough contends that this indicates that the state has elected to no longer "require" the borough to provide for the transportation. But the fact that it is discretionary with the Commissioner whether to enter into the contract, does not make it less a requirement on the part of the borough when such discretion is exercised. Moreover, as we have discussed previously, the real issue is not whether the borough was "required" to furnish the transportation, but whether it acted as agent for the state in either a compelled or voluntary capacity.

21. 29 Cal.App.3d 585, 105 Cal.Rptr. 804 (1972).

22. *Id.* at 805, 807 (footnote omitted, citations omitted).

23. The *Gonzales* case was modified by an uncontradicted declaration in support of the state's motion for summary judgment that the school district owned, operated and controlled the buses used to transport its students and the state did not own, operate or control any of the buses at any time. 29 Cal.App.3d 585, 105 Cal.Rptr. at 806. We have discussed *supra* the more difficult question of control involved in the instant case.

24. 4 AAC ch. 1, subch. 10 § 10.1 (Register 14, February 1965).

25. 4 AAC 27.050 (Register 38, July 1971).

We conclude that the superior court was correct in granting summary judgment for the state holding that the borough was not acting as an agent of the state in furnishing school transportation.

Affirmed.



**James O. ADKINS, Appellant,**

**v.**

**Michael LESTER et al., Appellees.**

**Brenda S. ADKINS and James O. Adkins, Appellants,**

**v.**

**CITY OF FAIRBANKS and Michael Lester et al., Appellees.**

**Nos. 2078, 2113.**

Supreme Court of Alaska.

Feb. 3, 1975.

Consolidated actions were brought arising out of a collision between an automobile and an unmarked city police vehicle which was at the time responding to a radio report of a burglary in progress but which was not using its siren or flashing red light. The Superior Court, Fourth Judicial District, Fairbanks, Warren William Taylor, J., entered judgment in favor of police officer and city, and motorist and his wife appealed. The Supreme Court, Erwin, J., 530 P.2d 11, reversed and remanded. On petition for rehearing, the Supreme Court, Connor, J., held that although the jury did in fact give a negative response to an interrogatory concerning whether the police officer's actions were a proximate cause of the collision, the way in which the interrogatory was phrased may have led the jury to believe that, having found the officer not negligent, it had to find no causation, and the improperly excluded opinion testimony of investigating officer that the speed of the police vehicle was excessive and was a contributing cause of the accident may have affected the jury's answers on both the negligence and causation issues.

Petition denied.

Rabinowitz, C. J., did not participate.

**Appeal and Error ⇨1056.1(5)**

Although, in actions arising out of collision between automobile and unmarked city police vehicle, jury did in fact respond negatively to interrogatory concerning whether police officer's actions were a proximate cause of collision, the way in which interrogatory was phrased may have led jury to believe that, having found officer not negligent, it had to find no causation; and the improperly excluded opinion testimony of investigating officer that the police vehicle's speed was excessive and a contributing cause of the accident may have affected the jury's answers on both the negligence and causation issues.

O. Nelson Parrish and James Parrish, Fairbanks, for appellant Brenda Adkins.

Burton C. Biss, Anchorage, for appellant James O. Adkins.

Thomas E. Fenton, of Call, Haycraft & Fenton, Fairbanks, for appellee Michael Lester.

D. Rebecca Snow, Law Office of Charles E. Cole, Fairbanks, for appellee City of Fairbanks.

Before CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

OPINION ON REHEARING

CONNOR, Justice.

Appellee City of Fairbanks in its petition for rehearing points out that at page 17 of our opinion we misstate the actualities of the case where we say:

". . . . The jury responded that it found no negligence on the part of appellees but did not respond to the ques-

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November 10, 1980

REPLY TO:
Anchorage

Gordon Ryan, City Manager
City of Kodiak
P.O. Box 1397
Kodiak, AK 99615

Re: Proposed Legislative Changes
Our File 844-10

Dear Mr. Ryan:

Pursuant to your request, I have reviewed Title 29 of the Alaska Statutes and the supplements for the purpose of making recommendations regarding proposed changes to statutory sections that might be presented to the Alaska Municipal League during its meeting in Fairbanks during the week of November 17, 1980. In particularly, I have attempted to locate the statutory sections that have been the source of litigation or disputes in the past. I have also discussed this matter with Mel Stephens and sought his recommendations.

A. I would recommend that the first full paragraph of AS 29.28.070(b) be amended to read as follows:

> (b) Every petition for either the initiative or referendum in the government of a municipality shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities or to a service area, by a number of qualified voters residing within the area outside cities or within the service area, as the case may be, equal to the following per cent of the total number of votes cast at the last regular [GENERAL] election in the city or borough or borough area concerned, or a special election called for the purpose of electing city or borough officers:

The word that has been underlined in the above section is the word to be added by the change in legislation. The capitalized word in brackets will be deleted.

The basis for this recommendation is the ruling by Judge Carlson in the recall case holding that the signature requirement was based on the number of votes cast in the municipality during the last general election. In effect, the signature requirements for initiative, referendum and recall may be substantially increased by this ruling.

B. I would recommend that the provisions relating to the review of a recall petition be amended to provide for a review of the petition by the clerk prior to the time the petition is circulated for signature. Moreover, I would recommend that some procedure be provided for an expeditious review of the clerk's decision by the Department of Community and Regional Affairs if the the clerk determines that the contents of the petition are insufficient.

Possible legislative changes to implement the suggestion would be as follows:

Add a new section 29.28.145 to read:

> (a) A petition seeking recall of one or more municipal officials shall contain the grounds for recall stated with particularity as to specific instances reflecting the alleged misconduct in office, incompetence, or failure to perform prescribed duties. The statement of grounds for recall shall be submitted to the municipal clerk for review as to content, prior to circulation for signature and the municipal clerk shall, within ten (10) days, certify whether the statement is acceptable or unacceptable. The clerk shall not determine whether the statement of grounds for recall is true or false, nor shall the clerk determine whether the specific instances set forth constitute misconduct in office, incompetence or failure to perform prescribed duties. If the petition is determined by the clerk to be unacceptable, the clerk shall specify in writing the reasons for determining the statement to be unacceptable.

(b) A statement of grounds for recall that is determined to be unacceptable by the clerk may be amended and resubmitted, or the clerk's decision may be submitted by the recall proponent to the Department of Community and Regional Affairs for review. Within ten (10) days after receipt, the Department of Community and Regional Affairs shall review the statement of grounds for recall and the clerk's written specification of the reasons why the statement is unacceptable and shall determine whether the grounds for recall are stated with particularity as to specific instances in a form acceptable for the petition.

Section 29.28.150 should be modified to provide as follows:

Petition. (a) The petition containing an accepted statement of grounds for recall shall be filed with the municipal clerk when it has been completed to contain

(1) the signatures and resident addresses of a number of voters as prescribed in Section 70(b) of this chapter for initiative and referendum; and

(2) the date each voter signed the petition.

(b) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition.

Modify Section 29.28.160 to provide:

Examination of Signatures. The municipal clerk shall review the signatures, addresses and dates contained in the petition and shall certify on the petition within ten (10) days of the filing date whether it is accepted or rejected. Until the petition is accepted, a petition signer may withdraw his signature upon written application to the clerk.

The proposed changes recommended above, would provide a procedure for reviewing the statement of grounds in a recall petition prior to the expenditure of the effort that normally

goes into obtaining adequate signatures. Moreover, by establishing in the guidelines for the clerk's decision and providing for review by the Department of Community and Regional Affairs, the modifications would tend to minimize litigation that otherwise occurs.

C. I would recommend that AS 29.33.070(a) be amended to negate any implied power that boroughs now have to review and disapprove capital improvement programs of cities located within the boroughs. This modification might be accomplished by adding a second sentence to subparagraph (a) to read:

> The powers delegated to boroughs under this section shall not be construed to grant to a borough any authority or control over a capital improvement program or project of a city within the borough or a city's right to seek funding of such capital improvements without prior approval by the borough.

This recommendation is based upon the unacceptability of the A95 Review Procedures for Grant Applications. As I understand that review procedure, if a borough does not approve a capital improvement project proposed by a city within the borough, the grant application is rejected. Obviously, there may be other and perhaps better ways of eliminating borough control over city capital improvement projects.

D. I would recommend that Section 29.33.130 relating to judicial review of decisions by the Board of Adjustment be amended. At the present time, if a city has been delegated the authority to act as a Board of Adjustment, the city is invariably named as a party in the appeal from the Board of Adjustment decision. In some instances, the city is designated as the sole party and it is forced to incur the costs and attorney's fees necessary to respond to the appeal. So long as the city is a party to the appeal they are also subject to a judgment for costs and attorney's fees incurred by the party appealing from the Board of Adjustment action.

This problem might be resolved by an additional paragraph within Section 29.33.130 to read as follows:

> If a city acted as a Board of Adjustment pursuant to a power delegated by the borough, the city shall not be named as a party in the action seeking review unless the action of the Board of Adjustment reversed or overturned action by the borough planning

commission. The city may, however, intervene as an interested party in an appeal from a Board of Adjustment decision which related to property within the limits of the city.

E. I would recommend that Section 29.33.120 be amended to specifically provide that appeals to the Board of Adjustment may be heard on the record. It would appear to be wise policy to require an applicant seeking relief from the Planning & Zoning Commission to present a full and complete record of the grounds upon which the relief is based. A record should therefore be adequate for review and decision when supplemented by briefs of the parties. A requirement that de novo hearings be held, which might possibly be implied from the provisions of AS 29.33.110(a), which authorizes the presiding officer to administer oath and compel attendance of witnesses, may encourage the presentation of a minimal case before the planning commission with the thought that the record can always be improved before the board of adjustment.

F. I would recommend that AS 29.33.150 be amended to require city participation in the platting process if the subdivision is located within the city. In particular, that section might be amended to provide that rules and regulations relating to installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements, which are to be located within, operated by or connected to facilities in a first class city, shall be constructed in compliance with requirements that are not less stringent than those established by the city. Moreover, the statute should require approval of the plat by a city within which the platted property is located and to prohibit the filing of the plat until all improvements have been constructed or security, in a form acceptable to the city, has been provided to insure that the improvements will be completed as designed and approved.

The city has in the past, particularly with regard to the Russells Estates Subdivision, been placed in the position where the borough specifications for roads and utilities were far below those required by the city. The city had no authority to prohibit or disapprove the construction but may be required to maintain dedicated roads after they are completed and may assume the responsibility for the proper operation of the utilities. In Russells Estates, the streets were of insufficient width, were improperly constructed and the sewer facilities, which was designed to operate with individual grinders and pumps in the homes failed to operate

properly. As a result, the city incurred substantial expenditures to completely reconstruct the project. The borough naturally assumed no responsibility for the deficiencies that existed. After the developer sold the lots he moved out of state and the city is finding it extremely difficult to obtain any reimbursement for its expenditures.

F. I would recommend that AS 29.53.025(c)(2) be repealed or, if not repealed, modified to eliminate the problem that currently exists with regard to the personal property tax exemption in Kodiak. The framework created by the statute is totally unworkable because the borough is given authority to determine the revenues lost as a result of the exemption. In the case of the personal property tax exemption the borough includes substantial properties on its assessment list for which taxes would not or could not be collected if the borough was levying and collecting the taxes.

It is extremely difficult to recommend modifications for this section because it appears that the appropriate solution would be a repeal of the exemption by the City of Kodiak. That has been attempted once, but a petition for a referendum of the repealing ordinance was filed and ultimately found to be valid by the Superior Court in Kodiak. At the election, a majority of the voters cast their ballots in favor of the referendum.

One possible modification would be to require borough consent for exemption and subject the exemption to an agreement between the municipalities regarding the determination of the revenues lost and the method of repayment. That type of approach would have to provide some method for revoking the consent on the reasonable notice.

Another possible modification would be to amend that section to read as follows:

> (2) A home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough an amount calculated to equal the reasonably anticipated revenues, less costs of collection, lost by the borough because

of the exemptions or exclusions. The amount of lost revenues shall be determined annually by the assembly, subject to approval by the city council. If the council disapproves the amount determined by the assembly, the city shall appropriate the amount determined by the assembly to have been lost during that year, and the exemption shall thereafter be void with regard to borough taxes levied in future tax years.

The recommendations proponed above are based in substantial part upon the experience I have had in the City of Kodiak over the past six years. Recommendations as to specific language for changes in the statutes are merely rough proposals and would have to be carefully reviewed and refined if it was determined that those proposals could be supported by the Alaska Municipal League. Nevertheless, I believe the problem areas are adequately highlighted and possible solutions proposed.

If you have any questions after you have had an opportunity to review these recommendations, please advise me at your convenience.

Kindest regards.

Very truly yours,

HARTIG, RHODES,
NORMAN & MAHONEY

Robert J. Mahoney

Robert J. Mahoney

RJM:bad

# CITY OF FAIRBANKS
ALASKA
99701

CHARLES M. GIBSON
CITY ATTORNEY

BRETT M. WOOD
DEPUTY CITY ATTORNEY

HERBERT P. KUSS
DEPUTY CITY ATTORNEY

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ASSISTANT CITY ATTORNEY

*Legal Department*
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881


passed out to Policy Group Nov. 11, 1980

August 5, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 N. Franklin Street
Juneau, Alaska 99801

New 29.42.150

Dear Ginny:

I am taking this opportunity to write to you concerning several matters which I would thank you to transmit to the committee studying the revision of Title 29.

First, at a recent city council meeting, there was a matter on the agenda concerning the vacation of a certain street in the city which had come to the council with a recommendation from the Borough Planning and Zoning Commission that the vacation of the street be permitted. Because of the time constraints in Section 29.33.220 requiring action by the council within 30 days from the decision of the Commission in which to veto that decision, the council was required to act upon the matter with what they considered to be insufficient information to properly consider the proposal. As a result of this incident, the council reviewed the provisions of Section 29.33.220 and directed me to bring this to your attention for action by the Title 29 revision committee. The last two sentences of this Section (29.33.220) state:

> The assembly or council shall have 30 days from the decision in which to veto the board's decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

It was the feeling of the council that in matters as important as a vacation of a city street, it should require affirmative action, rather than silence, to constitute consent. With that in mind, I respectfully submit the following language, or some variation of it, in place of the last two sentences of the section as it is now written as follows:

> The assembly or council shall have 30 days from the date that the board decision is received by the assembly or council within which to consider the proposed vacation. If the decision of the assembly or council is not received by the board within the 30-day period, then the council or assembly shall be deemed to have vetoed the proposed vacation.

In this way, it would be much easier for the petitioners seeking the vacation to submit a new petition than it would be to have the council or assembly reverse the effect of its failure to act as is now the situation.

Mayor Wood has requested me to seek the committee's consideration of revising the applicable provisions of Title 29 so as to allow a home rule city to enact and implement certain tax incentive measures for the promotion of residential and industrial development within the municipality. As we read the present provisions of Chapter 53 of Title 29, Sections 10 through 350, and 400, there are certain required exemptions as set forth in 29.53.020(a) through (i), none of which would cover the type of tax incentives which the mayor has in mind. Also, the optional exemptions and exclusions in Section 29.53.025, as amended through 1979, are not broad enough to allow the type of residential and industrial tax incentives which he feels are necessary to stimulate economic activity within the community. Subsections (f) and (g) afford some relief in the residential area of concern, but again are not sufficiently broad in scope to permit the provisions that we wish to consider for such legislation. In addition, it is our opinion that the required and optional exemptions and exclusions set forth in Chapter 53 of Title 29 are exclusive, and as such, would not permit a home rule municipality to enact tax incentives for industry which we feel would be desirable. Rather than set forth a statutory scheme to cover a myriad of available or innovative incentives, it occurs to me that it might be more desirable to specifically exempt home rule cities from the provisions of Section 29.53.025, and rather than have the exemption by silence, to insert language in any revision thereof indicating home rule cities to be exempt from these provisions and subject only to constitutional provisions in the taxation of real property situated within the corporate limits.

I would appreciate it very much if you would transmit these suggestions to the committee.

With kindest personal regards, I am

Sincerely yours,

Mac Gibson

Charles M. Gibson
City Attorney

CMG:bc

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October 29, 1980

Mr. Bob Lohr
Rural Alaska Community
Action Program
P.O. Box 3-3908
Anchorage, Alaska 99501

Dear Bob:

I have just learned that you needed some input, from small communities, concerning the problems they are experencing, from Villages to Municapalities, We the people of Tyonek, are governed by the I.R.A. Council, we offer Municipal type services.

1. Road Maintance, with a Grant from Bureau of Indian Affairs.

2. Water System, from Public Health Services.

3. Waste Disposal, from Kenai Borough Etc.

Before, we got these Grants, we payed for our own services, What the problem.? We have governed our own people, since we were Incorporated in 1936. under the Indian Reorganization Act. then ANSCA came along, and everyone forgot about the I.R.A., something has to be done, because we are still active, but no land base to govern. We aren't considered as a municipilty, but yet in fact we are, I would recommend very highly that we could be reconized as a municipal government. yet we have the problems of Non-Natives, Historically we have excluded Non-Natives, based on what is called Rule No. 4. We do not discriminate, but we like to live by this rule, simply because it prevents outsiders from coming on our land to sell illegal things, and also because of this rule, we do not have any Bar's, or any controlling interests, we must remain under the I.R.A. Council, in order for us to survive. To become a Public Municipality would mean death to our Culture, and eventually to our land. We would like to share the States money, but we would'nt sell our people out for money.

Sincerely,

Donald Standifer, President
of The Native Village of Tyonek.

cc: Enclosure

TO WHOM IT MAY CONCERN:

We, are not yet ready to form a Municipal Government for reason's that there isn't enought Industry to create enought job's, to pay Taxe's. Light Bill's, Water Sewer, and Waste.

We, have a lot of elderly people and, some disable that would'nt be able to live on what little Welfare they get.

The problem's we have today, are mostly that, we are tied to a Borough of which we don't have any ties. All our Business are in Anchorage, Alaska. our mail, Grocie's, Hospital, all comes thru Anchorage, the only ties we have with Kenai, is the School.

We, cannot get any Grant's out of Community and Regional Affair's without going thru, the Kenai Borough, which mekes it hard for us as there is, so much Red Tape, and being a Small Village, we are always left out of Grants. Before Grants are approved to the Borough, its Citys already have their Grants written, they already know that certain Grants are being approved, as we dont know until, the monies are all spent. We are not kept up to date on any Grants, that comes to the Borough.

In 1978, a Grant of $100,000.00 was approved by the State Legislature to upgrade our Airstrip, we had to turn this grant down, because it had so much strings attached, Such as opening the Airstrip to the Public. To the Public is ok, if they would pay Fee's Etc. but everyone feels that since, they are Tax Payers they should have excess to the Airstrip, since they pay their taxes. It cost us thousands of dollars to maintain the Airstrip, Up grading, Light, and Power, Snow Removal, of which we use our own Equipment and Fuel, Pay our own men to do the necessary work. We recently used some funds from R.D.A. Rural Development Administration, and charged landing fees, although we spent all our monies as stated above, we had to argue with Aircraft Owners over landing fees, and we were accused of trying to shoot people Etc. Its not fair to us to spend all this money to keep up the Airport and not be able to charge landing, and Parking fees, we pay taxes to.

We get grants from the Bureau of Indian Affairs, such as Jonson O'Malley, Self-Determination Act, Title 4 Bilingual, and Cultural. All these Grants, are below living costs, and at times are supplemented by our own funds, just to get someone to work. These Grants are a lot of Red Tape, and takes time to get, making it difficult to get people interested. C.E.D.A. Programs are so Red Taped that one almost have to be living in Poverty, before they qualify. If this is a Training Program it should be just that not a Welfare Program.

I, feel that we should be left alone, and let us decide our own destiny, and if we want to go into Municiple Type Government, we should be able to do it, at our own pace. There is this big problem of Non-Indians coming in, and taking over something that, we have worked for all of our lives, an those before us. We have kept our Traditional and Culture, which is so important to us, all these years and are not about to throw that out for someone else to benefit by. Kenai, Alaska was a nice and beautiful Village once, but they made a mistake by letting the Whites in, today all are staying outside of the Municipal City.

TO WHOM IT MAY CONCERN:

This Village is the only one on the Cook Inlet with all Natives, and must be kept that way, if this Village loses then the State of Alaska loses one of its last Historic Area not only that, but the True Indian way of life. Millions of Dollars was spent to keep it, that Millions of our own money, and times we must not let it go.

On the other hand, in time with control, we can form a Municipal type of Government, but only with local control, all the Grants and Monies would be worth nothing, if we lost control, and outsiders took over our Village.

Sincerely,

Emil McCord

Emil McCord,
Village Administrator

November 7, 1980

Timothy E. Troll
City Manager
City of St. Mary's
P.O. Box 163
St. Mary's, Alaska 99658

Dear Mr. Troll:

I have submitted copies of your letter to members of the Title 29 Policy Advisory Group so that they will be aware of your concern over AS 29.48.260. Your other comments which were originally sent to the Department of Community and Regional Affairs have been made available to the Title 29 Policy Advisory Group as well. Please send any additional comments which you have to me and I will see that members of the Policy Group receive copies.

I talked by phone with Mr. James N. Reeves on November 5, 1980. He indicated that he would like to address the Policy Group at the next meeting they hold in Anchorage. I will inform him of the meeting time and place as soon as it is set. Time is made available during meetings of the Policy Group to any person who wishes to address the group, so perhaps you would like to attend a meeting as well. I expect that the Policy Group will decide to meet again early in December and I will inform the group of your desire that the meeting be held in Anchorage.

Sincerely,

Tamara Brandt Cook

Tamara Brandt Cook
Legislative Counsel

TBC:maf

cc: Title 29 Policy Advisory Group
James N. Reeves

# City of St. Mary's

P.O. Box 163
ST. MARY'S, ALASKA 99658

October 23, 1980

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Ms. Cook:

I would like to request that discussion of A.S. 29.48.260 be placed on the agenda for the first meeting of the Title 29 Policy Advisory Group in December and that myself and James N. Reeves be permitted to make a presentation on this provision. Presently Mr. Reeves and I are working on legal problems related to property in St. Mary's under a Community Legal Assistance Grant from The Department of Community and Regional Affairs. The first project we have undertaken under the grant is an analysis of 29.48.260 and changes that should be made for the benefit of rural communities. 29.48.260 is a very unmanageable statute for this and I suspect most other rural communities. I would consider the work of the Policy Advisory Group successful if it can effect a workable change in this provision.

Hopefully, the meeting will be held in either Anchorage or Bethel as the City cannot afford to send me much further.

Sincerely,

CITY OF ST. MARY'S

Timothy E. Troll
City Manager

cc. James N. Reeves
FAULKNER, BANFIELD, DOOGAN & HOLMES
Suite 510, 425 G. St.
Anchorage, Alaska 99501

P.S. I have also sent along copies of my other comments which I sent to Community & Regional Affairs. I never received acknowledgement of their receipt by the Committee

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

July 29, 1980

Department of Community and Regional Affairs
Pouch B
Juneau, Alaska 99811

Re: Recommendations for changes in Title 29
To Title 29 Policy Committee

Gentlemen:

At the request of Mayor Paukan I am submitting the following comments on some of the provisions of Title 29 that the City would like to see changed. The provisions I have commented upon are those that have proved somewhat troublesome during my duration as City Manager. There are no doubt many other provisions that require change.

29.23.570 VACANCIES: This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570

29.23.070 and 29.43.040 PLANNING, PLATTING AND ZONING The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

29.48.190 BUDGET AND CAPITAL PROGRAM Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except though lengthy procedures to amend the budget. The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or $10,000 whichever is less of the original appropriation.

29.48.220 POST AUDIT The audit requirement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million

29.48.260 MUNICIPAL PROPERTIES I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's. First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak english from participating in auctions. The words "if any" in subsection (c)(8) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

I can see no reason for subjecting leases of City land to the same requirements that attach to sales of city land. This unduly restricts the City's ability to make land available for new businesses.

It is not clear whether the exception developed in subsection (e) is free from the requirements of prior appraisal and public auction or sealed bid.

29.68.010 LOCAL BOUNDARY COMMISSION The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative session has begun. The delay in time between the decision of the Local Boundary Commission and the legislative disapproval time is unnecessary and can lead to legal complications.. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

I am encouraged to see the efforts to review Title 29. I hope it produces some beneficial results. I trust these comments will prove helpful.

Sincerely,

CITY OF ST. MARY'S

Timothy C. Troll
City Manager

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

**OFFICE OF THE MUNICIPAL ATTORNEY**
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
P. O. BOX 7300
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

November 4, 1980

State of Alaska
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Attn: Tamara Cook

Re: Title 29 Review - Inclusion of Harbors and Marinas under Extraterritorial Jurisdiction

Dear Tamara:

Please find enclosed a proposed amendment to existing Section 29.48.037 [Extraterritorial Jurisdiction] (new 29.33.020) to clarify the authority of municipalities to provide harbors and marinas outside their boundaries.

As we have mentioned, the City of Ketchikan has for many years leased from the State of Alaska, and operates and regulates, several small but important boat harbors and marinas outside the boundaries of the City.

Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

cc: City Manager
Ted Berns, Esq.
Lee Sharp, Esq.
Allen Tesche, Esq.
Jim Nordale, Esq.
Ginny Chitwood

**Sec. 29.33.020. Extraterritorial jurisdiction.**

(a) A municipality may provide parks, roads, trails, playgrounds, cemeteries, harbors, marinas, and airports outside its boundaries, subject to AS 29.33.010, and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Formerly: As 29.48.037

Comments: Expands existing law to include harbors and marinas as facilities a municipality may acquire, operate and regulate outside its boundaries.

**Tanana Chiefs Conference, Inc.**

Doyon Building
1st and Hall Streets
Fairbanks, Alaska 99701
Phone (907) 452-8251

RECEIVED
AUG - 5 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

August 1, 1980

Ms. Lee McAnerney
Commissioner
Dept. of Community & Regional
Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

This letter is in response to your June letter requesting comments on the Title 29 Municipal Government Code Revision authorized under Senate Concurrent Resolution No. 66. As indicated by our prior correspondence, we are greatly interested in this area and wish to submit the following comments to be used in the Title 29 revision project.

RECOGNITION OF TRADITIONAL GOVERNMENTS

Local government in rural Alaska is extremely complex. This complexity is primarily due to the vast number of board, commissions, municipal corporations, ANCSA Native Village corporations, town site trusts, recognized entities for municipal trust lands, IRA councils, traditional councils, etc. For sometime TCC has been in favor of local government simplification. The problems of local government should not be addressed through the creation of new boards, commissions, corporate bodies, or new forms of municipal government. Rather, rural local government should be reorganized to utilize existing bodies and enhance those bodies. The introduction of new and novel forms of government may only lead to confusion as rural residents attempt to deal with their local governmental matters.

In connection with this policy of local government simplification, we believe it is important to fulfill the constitutional guarantee that the legislature shall provide for performance of services that it deems necessary or advisible in the unorganized borough and allow for maximum local participation and responsibility. This policy is substantially analogous to the federal policy of self-determination.

To meet these two basic policies, we feel it is necessary that the state of Alaska recognize the traditional governments which currently operate in Alaska. Such recognition will do several things. First, it will allow for the coordination of the funds currently available to local communities from sources other than the state, i.e., BIA, HUD, various CETA programs, etc.

To some degree this issue has already been addressed in the recognition of traditional governments for revenue sharing purposes. We feel, however, that more cooperation is needed between the state and these traditional governmental forms to fully realize maximum local participation and responsibility. To implement this, we favor such legislation as S.B. 565 introduced last session.

By extending such recognition to existing village and community organizations, we believe that rural government will be substantially enhanced. The recognition of such existing bodies will obviate the necessity for the specialized advisory committees, specialized service areas and boards and substantially contribute to local government simplification in the currently unorganized areas of rural Alaska. In addition, such recognition will fulfill the constitutional guarantee of maximum local participation and responsibility.

DECENTRALIZATION OF STATE SERVICES

It is sometimes difficult even for Alaskans to fully comprehend the geographical immenseness of Alaska. An appreciation of the sheer size of Alaska cannot be achieved through casual reference to a map. A full appreciation of Alaska's geographical size can only be appreciated by traversing this great land through conventional transportation systems. To the rural resident, this means being dependent on urban based state service personnel located at various sites throughout the state. Seldom is it possible for the rural resident to contact a state agency locally or even make a single phone call to a single urban government office to solve any problem. The urban Alaskan faces a similar problem in having to rely on state personnel based in other urban centers.

In both the rural and urban contexts, the root problem is the economy of scale. It is simply not economically feasible to establish free standing state agencies at the local level. The administrative cost to establish such programs would be enormous, but the need for decentralized state services is evident. State services should be available in the areas of need. State services should be available at a local level in all localities of the state to the extent that this is feasible. This problem can only be solved through the cooperation of local and state governments to provide maximum local services. This cooperation can be achieved by allowing the local governments to contract for the providing of state services. Basically, this will allow the merger of local and state program administration and allow a maximum amount of direct state financing directed toward program operations. Additionally, it is perceived that such cooperation would make the operation of state programs more responsive to local needs and desires.

It should be remembered, however, that the legislature under this theory will retain ultimate policy decision-making authority. It is only the administration of state and local programs which will be affected. Additionally, it should be recognized that not all state programs can be effectively decentralized, nor is it desirable that all state programs be decentralized. Rather, it is important that those state programs which are technically capable of being decentralized and for which there is a stated need and desire for local program operation should be decentralized through contracting.

LOCAL GOVERNMENT CONSORTIUMS

During the last legislature, several bills were produced out of the interim work of the Senate and House Community and Regional Affairs Joint Local Government Study of 1979. These bills recognized the need for coordinated regional planning.

Last February, TCC submitted comments on this legislation. At that time, we stated that existing local governments should be used as much as possible and that regional concerns can best be addressed through consortiums of existing governments.

Consortiums are advisable for a number of reasons. First, they would be entirely voluntary. The committee hearings fairly indicated strong opposition to "mandatory" regional organization. Second, consortiums could easily coordinate existing programs allowing for current program and plan continuity. Third, a consortium would not create a new independent regional entity and, thus, it would be possible to avoid the type of intergovernmental conflicts which characteristically exist between boroughs and included cities. Finally, the consortium would be governed by a flexible agreement between communities. Such agreements could be flexible enough to address unique regional variations found within each area. In addition, a community's participation would be voluntary, and, therefore, presumably supported by the local community.

The arrangements which we propose are currently authorized under Article X, §13 of the Alaska Constitution which allows local governments to enter into compacts for the joint administration of functions and powers. What is needed is clarification of the permissible scope and impact of these agreements, and new legislation which would allow such consortiums to jointly exercise authority outside of their existing local boundaries.

Conceivably, these consortiums would do three things. First, they would provide for coordinated administration of local governments. By splitting costs and sharing staff the consortiums could provide a higher quality of service at a reduced cost, where the fragmented governments that now exist cannot operate. Second, the consortiums could address regional concerns, provide a forum for expressing those concerns, and advise state agencies on regional needs and desires.

Third, they would jointly exercise those powers which they agree to jointly exercise outside their current respective boundaries, or within existing boundaries, upon consent of the respective municipal governments.

## STATE SUPPORT OF LOCAL AUTHORITY

There are a number of disincentives to a rural municipal government which wishes to exercise its municipal authority. For example, a rural community which passes an ordinance, may not be able to enforce it. If a city attempts to enforce its ordinances, it is subject to substantial liability under current tort law. Where a civil plaintiff or criminal defendant often have free legal assistance available, a city has severely limited funding available to enforce its ordinances or defend against civil complaints. If a city looses a civil suit, the resulting judgment could bankrupt the city or substantially incumber future revenues. In this atmosphere, it is impossible to expect a responsible city official to fully exercise the local government functions.

It is important that the state assist rural municipal government if it is to succeed. Many of the problems can be addressed in Title 29 itself. For example, municipal liability can be reduced to acceptable levels by enactment of a rule raising the standard of municipal tort liability for only those official acts involving "wanton and willful" conduct rather than mere negligence alone. Municipal ordinances and regulations can be assimilated into state law to allow state prosecution of local violations. Such assimilation could be dependent upon compliance with a model municipal code enacted by regulation or dependent on approval of the attorney general's office or Department of Community and Regional Affairs. Communities enacting nonapproved regulations and ordinances, however, should still be able to enforce them in the conventional manner.

Initially, such a system seems expensive to implement. It should be noted, however, that the state is expanding its criminal justice presence in rural Alaska. The proposed Bush Justice Corrections Plan would provide the basic infrastructure required by the above model. In light of these developments, the above model is a minor addition to the planned infrastructure.

## IMPLEMENTATION OF LOCAL INPUT

Often local governments and state agencies are not coordinated. Most notably, state land disposals have often conflicted with local land use/development plans. State law generally favors local control or at least local input in the organized areas of the state. In the unorganized areas of the state, however, the state agencies seem to dominate. This exists in spite of the constitutional promise of maximized local participation. We, therefore, propose that some mechanism be inserted into law to provide for fuller local participation.

Three alternatives exist. First, an administrative restraint may be placed on agencies' actions. Specifically, a community or consortium must agree to agency actions/plans affecting the community or consortium. In the absence of such consent, the agency would have to show, in a locally neutral administrative hearing, that the best interest of the state requires such agency action/plan.

A second alternative would be a planning restraint on the agencies. The communities or consortiums would produce regional plans with which the agencies must comply. Without compliance, the agencies would have to get a waiver from the community or consortium or proceed through a local neutral hearing.

Third, a political mechanism could be established. State law could require agencies to have local plans/actions approved by a local hearing officer at a local hearing. This would allow affected communities and consortiums an opportunity to provide input and hopefully influence agency actions in their areas.

We hope that you find the above comments useful, and that these concerns find their way into the planned Title 29 revisions. We will be glad to respond to any questions regarding the above proposals and plan to augment these comments as needed.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. "Spud" Williams
President

WCW/4877m
113a11

# HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711


December 31, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

RE: Correction to December Title 29 Commission Minutes

Dear Senator Sturgulewski:

On page 3 of the minutes of the December 15, 16 and 17th Title 29 Revision Commission meeting it is stated that the technical committee was directed to bring back wording to allow the transition from any class of city to home rule. I am under the impression that the technical committee was directed to bring back language that would allow the transition from any class of borough or city or unincorporated area to home rule. Discussing the motion to eliminate third class boroughs and to grandfather the Haines Borough, Terry Cook emphasized his desire to see legislation developed which would allow transition from any class of borough or city to home rule. The direction to the technical committee followed this discussion and I do think it included transition of any class of boroughs as well as cities to home rule. Perhaps a double check of the tape would clarify this issue.

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

xc: Tamara Cook
Legislative Affairs

Millisa Fawset

# CITY OF BARROW

"native owned incorporated city"
BOX 629
BARROW, ALASKA 99723
PHONE (907) 852-5211


December 10, 1980

Senator Arliss Sturgulewski
Assembly Bldg.
Room 100
Juneau, Alaska 99811

Re: Title 29 Revisions

Dear Arliss:

I would like to submit the following comments for your consideration, regarding Title 29 of Alaska Statutes and its revisions.

It appears to me, that we here on the North Slope have our own unique situation, in that we are within a home rule Borough and are a first class City operating within that Borough. The Borough seat is headquartered in our City. The City has minimal powers left and does not have a property tax.

Many times, in attempting to provide new, or upgrade existing services and/or facilities, we have been hindered or stopped by lack of co-operation by the Borough. When we turn to Title 29 and cite the appropriate authorizations to undertake a particular venture we are stopped time and time again by the Borough explanation that Title 29 doesn't relate to them except as noted in Section 29.13.100. To help aleviate this problem, I would like to seem Home Rule Boroughs bound by the Sections in Title 29, unless otherwise so noted in a particular section. Home Rule Boroughs would be allowed to carry on their municipal functions beyond that in Title 29, but they would be bound by all sections of Title 29. This approach is directly opposite than the one currently ruling the conduct of Home Rule Boroughs. Cities would still be limited as to what they could do ---specifically, that which was authorized in Title 29.

In reviewing Title 29, I would like to bring to your attention some of the sections that we have dealt with that have caused us some difficulties or confusion.

Section 29.23.270 Veto (a) The mayor of a first class city may veto any ordinance, resolution, motion, or other action of the council and by veto, strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items. He shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons. A veto is overridden by the vote of two-thirds of the authorized membership of the council.

The part about "he shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons." leaves it unclear when a veto is made, is it a verbal veto at a meeting where the action takes place

or is it the written veto at the next meeting that puts a veto in effect. If so, does the council action stand until the written veto is presented at the next meeting. Again, if that is the case, what happens when the mayor wants to veto an action but the course of action sought by the council will have all ready taken place before the veto can be placed before the council at their next meeting.

29.23.570 Vacancies. An elected municipal office is vacated under the following conditions and upon the declaration of vacancy by the assembly or council. The assembly or council shall declare an elective office vacant when the person elected

(6) misses three consecutive regular meetings unless excused;

I think that some guidelines should be mentioned as to what is excused or unexcused, i.e. failure to notify the city office that they will be unable to attend, off on a campaign tour for another elected office.

Initiatives and referendums: There should be a submittal deadline for invitations and referendums that wish to be considered on an upcoming general election 15 days, 30 days, 45 days, 60 days prior to the eldction. If all the procedures, protests and appeal time lines were allowed for it might look something like this:

| | | | |
|---|---|---|---|
| Absolute deadline if an initiative or referendum is to be placed on the Ballot (to allow for printing) | | | 15 days |
| Section 29.28.073 | (a) | City Clerk has 10 days to certify petition | 10 days |
| | (b) | Petitioners have 10 days to correct insufficient petition | 10 days |
| | (c) | Clerk has 10 days to certify corrected petition | 10 days |
| Section 29.28.075 | | Petitions have 7 days to file protest with Council | 7 days |
| | | Council to decide appeal at next meeting (14 days for Council 30 days for Assembly; for sake of uniformity use 30 day Assembly timeframe) | 30 days |
| | | Total days required for process | 82 days |

In the current Title 29, the initiative/referendum section doesn't apply to Home Rule Municipalities and the North Slope Borough has no provisions for initiatives or referendums in their Code of Ordinances. The North Slope Borough charter outlines the basic initiative/referendum requirements. However, the charter goes on to say the initiative/referendum procedures must be established by Ordinance, of which there is none.

It would make life much simpler if the requirements, format, and timelines for all petitions were standardized.

Section 29.33.030 Assessment and Collection. Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to Chapter 53 of this Title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

This Section doesn't apply to Home Rule Boroughs so technically speaking, a Home Rule Borough could tell any of the cities in its jurisdiction that it will no longer collect the cities taxes. In our area this would place an undue and perhaps backbreaking burden on some of our communities.

Section 29.33.110 Board of Adjustment. (a) The assembly is the board of adjustment for areas outside cities. The City Council is the board of adjustment for the area within the City boundaries but may delegate by resolution or ordinance part or all of its functions to the borough, subject to & 70 (b) (1) of this chapter, in addition to making delegations as provided for an assembly under & 245 of this chapter. Meetings of the borough board are held at the call of the presiding officer and of the city board by the Mayor. The presiding officer or Mayor may administer oaths and compel attendance of witnesses. Meetings and hearings of the board shall be open to the public and the board shall keep minutes of its proceedings as a public record.

The rational behind this escapes me, but again it doesn't apply to Home Rule Boroughs. It would be very interesting if our City Council could act as the Board of Adjustment within our City, instead of the Borough Assembly.

Section 29.48.030 Municipal Facilities & Services. (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

We have had several problems with this and Section 29.48.035 Regulatory Powers.

> The question has arisen about whether or not when you transfer a power under 29.48.030 you also transfer any regulatory powers that might be associated with the power transfered, especially if the regulatory power is mentioned in 29.48.035.

Where we have run into our biggest problem is when we transfer a power under 29.48.030, such as police powers, where we transfer a power complete with enforcement ordinances, and the Borough refuses to exercise the enforcement ordinances. Furthermore, the Borough sees no need in enacting ordinances of their own. To us, this seems like we receive a lower level of service than we had before. We have presented this problem to the State and their opinion is that City ordinances transfer with the power until amended, repealed, or a new Borough

Ordinance supercedes the transfered City ordinance. The Borough says they don't quite see it that way. However, they will enforce the City's ordinances, as their priorities allow, and we will have to prosecute in Court. This is the same procedure they use with the State. They will enforce State Statutes and the State is responsible for prosecuting in Court. Since the Borough doesn't have any ordinances to enforce, they don't have to worry about prosecuting costs for the Borough. A cost that is prohibitive to the City. From our standpoint, we would like to see it made manditory, that when a power is transfered, so is the responsibility for accepting and enforcing any associated ordinances until such time as the Borough amends or implements new ordinances.

I'm sure that it would have to be explored in greater detail, but, perhaps a mechanism should be developed through which a City could have a power returned to it by a Borough.

Section 29.48.150 Ordinance Procedure. (a) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the assembly or council or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance and its amendments is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The assembly or council shall hear all interested persons wishing to be heard. After the hearing, the assembly or council shall consider the ordinance and may adopt it with or without amendment. The assembly or council shall print and make available copies of adopted ordinances.

We would like to see a better definition of published, as called for in this section. Perhaps in rural areas, publishing could be accomplished by posting around town, often times it is unrealistic for a remote rural area to publish a notice in a Fairbanks or Anchorage paper. Especially since the newspaper might not reach the village until after the meeting has been held.

The publishing requirement should remain the same for Boroughs, as their level of sophistication and operations are on a much higher plane.

Section 29.48.260 Municipal Properties. (c) The assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, or posted within that time in at least three public places in the municipality; (3) public auction or opening of sealed bids, if any; and (4) other terms and conditions fixed by the assembly or council. However, no ordinance for the sale, lease, or disposition of real property or interest in real property valued at $25,000. or more is valid unless ratified by a majority of the qualified voters

voting at a regular or special election at which the question of the ratification of the ordinance is submitted. Thirty days notice shall be given of the election and during that period the assembly or council shall have published at least once a week in a newspaper of general circulation distributed within the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, and stating the title and date of passage of the ordinance. Notice shall be given by posting a copy of it in at least three public places in the municipality at least 30 days before the election. If no newspaper of general circulation is distributed within the municipality, the ntoice given by posting is sufficient for the purposes of this section.

The rational behind this is somewhat understandable, but the reason for the $25,000. figure is hard to visualize. Again, in our area $25,000. is a lot of money, but at the same time it isn't. If we had to go to a special election every time we wanted to lease some property in excess of $25,000. we would begin to incur additional expenses and waste a lot of time. Especially when you consider we probably wouldn't get a voter turn out of over 150 people.

Section 29.53.360 Deed to Borough or City. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

We have approached the Borough on this and their response is, that since the City has no property tax, we have no interests in any such property and therefore, this Section doesn't apply to us. Furthermore, the North Slope Borough isn't bound by this section anyway.

Section 29.68.240 Unification of Local Governments. An organized Borough and all cities within the Borough may untie to form a single unit of Home Rule local government by complying with this chapter. This section doesn't apply to Home Rule Boroughs. Therefore, a Home Rule Borough couldn't legally unify with it's cities. Or could it, as there is nothing in Title 29 saying that it can't. However, the cities would have to follow the provision in 29.68.240. So any provisions a Home Rule Borough would want to incorporate into their unification procedures would have to include the provisions in 29.68.240 so it would be just as easy to make Home Rule Boroughs subject to 29.68.240 and avoid a lot of confusion.

At the AFN Convention I picked up a copy of some of the proposed changes for Title 29. Unfortunately, I have misplaced these and it wouldn't surprise me too much if some of my comments have already been addressed. The revision of Title 29 is long overdue and I appreciate the opportunity to be able to provide some input into the program. If I can be of further service, please don't hesitate to contact my office.

Sincerely yours,

Bryan MacLean
City Manager

December 10, 1980

Ms. Cook,

Lee indicated that you may be making multiple copies of his letters to Senator Sturgulewski. Our copy machine does not make good copies for reproduction, so I have made you an additional original copy with Lee's signature typed in and you may wish to use that copy for reproduction.

Joyce Rutschman
Secretary

Copies = to Policy = Group. =

M. Expect to prepare handout packages like these ones last time.

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski
Senator, State of Alaska
Chairman, Title 29 Revision Policy
Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

FILE: Title 29 Revisions

SUBJECT: Initiative and Recall

Dear Senator Sturgulewski:

In reviewing the changes which the Policy Committee made to the proposed initiative and referendum proceedings, I note that a municipality will now be required to hold special elections for initiatives. Present law requires that initiatives be filed within 90 days of the next regular muncipal election. This requirement eliminates the need lor the muncipality to ever have to hold a special election on an initiative. However, there seems to be little reason not to allow petitioners to file an initiative at any time they please so long as the municipality is not required to undergo the expense of special elections. It was this approach which the Technical Committee suggested.

The Legislature has seen fit to provide an initiative procedure at the state level which does not permit the filing of an initiative petition to generate the requirement for a special election. Further, an initiative petition could be filed with the State and not be placed on the ballot for almost two years. Municipalities have elections each year. If they are required to place initiatives on the next occuring regular or special election, initiatives at the local level will be voted on, in all cases, much more quickly than at the State level. If the State cannot be put to the expense of a special election for an initiative, it seems inappropriate to force municipalities to undergo the expense of special elections for initiatives.

I also believe that if a referendum is filed, no special election should be held unless the referendum has been filed in such a

manner that the effect of the measure to be referred is suspended.

For the foregoing reasons, I strongly suggest that the Committee consider changing the election requirements for initiative and referendum to provide that initiatives are placed on the first regular or special municipal election held not sooner than 75 or 90 (or some other reasonable time) days after the initiative is submitted to the Legislative body. I would suggest that a referendum be treated in the same manner unless the filing of the referendum operates to effect a suspension of the matter to be referred. In such cases, a special election should be held if required.

Sincerely,

/s/ Lee Sharp

Gerald L. Sharp
City-Borough Attorney

GLS:phl

cc: Tam Cook, Esq.
Legislative Affairs

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski, Senator
Chairman, Title 29 Revision Policy Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

File: Title 29 Revisions

Subject: Recall

Dear Senator Sturgulewski:

At the meeting held by your committee in Fairbanks just before the Alaska Municipal League meeting, a great deal of debate focused on the question of whether the grounds for the recall of a local official should be narrowly or broadly drawn. Mayor Larson requested from me a defense of narrowly drawn grounds and other procedures designed to provide the elected official with some measure of protection. Please consider this letter as that defense.

Many features of our democratic system of government are accepted as basic and necessary to the system. These ascertions are seldom examined critically as it is unpopular and distasteful for any one to seriously undertake criticism of what is popularly perceived to be the underpinnings of our democratic form of government. Recall is one such uncritically examined element of our democratic system of government.

First, we should note that our system of government is not a pure democracy but it is rather a democratic republic. Article IV, Section 4 of the U.S. Constitution guarantees to each state a republican form of government, not a democracy. That Constitution provides for neither an initiative or recall. Throughout the history of the United States, the states themselves have not universally provided for recall.

The upsurge of recall provisions came about during the government reform movement. While recall may be viewed as a procedure which strengthens democratic principles, it clearly accentuates one of the greatest weaknesses of the democratic system - its vulnerability to popular but ill-conceived whims of the public and its manipulation by a minority.

The Greek philosopher who first categorized the various forms which government could take, and who gave democracy its name, rated

democracy rather low as a form of government which would best serve the needs of its subjects. Being subject to the whims of a relatively uninformed populace made a democracy ill suited to consistently serve the needs of the public. The Federalist Papers and the U. S. Constitution clearly show that the thoughtful leaders of our country who drafted our Constitution had severe reservations about the democratic form of government and sought to overcome those perceived deficiencies. They provided us with an electoral college which, they hoped, would have the collective wisdom necessary to select a statesman worthy and capable of discharging the duties of President of the United States. They did not provide for his direct election by the populace as would have been the more "democratic" method. They provided us with two houses of Congress, one of which would be based upon population and which might reflect popular sentiment and a second house which would provide equal representation to all the states. This second house, it was hoped, would provide the mechanism for preventing the enactment of popular but ill-conceived measures. A further check upon both of these houses was given to the President who could veto measures he believed were inappropriate. The drafters of our Constitution believed that these and other checks, along with the probability that various interest groups would form different coalitions on different measures, would combine to overcome one of the more serious defects of the democratic form of government. They apparently did not feel that recall was either necessary or desirable. In fact, I suggest that the "open season" type of recall which has been proposed for Title 29 is contrary to the very principles which are reflected in our Constitution and the philosophy of those who drafted it.

Under our republican form of government, an elected official does not serve as a mere extension or agent of those who elected him. The elected official is expected to exercise his informed and considered judgment in providing for the public good. If it were reasonable to believe that the public could become adequately informed on all the public issues which face a legislative body, then it might also be reasonable to assume that the general public could also function in the manner of a town meeting and decide all public issues. Because few of us are able to devote the time necessary to become so informed, we delegate to our elected officials the responsibility to become adequately informed and to make decisions as to the public needs. If the public is dissatisfied with a policy decision made by public officials, the initiative and referendum may be used to correct what are perceived to be errors of decision making. When recall is used in such cases, it is not corrective in nature, it is vindictive and punitive.

As already noted, recall was a concept which became popular during the reform era. It was aimed not at governmental bodies which had

made decisions which were unpopular with various segments of populace but was aimed at corrupt individuals. The public good demands that persons be removed from office who are corrupt or dishonest in office, who fail to perform prescribed duties of the office or who are physically unable to perform the duties of the office. If there is no administrative or judicial procedure for removing such persons from office, it would be appropriate to provide a method for the electorate to effect such a removal. However, any such system should be strictly limited to removals for corruption, dishonesty affecting the public good, and inability or refusal to perform the duties of the office. It would be an abuse of the recall mechanism to permit recall of an elected official merely because the official had participated in making a decision which was unpopular with a large segment of the public. Any controversial matter is likely to be unpopular with a large segment of the public and public officials should not have the threat of recall hanging over their heads whenever their honestly held convictions compel them to vote in a certain manner. Unfortunately, a review of recall efforts will reveal that most, if not all recall efforts, are actually based upon an action taken by the entire body and have little or nothing to do with any of the legitimate grounds for recall. To make matters worse, the proponents of the recall often resort to slander or grossly exaggerated accusations in their recall petition.

It cannot be denied that there is currently a movement in the direction of single issue politics. When there are groups about which openly flaunt their "hit list," it behooves us to examine the elements of our political system in light of this new phenomenon. A recall provision which requires merely that someone be dissatisfied with an elected official's performance amounts to a declaration of open season on all elected officials. If the recall mechanism can be called into play for essentially no reason at all, the quality of persons who will run for public office will suffer as will the basic decision making process itself. At the municipal level, once a recall petition has been placed in circulation, and even more so after it has been filed, the proponents of the recall often become very forceful and vocal in airing their belief that the governing body should cease making important decisions until after the recall matter has been settled. As local elected officials are not insensitive to public demands, such demands do have an impact on the elected body. Unnecessary delay in decision making coupled with an overemphasis on the recall petitioners' position on matters before the body may combine to produce results which are not in the best interest of the public. The tension and turmoil which a recall petition creates within the elected body and the community is an undesirable but, nevertheless unavoidable, effect of a recall attempt. Therefore, every effort should be made to minimize the unnecessary exposure of a municipality to these effects. The "open season" type of recall will serve to maximize the number of occasions upon

which the local government will experience these effects. These negative effects can be minimized without destroying the right of recall if the grounds for recall are narrowly drawn to limit them to matters such as corruption in office and inability or refusal to perform the functions of the office. Not only does this narrow the grounds to those which are truely relavent to the purpose of recall but it also would reduce the ease with which a recall effort could be mounted against several members of a governing body based upon the way the body had voted.

Not only must the grounds be drawn narrowly to insure that the recall mechanism is not abused but the recall system should clearly provide for judicial review of the grounds stated. Failure to provide a clear right of judicial review renders the requirement for clear and narrow grounds a nullity.

Before any group should be permitted to force the public to undergo the expense of an election, there should be a very substantial showing that the public is indeed interested in voting on the proposed issue. Therefore, there should be a substantial signature requirement. Under state law, those seeking a recall petition for a state official must first submit an application containing the signatures of at least 10% of those who voted in the last election in the relevant district. If the Lieutenant Governor determines that the application is sufficient, a petition is issued and the petitioners must then obtain signatures equal to at least 25% of those who voted in the last general election in the relevant district. Thus, at the state level the legislature has provided for a recall system which places a significant burden upon the petitioners and thus may well filter out most of those recall efforts which would be unsuccessful. In addition, the grounds for recall (lack of fitness, incompetence, neglect of duties, and corruption) are all narrow enough that the political philosophy or the way a person voted would not be a sufficient basis for a recall. Further, the legislature has clearly provided for a mechanism for judicial review of a determination by the Lieutenant Governor.

Recall is not a matter to be taken lightly and is not one which should be easily initiated or carried out. A political system which provides for the relatively easy recall of an elected official for reason of the way that official voted on a particular matter is a system which has lost one of the essential characteristics of our republican form of government. We should not cater to the fickleness of the electorate if to do so would tend to reduce the effectiveness of local government without some significant, compensating good. Our system of government will function most smoothly, most effectively and for the benefit of the general good if we provide for a recall system with narrowly drawn grounds and with other mechanisms which are designed to prevent the abuse of the recall system. The "open season" system brings with it disruptions

which serve no legitimate or public purpose. The "open season" approach should be abandoned.

Very truly yours,

/s/ Lee Sharp

Gerald L. Sharp
City-Borough Attorney

GLS:jr

cc: Mayor Ron Larson
Mat-Su Borough

Tam Cook, Esq.
Legislative Affairs

**OFFICE OF THE MUNICIPAL ATTORNEY**
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

334 FRONT STREET
P. O. BOX 7300
KETCHIKAN, ALASKA 99901
(907) 225-3111, EX. 327

# MEMORANDUM

TO: All members of Title 29 Technical Committee;
Tamara Cook;
Palmer McCarter

FROM Russell W. Walker
Ketchikan Municipal Attorney

RE: Title 29 Review; Inventory of other statutes, requirements and provisions applicable to Municipalities

DATE: November 4, 1980

As you will recall, several members of the policy committee and also the technical committee have expressed an interest in inventorying other statutes and provisions applicable to the activities of municipalities and referencing or at least footnoting these provisions in the revised Title 29 to assist managers, clerks, attorneys and other public officials in complying with the requirements of the code, particularly in the more remote areas.

In furtherance of the above, we have prepared and enclose herewith a preliminary list of such provisions and would appreciate your noting any additional references to provisions applicable to municipalities of which you are aware to assure the compilation is as complete as possible.

RWW:sf

Enclosure

**INVENTORY OF OTHER STATUTES, REQUIREMENTS AND PROVISIONS APPLICABLE TO MUNICIPALITIES:**

(1) 09.55.275: Eminent Domain. Municipalities and the State must submit a preliminary plat of a proposed acquisition resulting in a change of boundaries to the municipal platting authority for approval; final approval of replat must also be obtained.

(2) 34.60.010, et seq.: State Relocation and Real Property Acquisition Practices Act Term "state agency" required to comply with procedures includes political subdivisions of State [AS 34.60.150(6)].

(3) 35.15.080: Local Control of State Public Works Projects. General law or home rule city or organized borough may request assumption of planning and construction of public works project of State under section 35.15.080, and may make agreements with State for these purposes "irrespective of restrictions of other provisions of law on the acquisition and exercise of borough powers." (section confers power); "municipality" includes general law or home rule city or organized borough [35.15.120]).

(4) 35.30.010: Local approval of State Plans. Requires review and approval of D.O.T. plans and project by local planning authorities subject to certain exceptions and waiver.

(5) 35.30.020: State Compliance with Local Planning and Zoning Ordinances. Requires certain departments of State to comply with local planning and zoning ordinances and other regulations in the same manner and to same extent as other land owners.

(6) 36.05.070: Minimum Wage. Required inclusion of minimum wage in advertised specifications for contract for public works and submittal of information to Department of Labor.

(7) 36.10.010: Employment Preference. (questionable validity after Hicklin v. Orbeck, 437 U.S. 578, 98 S.Ct. 2482 (1977).

(8) 36.15.010-.015: Local Forest Products Clause. Clause required in certain projects and contracts using forest products financed with State money.

(9) 36.25.010: Contractor's Bonds. Requires specified performance and payment bonds be obtained and verified by political subdivisions regarding contract for public buildings or works (AS 36.95.010(6) [includes boroughs and cities]).

(10) 37.10.085: Prohibition of Extension of Credit. Neither State nor political subdivision of State may lend its credit or borrow money for the use of a corporation.

(11) 37.10.090: Action to Recover Illegal Expenditure or Disposition of Funds or Property. Money, funds or property of a city, school district, or municipal government illegally paid, or diverted for an illegal purpose, or paid to a person not authorized by law to receive them, may be recovered by action brought by the Attorney General (State to advance costs of suit and recovered from recovery repaid to agency for whom funds recovered [37.10.100]).

(12) 44.62.310: Public Meetings.

# CITY OF SEWARD

P. O. BOX 337
SEWARD, ALASKA 99664

| | |
|---|---|
| CITY MANAGER | 224-5214 |
| COMPTROLLER | 224-5216 |
| INFORMATION | 224-5215 |
| CITY POLICE | 224-5201 |


December 1, 1980

TAMARA BRANDT COOK
LEGISLATIVE COUNSEL
LEGISLATIVE AFFAIRS AGENCY
Pouch Y
JUNEAU, AK 99811

MEMO FROM STATE CLERKS TO TITLE 29 COMMITTEES

Enclosed is a memo regarding various sections of Title 29 and its proposed revisions which the Alaska Association of Municipal Clerks unanimously approved at its annual meeting held in Fairbanks the week of November 10. The Association requested that I forward this memo to the Technical and Policy Committees.

I have been trying to recover from the flu for the past week and still am unsure if I will be in attendance at the December 4-5 Technical meeting. Therefore, I am sending this memo on to you for distribution.

By copy of this letter and the enclosure, I am also forwarding this information to John Messenger's office just in case this does not reach you in Juneau in time.

Thank you.

JOANNE E. SHANLEY
CITY CLERK

Enclosure

cc: John Messenger w/ enclosure

November 5, 1980

Carol A. Tellevick
City Clerk
City of Port Alexander
Box 725
Port Alexander, Alaska 99836

Dear Ms. Tellevick:

Here is a copy of Title 29 and the supplement. The supplement does not include legislation passed during the 1980 session, so you should contact the Michie Company to order the new supplement when it is printed. If I can help in any other way please let me know.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:maf

Encl.

# CITY OF PORT ALEXANDER

Box 725 • Port Alexander, Alaska 99836

October 23, 1980

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Hello:

In reference to your Notice of Meeting concerning the revision of the Municipal Code, Title 29.

The City of Port Alexander for over a year now has been trying to acquire a copy of Title 29. We were instructed to order one from Michie-Bobbs-Merrill, PO Box7587, Charlottesville, Virginia. We sent this company the payment, they claimed they sent us the Title 29 and Supplement. We never received it, so again we ordered one. That was last spring and we haven't heard from them since.

Perhaps you could assist us by sending us a copy of Title 29 and supplement? It would be greatly appreciated.

Sincerely,

Carol A. Tellevik

Carol A. Tellevik
City Clerk

# HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711


October 24, 1980

Tamara Brandt Cook
Legislative Counsel
Pouch Y
Juneau, Alaska 99811

Dear Tam:

Thanks for your letter re my suggestions on the service area statute. I have asked the Assembly to send our Borough Attorney, Tom Blanton, to your Fairbanks meeting. However, I hope to follow the Fairbanks meeting through Tom's report.

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

# NATIVE VILLAGE OF TYONEK, ALASKA

INCORPORATED
TYONEK, ALASKA 99682

MANAGEMENT OFFICE
1675 "C" STREET — ROOM 246
ANCHORAGE, ALASKA 99501


October 16, 1980

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Tamara:

I have just recieved a letter of notice of meeting dated October 6, 1980, in regards to the policy advisory group concerning title 29.

Up until I recieved this letter, I was not aware of such a group.

Could you sent me information on this, also it's purpose.

Thank you.

Sincerely,

Donald Standifer, President
of Native Village of Tyonek.

cc: Village File

23 October 1980

Sent copies of Minutes of Meetings for Policy Group Meetings to date.
Sent copy of Legislative Resolution forming Title 29 Commission.

MAF

Chefornak City Council
Chefornak , Alaska 99561

20 June 1980

Local Government Study
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Gentlemen;

We wish to give our full suport to the issue on Capitol Foundation fund. We find it very helpful to our situation because we don't have very much in matching costs to our capitol projects.

Right now we are trying to get funds to build a Cultural Facility but we don't have matching costs. If it is possible, we will introduce the amounts we are trying to get and the matching costs.

We have other capitol projects we would like to get on, but don't have funding.

If we have to fill out forms or questionaires to get those funds, Please don't hesitate to send them to us.

With our support,
Chefornak City Council
Chefornak City Council

cc. D.L.
N.L.

[redacted] 30, 1990

[redacted]
Administrative Secretary
Haines Borough
P.O. Box 1
Haines, Alaska 99827

Dear Ms. [redacted]:

Thank you for your letter. I have provided copies of the material you sent to all members of the Title 29 Advisory Policy Group.

For your information the Superior Court opinion City of [redacted] v. Kodiak Island Borough was never appealed. Unfortunately, I am not aware of any additional case law construing the statutory provision which limits the authority to form service areas. I will forward any additional information I receive on the subject to you. You have suggested that AS 29.63.090(d) be rewritten to provide more flexibility to municipal governments in creating service areas. Since that section is essentially a restatement of language contained in the state constitution, I doubt that rewriting the statute would accomplish your purpose.

Please send me any other suggestions which you may have regarding proposed changes to the Municipal Code and I will gladly forward them on to the Policy Group. Our next meeting is scheduled to be held in Fairbanks on November 10th and 11th. I hope to see you there.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Title 29 Policy Advisory Group

# STATE OF ALASKA
# THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

**MEMORANDUM** October 16, 1980

**SUBJECT:** A.F.N. Meeting

**TO:** Policy Advisory Group
Technical Committee
Title 29 Revision

**FROM:** Tamara Brandt Cook
Legislative Counsel TBC

The Alaska Federation of Natives, Incorporated is holding its Fourteenth Annual Convention at the Sheraton Hotel in Anchorage on October 23, 24, and 25, 1980. In connection with this convention, an affiliated meeting dealing with the work being done by the Title 29 Revision Committee will be held on Friday, October 24th at 1:00 P.M.

You are invited to attend and to participate in the affiliated meeting which will focus on the concerns of smaller rural communities. Senator Arliss Sturgulewski will be there and I hope some of you are able to attend.

TBC:ljb

cc: Frank Ferguson, President, A.F.N.

MEMORANDUM October 7, 1980

SUBJECT: Progress report - Title 29 Revision Committee

TO: Senator Bill Ray, Chairman
Interim Projects Oversight Committee

FROM: Tamara Brandt Cook
Legislative Counsel

CSSCR 66, Legislative Resolve 39 of the last regular legislative session directed the Alaska Legislative Council to revise AS 29 (the municipal government code). A Policy Advisory Group was authorized to assist in the revision and I was assigned to the project from the Legal Services Division. Members of the Policy Group were appointed in August, and the first meeting was held in Anchorage on August 27 and 28, 1980. Minutes of that meeting are attached.

During the first meeting the Policy Group appointed a Technical Revision Committee, composed primarily of attorneys with expertise in municipal law to perform actual drafting. The committee was directed to reorganize Title 29 as a first step in the revision. The Policy Group went on to consider various issues including: greater self-determination and latitude for local governments; whether the provisions relating to development cities should be restructured or eliminated; whether changes should be made in the present categories of municipal government; and the possibility of the state recognizing traditional village governments as municipal governments.

The Technical Committee met in Anchorage on September 8, 1980 and worked out a proposed reorganization format for Title 29. Staff was directed to prepare an index of Title 29 according to the proposed reorganization scheme. The Technical Committee met again in Anchorage on September 19, 1980 to consider the proposed reorganization. The proposed reorganization scheme was rejected as too complicated and

unworkable. An alternative reorganization of Title 29 was worked out and adopted by the committee for presentation to the Policy Advisory Group.

The Policy Advisory Group met in Anchorage on September 29 and 30, 1980. Minutes of that meeting are attached. The morning of the first day was devoted to presentations by members of the public. In the afternoon the Technical Committee presented its reorganization of Title 29. Staff was directed to prepare a complete text of Title 29 according to the proposed reorganization scheme and to mail it to members of the Policy Advisory Group as soon as possible. The rest of the meeting was devoted to discussion of policy issues and proposed changes to Title 29, with the Technical Committee directed to make several drafts incorporating specific changes to be presented for review by the Policy Group at its next meeting.

The next meeting of the Technical Committee is scheduled to take place in Anchorage on October 20, 1980. The committee will attempt to produce a complete technical revision of Title 29, as well as incorporating the specific changes requested by the Policy Group into drafts. The Technical Committee may require three or four additional meetings in order to complete their revision of the municipal code. The Policy Group is scheduled to meet again in Fairbanks on November 10 and 11, 1980. The meeting is planned to coincide with a meeting of the Municipal League to provide maximum opportunity for interested persons to address the Policy Group. After receiving public comments, the group will make a final decision on the reorganization of Title 29, and consider all drafts submitted by the Technical Committee. It is possible that the Policy Group may request one or two additional meetings for the purpose of considering the final revision of the municipal code before presenting it to the legislature. A statement of actual and projected expenditures is attached.

If you have further questions concerning the Title 29 Revision project, please contact me.

TBC:ljb

Enclosures

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM October 7, 1980

SUBJECT: Progress report - Title 29 Revision Committee

TO: Senator Bill Ray, Chairman
Interim Projects Oversight Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

CSSCR 66, Legislative Resolve 39 of the last regular legislative session directed the Alaska Legislative Council to revise AS 29 (the municipal government code). A Policy Advisory Group was authorized to assist in the revision and I was assigned to the project from the Legal Services Division. Members of the Policy Group were appointed in August, and the first meeting was held in Anchorage on August 27 and 28, 1980. Minutes of that meeting are attached.

During the first meeting the Policy Group appointed a Technical Revision Committee, composed primarily of attorneys with expertise in municipal law to perform actual drafting. The committee was directed to reorganize Title 29 as a first step in the revision. The Policy Group went on to consider various issues including: greater self-determination and latitude for local governments; whether the provisions relating to development cities should be restructured or eliminated; whether changes should be made in the present categories of municipal government; and the possibility of the state recognizing traditional village governments as municipal governments.

The Technical Committee met in Anchorage on September 8, 1980 and worked out a proposed reorganization format for Title 29. Staff was directed to prepare an index of Title 29 according to the proposed reorganization scheme. The Technical Committee met again in Anchorage on September 19, 1980 to consider the proposed reorganization. The proposed reorganization scheme was rejected as too complicated and

unworkable. An alternative reorganization of Title 29 was worked out and adopted by the committee for presentation to the Policy Advisory Group.

The Policy Advisory Group met in Anchorage on September 29 and 30, 1980. Minutes of that meeting are attached. The morning of the first day was devoted to presentations by members of the public. In the afternoon the Technical Committee presented its reorganization of Title 29. Staff was directed to prepare a complete text of Title 29 according to the proposed reorganization scheme and to mail it to members of the Policy Advisory Group as soon as possible. The rest of the meeting was devoted to discussion of policy issues and proposed changes to Title 29, with the Technical Committee directed to make several drafts incorporating specific changes to be presented for review by the Policy Group at its next meeting.

The next meeting of the Technical Committee is scheduled to take place in Anchorage on October 20, 1980. The committee will attempt to produce a complete technical revision of Title 29, as well as incorporating the specific changes requested by the Policy Group into drafts. The Technical Committee may require three or four additional meetings in order to complete their revision of the municipal code. The Policy Group is scheduled to meet again in Fairbanks on November 10 and 11, 1980. The meeting is planned to coincide with a meeting of the Municipal League to provide maximum opportunity for interested persons to address the Policy Group. After receiving public comments, the group will make a final decision on the reorganization of Title 29, and consider all drafts submitted by the Technical Committee. It is possible that the Policy Group may request one or two additional meetings for the purpose of considering the final revision of the municipal code before presenting it to the legislature. A statement of actual and projected expenditures is attached.

If you have further questions concerning the Title 29 Revision project, please contact me.

TBC:ljb

Enclosures

cc: Senator Arliss Sturgulewski
Billy G. Berrier

**Title 29 Commission**
**Actual and Projected Expenditures**
**As of 06 October 1980**

| | |
|---|---|
| SCHEDULED MEETINGS: | |
| Balance as of 1 August 1980 | $53,785.00 |
| Policy Group Meeting<br>27 & 28 August 1980 | 3,910.25 |
| Technical Group Meeting<br>08 September 1980 | 1,601.25 |
| Technical Group Meeting<br>19 September 1980 | 1,787.75 |
| Estimated Cost:<br>Policy Group Meeting<br>29 & 30 September 1980 | 3,500.00 |
| Estimated Cost:<br>Technical Group Meeting<br>20 Oct 1980 | 2,000.00 |
| Estimated Cost:<br>Policy Group Meeting<br>11 & 12 November 1980 | 6,000.00 |
| Personal Services to 15 January 1981 | 11,400.00 |
| UNSCHEDULED MEETINGS: | |
| Policy Group Meeting:<br>Late November 1980<br>Mid-December 1980 | <br>3,500.00<br>3,500.00 |
| Technical Group Meetings:<br>November 1980<br>November 1980 | <br>2,000.00<br>2,000.00 |
| Technical Group Meetings:<br>December 1980<br>December 1980 | <br>2,000.00<br>2,000.00 |
| Projected Total Cost: | 45,199.25 |
| Balance: | 8,585.75 |

July 28, 1980

The Honorable Clem V. Tillion
President of the Senate
Halibut Cove, AK 99603

Dear Senator Tillion:

CSSCR 66, Legislative Resolve 39 of the recent legislative session, directs the Alaska Legislative Council to revise AS 29, the municipal government code. A policy advisory group is authorized to assist in that task. Together with two members of each house of the legislature appointed by the respective presiding officers, the resolution also authorizes selection by the presiding officers of an unstated number of public members, drawn from recommendations submitted by legislative members, the Departments of Community and Regional Affairs and Law, the Alaska Municipal League, the Rural Alaska Community Action Program, and the legal services division of this Agency.

At my direction, Jack Chenoweth of this office met today with Ginny Chitwood of the Municipal League, Palmer McCarter (speaking for the administration) and, by phone, Bob Lohr, the deputy director of RuralCAP. It is their suggestion, and my recommendation, that nine public members be appointed to serve with the four legislators previously designated for the policy advisory group for the Title 29 revision. Their suggestion included the following recommended nominations:

Ted Berns, municipal attorney
Municipality of Anchorage

Terry Cook, member of the city council
City of Alakanuk

Marilyn Dimmick, member of the assembly
Kenai Peninsula Borough

James O. Eckstedt, member of the assembly
Matanuska-Susitna Borough, and of the city council
City of Palmer

James Kohler, city manager
City of Yakutat

Gene Moore, city manager
City of Kotzebue

Donna Sherby, city clerk
City of Cordova

Jonathan Solomon, presently working in support of establishment of a rural borough for the Upper Yukon River area, Fort Yukon

Russell W. Walker, attorney
City of Ketchikan and Ketchikan Gateway Borough

The policy advisory group provided for by the resolution will have direct and continuing support and assistance from Palmer McCarter of the Department of Community and Regional Affairs, Ginny Chitwood of the Alaska Municipal League, Phil Smith of RuralCAP, Rod Pegues from the Department of Law, and Tamara Brandt Cook, whom I have assigned from the staff of this division.

Your consideration of the nominations suggested in this letter for appointment as public members of the policy advisory board for the revision of AS 29 is appreciated.

Very truly yours,

Billy G. Berrier
Director
Division of Legal Services

BGB:JBC:jdn

bcc: Senator Sturgulewski
Palmer McCarter
Ginny Chitwood
Phil Smith

MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

**Alaska Municipal League - Nominations for Title 29 Revision Committee**
**(resumes included for several nominees)**

| | |
|---|---|
| **Edward Ambarian**<br>**Member, Kenai City Council**<br>**Member, Kenai Peninsula Borough Assembly**<br>**Former Member, Kenai Planning Commission** | **P.O. Box 580**<br>**Kenai, Alaska 99611**<br>**283-7535** |
| **Theodore D. Berns**<br>**Attorney, Municipality of Anchorage** | **Pouch 6-650**<br>**Anchorage, Alaska 99502**<br>**264-4545** |
| Richard Careaga<br>Planner, City of Unalaska | P.O. Box 89<br>Unalaska, Alaska 99685<br>581-1251 |
| Ginny Chitwood<br>Executive Director, Alaska Municipal League<br>Former Mayor, City & Borough of Juneau<br>Former Chairman, Greater Juneau Charter Commission | 204 North Franklin<br>Juneau, Alaska 99801<br>586-1325 |
| Terry Cook<br>Secretary/Treasurer, Alakanuk City Council | Box 51<br>Alakanuk, Alaska 99554 |
| Samuel L. Coxson<br>Manager, City of Whittier | 6754 Blackberry Street<br>Anchorage, Alaska 99502 |
| Ruby Coyle<br>City of Kenai | P.O. Box 580<br>Kenai, Alaska 99611<br>283-7535 |
| Bill Curtis<br>Manager, City of Palmer<br>Member, AML Legislative Committee | P.O. Box 1368<br>Palmer, Alaska 99645<br>745-3927 |
| Marilyn Dimmick<br>Member, Kenai Peninsula Borough Assembly<br>Member, AML Legislative Committee<br>Former Member, Borough Planning Commission | Box 151<br>Ninilchik, Alaska 99639<br>567-3927 |
| Richard Garnett, III<br>Attorney, Kodiak Island Borough<br>Formerly, Municipality of Anchorage<br>Attorney's Office<br>Formerly, Attorney General's Office | 900 West Fifth Avenue<br>Suite 540<br>Anchorage, Alaska 99501<br>276-2221 |

| | |
|---|---|
| **Bob Jones**<br>**Finance Director, Fairbanks North Star Borough**<br>**President-Elect, Municipal Finance Officers Association**<br>**Member, AML Revenue Sharing Committee**<br>**Member, State Manpower Services Council** | **P.O. Box 1267**<br>**Fairbanks, Alaska 99707**<br>**452-4761** |
| Robert S. Juettner<br>McGrath City Administrator | P.O. Box 57<br>McGrath, Alaska 99627<br>524-3825 |
| Ronald Larson<br>Mayor, Matanuska-Susitna Borough<br>Chairman, AML Legislative Committee | Box B<br>Palmer, Alaska 99645<br>745-4801 |
| John Messenger<br>Preston, Thorgrimson, Ellis Holman & Fletcher<br>AML Associate Member<br>Expertise in Bonding and Finance<br>Former Commissioner of Revenue | 420 "L" Street<br>Suite 404<br>Anchorage, Alaska 99501<br>276-1969 |
| Gene Moore<br>Manager, City of Kotzebue<br>Member, AML Legislative Committee | P.O. Box 186<br>Kotzebue, Alaska 99752<br>442-3401 |
| George Navarre<br>Former Chairman, Kenai Peninsula Borough | Box 580<br>Kenai, Alaska 99611<br>283-7535 |
| * Jim Nordale<br>Attorney, Fairbanks North Star Borough<br>Member, AML Legislative Committee | P.O. Box 1267<br>Fairbanks, Alaska 99707<br>452-4761 |
| Joyce Rasler<br>Manager, City of Wrangell<br>Member, AML Legislative Committee<br>Former Clerk, City of Wrangell | P.O. Box 531<br>Wrangell, Alaska 99929<br>874-2381 |
| Andrew Sarisky<br>Attorney, Kenai Peninsula Borough | Box 850<br>Soldotna, Alaska 99669<br>262-4441 |
| Barbara Shaffer<br>Council Member, City of Nome<br>Member, AML Legislative Committee | P.O. Box 907<br>Nome, Alaska 99762<br>443-2900 |
| Jo Anne Shanley<br>Clerk, City of Seward | P.O. Box 337<br>Seward, Alaska 99664<br>224-5216 |

| | |
|---|---|
| Gerald Lee Sharp<br>Attorney, City and Borough of Juneau<br>Member, AML Legislative Committee<br>Former Member, Greater Juneau Borough Assembly | 155 South Seward<br>Juneau, Alaska 99801<br>586-3300 |
| Donna Sherby<br>Clerk, City of Cordova | P.O. Box 1210<br>Cordova, Alaska 99574<br>424-3237 |
| * Allan E. Tesche<br>Attorney, Matanuska-Susitna Borough | Box B<br>Palmer, Alaska 99645<br>745-3246 |
| Russell W. Walker<br>Attorney, Ketchikan Gateway Borough<br>Attorney, City of Ketchikan | Box 7300<br>Ketchikan, Alaska 99901<br>225-3111 # 327 |
| Michael Walleri<br>Local Government Specialist<br>Tanana Chiefs Conference, Inc. | Doyon Building<br>1st and Hall Streets<br>Fairbanks, Alaska 99701<br>452-8251 |

* Nominees specifically for working group.

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Ms. Ginny Chitwood
204 North Franklin
Juneau, AK 99801

Dear Ms. Chitwood:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook ✓

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Mr. Phil Smith,
327 Eagle Street
Anchorage, AK 99501

Dear Mr. Smith:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

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enclosures

cc: Billy G. Berrier
Tamara Brandt Cook

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Mr. Ted Berns
Pouch 6-650
Anchorage, AK 99502

Dear Mr. Berns:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary, Title 29 Commission

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enclosures

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Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 9981
907-465-3800

September 10, 1980

Mr. Jonathan Solomon
P.O. Box 269
Fort Yukon, AK 99740

Dear Mr. Solomon:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

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Secretary, Title 29 Commission

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Phil Smith

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 9981
907-465-3800

September 10, 1980

Mr. Terry Cook
Box 33
Alakanuk, AK 99554

Dear Mr. Cook:

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Sincerely,

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Secretary, Title 29 Commission

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enclosures

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Ginny Chitwood
Palmer McCarter
Phil Smith

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

September 10, 1980

Mr. Ronald Larson
Box B
Palmer, AK 99645

Dear Mr. Larson:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Secretary, Title 29 Commission

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# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

September 10, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, AK 99501

Dear Senator Sturgulewski:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

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Secretary, Title 29 Commission

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Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Senator Bob Mulcahy
P.O. Box 246
Kodiak, AK 99615

Dear Senator Mulcahy:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

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Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

September 10, 1980

Representative Charles H. Parr
S.R. Box 50599
Fairbanks, AK 99708

Dear Representative Parr:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH V - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

September 10, 1980

Representative Margaret Branson
P.O. Box 740
Cooper Landing, AK 99572

Dear Representative Branson:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

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Tamara Brandt Cook
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# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3867

September 10, 1980

Mr. Russell W. Walker
Box 7300
Ketchikan, AK 99901

Dear Mr. Walker:

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Sincerely,

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Secretary, Title 29 Commission

maf

enclosures

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Tamara Brandt Cook
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# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465 3800

September 10, 1980

Ms. Donna Sherby
P.O. Box 1210
Cordova, AK 99574

Dear Ms. Sherby:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

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Phil Smith

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Mr. Gene Moore
P.O. Box 186
Kotzebue, AK 99752

Dear Mr. Moore:

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Melissa Aber Fouse
Secretary, Title 29 Commission

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# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

September 10, 1980

Mr. James Kohler
P.O. Box 6
Yakutat, AK 99689

Dear Mr. Kohler:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

# STATE OF ALASKA
# THE LEGISLATURE
## LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

September 10, 1980

Ms. Marilyn Dimmick
Box 151
Ninilchik, AK 99639

Dear Ms. Dimmick:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

TITLE 29 REVISION COMMITTEE
Policy Advisory Group Meeting

Minutes of August 27 & 28 1980

The first meeting of the Policy Advisory Group of the Title 29 Revsion Committee was held August 27, 1980 in the Conference Room of the Legislative Information Office, 1024 6th Avenue, Anchorage, Alaska. The meeting was called to order by Billy G. Berrier, Director of the Division of Legal Services at 9:00 am.

Present were: Ted Berns, Terry Cook, Marilyn Dimmick, James Kohler, Gene Moore, Donna Sherby, Jonathan Solomon, Russell W. Walker, Ronald Larson, Senator Arliss Sturgulewski, Senator Bob Mulcahy, Representative Margaret Branson, Representative Charles H. Parr as members of the Policy Group. Also present were Phil Smith and Mr. Palmer McCarter, Ex Officio Members of the Policy Advisory Group. Allan E. Tesche attended representing the Technical Committee. Ted Berns and Russell Walker are also members of the Technical Committee. Mike Walleri of the Tanana Chiefs Conference, Inc., and Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee were present. Billy Berrier and Tamara Cook were present representing the Division of Legal Services, Legislative Affairs. Tam Cook explained that Ginny Chitwood from the Alaska Municipal League could not be present but would attend future meetings as an Ex Officio member.

The first order of business was the selection of a chairman for the committee. Nominations were opened and Senator Sturgulewski was nominated by Representative Parr. The nomination was seconded and Senator Sturgulewski was elected Chairman by acclamation.

Mr. Berrier spoke on the role of the Technical Revision Committee and asked for an appointment of a group. A motion to set up a Technical Revision Group was made by Representative Branson. The motion was seconded and carried. The Technical Revision Committee members will be Ted Berns, Richard Garnett, III; John Messenger, Jim Nordale, JoAnne Shanley, Gerald Lee Sharp, Allan Tesche, and Russell Walker.

The Ex Officio members were introduced and there was discussion as to their role. It was agreed that they should sit at the table and take part in the discussion. Palmer McCarter spoke about the role of Community and Regional Affairs. He said that there would be a representative of C&RA at every meeting, either he or Patrick Poland would attend. Mr. McCarter also presented a letter from the Local Boundary commission requesting the statutes regarding Development cities be left in Title 29 but improved. Phil Smith spoke on the concerns of RuralCAP regarding the impact of government on villages and rural areas.

Representative Parr suggested directions for the Policy Committee: 1). greater self determination and latitude for local governments; and 2.) that elected officials should be able to understand Title 29 without the help of attorneys. Senator Sturgulewski agreed that Title 29 needed clarification.

The members present of the Technical Committee met briefly and Ted Berns, as spokesman, gave a report regarding the ideas they discussed. The group recommended that Title 29 be broken down into three sections.

1. The first section to be general provisions applying to all local government.
2. The second section to be delineation of procedures and additional limits on specific forms of government.
3. The third section to be directory provisions to be used unless the local government adopts ordinances of their own.

It was decided that the Technical Committee should attempt to reorganize Title 29 along these lines and present a draft at the next meeting.

Mike Walleri, Village Government Specialist, Tanana Chiefs Conference, Inc., spoke, saying he would like a simplification of government.

A list of items pertaining to Title 29 included in the preliminary draft of the Alaska Municipal League 1981 policy statement was handed out.

Future meeting dates and places were discussed. None were decided upon.

The kinds of things applicable to all municipalities were discussed, such as incorporation, dissolution, boundary changes, classification of government, extraterritorial powers, merger/consoldiation, revenue, taxation, bonding, and intergovernmental relations.

Protection of people in service areas who are not represented by local government, such as persons living outside city limits, was discussed.

The meeting recessed at 4:00 pm.

The meeting was called to order the second day at 9:00 am., Chairman Sturgulewski presiding. In addition to the persons present at the first day's meeting, Chris Johnson of House Research and Nels Franklin from near Dillingham were present, and introduced by Chairman Sturgulewski.

Ted Berns gave a recap of the first days meeting.

Terry Cook was appointed repository of ridiculous laws.

Senator Mulcahy spoke on the problem of getting information, drafts, and policy issues to all municipalities within the time constraints. Phil Smith suggested a teleconference and said that he would be presenting material at the Alaska Federation of Natives Convention (23-25 October 1980, in Anchorage). It was decided that the problem of getting materials and information to the public would be an agenda item at the next meeting. Palmer McCarter, Phil Smith, and Ginny Chitwood of the Alaska Municipal League were appointed to a committee to research this problem and make recommendations.

Melissa Fouse was introduced as the new secretary to the Title 29 Revision Committee.

As part of the reorganization of Title 29, there was discussion as to which statutues belonged in which category.

Representative Parr wants a uniform provision on executive session. There was discussion on executive sessions.

The question of retaining present categories of government was raised and discussed. Ted Berns suggested only two classes of boroughs and home rule, pointing out that there are no first class boroughs.

The question of development cities was raised and discussed. Should we retain, restructure, or eliminate development cities?

There was discussion on the third category. If a municipality choses to follow procedures, should they be required to follow all of them?

Senator Mulcahy's legislation regarding the recognition of village governments was discussed. Copies of HB 192 are to be mailed to committee members.

There was discussion of persons representing committee members being allowed to vote. Mr. Berrier had reservations based on the appointment of the members of the commission according to resolution. It was decided that persons filling in for committee members be allowed to take part in the discussion, but would not be allowed to vote.

The meeting was adjourned at 12:00 pm.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse

BOX 234
DILLINGHAM, ALASKA 99576
HOME PHONE 842-5302

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
PHONE 465-3738 OR 3739
HOME PHONE 789-7897

BRISTOL BAY — LOWER KUSKOKWIM

HOUSE MAJORITY LEADER
VICE CHAIRMAN JUDICIARY COMMITTEE
MEMBER, RULES COMMITTEE
MEMBER, SPECIAL COMMITTEE
ON SUBSISTENCE

House of Representatives

August 26, 1980

Mr. Palmer McCarter, Director
Division of Local Government Assistance
Department of Community & Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Sir:

It has come to my attention that the second class cities and unincorporated village governments in the Bristol Bay Region will experience severe problems in meeting the September 20, 1980 deadline for mailing completed State Revenue Sharing applications to qualify for the $25,000 minimum entitlement provided for in the new law revising the State Revenue Sharing Program. It has further come to my attention that applications were only recently mailed to general law municipalities and that applications for traditional governing councils have yet to be mailed.

The September 20th time deadline is further compounded by the problem that many of the villages in our region are currently unaware of the provision in the new law which provides state aid to eligible governments recognized under the Alaska Native Claims Settlement Act. Another very real problem is the frequency of mail delivery service, which is sporatic at best, to many of the villages in the more remote areas.

A lot of work on the part of rural legislators went into FCCHB 192 reforming the State Revenue Sharing Program to include state aid to unincorporated governments and the $25,000 minimum entitlement provision for small rural municipalities with no tax base.

With the September 20th deadline for mailing applications just around the corner, it appears that many local governments that could take advantage of the new State Revenue Sharing program will be unable to do so. I would encourage your department to strongly consider extending the deadline to allow more local governments desperately in need of such monies to have the time to properly complete the application process.

Thank you.

Very sincerely,

Nels A. Anderson, Jr.

Nels A. Anderson, Jr.

cc: Senator George Hohman
Rep. Bill Parker
Sen. Arliss Sturgulewski
Governor Hammond
Commissioner Lee McAnerney, CRA
TUNDRA TIMES
TUNDRA DRUMS

OK
copy title 29 committee

CITY OF MC GRATH
P.O. BOX 57 MC GRATH, ALASKA 99627
PHONE (907) 524-3825

August 26, 1980

Arliss Sturgulewski, Senator
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

Dear Senator Sturgulewski,

Back at the beginning of the summer, I attended a meeting called by the Division of Community Planning. It was a "loose meeting" in that the agenda was flexible and covered many areas and concerns. Somewhere in the meeting, we touched upon the changes proposed by the Community & Regional Affairs Committees. If I am not mistaken, everyone agreed that the committees were on the right track especially in regards to the establishment of service areas following REAA boundaries.

Well, it seems that those of us living in the "bush" know more about what happens in Juneau than some of the state employees living and working there. For example, the Dept. of Health & Social Services just unveiled a plan whereby the communities of Holy Cross, Anvik, Shageluk and Grayling which are all in the Iditarod Area School District, REAA 11, will now receive there public health nurse services from Bethel. Ms Lois Bergerson decided that those people would be better served from Bethel than McGrath. Was there any local input from those communities? Was any consideration given to the fact that those people are Athabascans and not Yupiks? Did anyone think to explore the logic behind the boundaries of REAA 11? The answer to all three questions is no. However, Ms Bergerson is adamant that the changes will take effect on Sept. 1 irregardless of any protests.

It is my firm hope that when the Legislature convenes in January, that the Community & Regional Affairs Committees will reintroduce the same package of bills.

Sincerely,

Robert S. Juettner
City Administrator

8/29/80 Advised Bob I waved bring to committee → Jim Cooke – Please copy AS 29 Review. Committee civil ex-officio + Dept HSS + Fran Ulmer

**Municipality of Anchorage**

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

*GEORGE M. SULLIVAN, MAYOR*

OFFICE OF THE MUNICIPAL ATTORNEY

**September 2, 1980**

**Title 29 - Technical Review Committee**

**Re: Organizational Meeting**

It is my understanding that you have agreed to serve on a technical review committee to assist in a comprehensive review of AS Title 29. (Municipal Government). A Policy Review Group has been appointed by the Legislature to review Title 29 and report on any recommended revisions. The Technical Committee has been asked to assist the Policy Group in recommending changes and reorganizing the present body of statutes. As a member of the Policy Group, I have been asked to act as liason with the Technical Committee. I would therefore like to propose an organizational meeting and to pass along some preliminary requests made by the Policy Group at its initial meeting on August 27th and 28th in Anchorage.

One of the first points of consensus reached by the Policy Group was a feeling that the present Title 29 is confusing and badly organized. The Policy Group therefore requested the Technical Committee to explore the feasibility of a new organization for Title 29. Under the proposed organization, the present statute would be organized into roughly three or four categories according to their applicability. Category I would be those provisions applicable to and binding upon all municipal governments, including home rule municipalities. Category II would then contain statutory material constituting additional limitations or prescriptions for various classes of cities or boroughs. Category III would seek to address the needs of many smaller communities by containing directory administrative and legislative provisions. Such provisions would apply to local governments unless a municipality, by ordinance, rejected coverage in order to adopt its own local procedures. Probably, a Category IV containing miscellaneous and general matter would also be necessary.

It should be noted that, in addition to favoring a simplified organization for Title 29, there seemed to be considerable initial support for increasing local government autonomy. One of the Policy Group's next tasks will probably be a section-by-section analysis of the present statutes to determine which laws might either be eliminated or placed in a "directory" category to be used at the option of municipalities.

The Policy Group is tentatively looking at a second meeting on or about September 22nd. At this time, it is hoped that the technical group, together with staff, will have prepared an outline of a proposed new organization showing all of the present statutes organized into the three or four categories described above. Additionally, I know many of you submitted specific written comments on the present statutes, and I suggest that we explore a division of labor to begin preparing specific recommended statutory changes for consideration by the Policy Group.

Since time is uncomfortably short, I would like to propose an initial meeting for 9:00 a.m., Monday, September 8, 1980, at the Legislative Information Office, 1024 W. 6th Avenue, Anchorage. At this meeting, the committee would attempt to respond to the requests of the Policy Group and to discuss its future role in the review of Title 29. Hopefully, everyone will be able to consider in advance of September 8, a proposed reorganization along the lines described above and begin our individual grouping of present statutes. Recognizing all of our busy schedules, I am hopeful that a one day meeting on the 8th will be sufficient. However, if necessary, you may wish to allow for some time on your calendar for the morning of the 9th.

It is my understanding that travel and per diem expenses will be reimbursed. Please contact Ms. Tamara Cook, Legislative Counsel, 465-4996 for details. I look forward to seeing you in Anchorage. Please feel free to contact my office at 264-4236 with any questions.

Sincerely,

DEPARTMENT OF LAW

Theodore D. Berns
Municipal Attorney

TDB:gml
cc: Ms. Tamara Cook
Bill Berrier

(907) 586-1325
586-6026
JUNEAU, ALASKA 99801

July 16, 1980

The Honorable Terry Gardiner, Speaker
State House of Representatives
P.O. Box 6092
Ketchikan, Alaska 99901

Dear ~~Representative~~ Terry Gardiner:

Enclosed is a list of people who have volunteered or who have been recommended to serve on the Title 29 Revision Committee. I have sent the same list to Clem Tillion.

I had originally intended to offer a limited number of names for consideration. I believe, however, it is very important that the committee represent a broad spectrum of Alaska local government interests and without knowing what areas were being covered by other nominations, I found it very difficult to cut down my list.

If I can be of any assistance once all the names have been submitted, I will be happy to do so.

Sincerely,

Ginny

Ginny Chitwood
Executive Director

cc: Billy Berrier, Director, Division of Legal Services
Lee McAnerney, Commissioner, Department of CRA
Phil Smith, RuralCAP

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

July 16, 1980

The Honorable Clem Tillion
President, Alaska State Senate
Halibut Cove, Alaska 99603

Dear Senator Tillion:

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Phil Smith, RuralCAP

MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

**Alaska Municipal League - Nominations for Title 29 Revision Committee**
**(resumes included for several nominees)**

| | |
|---|---|
| Edward Ambarian<br>Member, Kenai City Council<br>Member, Kenai Peninsula Borough Assembly<br>Former Member, Kenai Planning Commission | P.O. Box 580<br>Kenai, Alaska 99611<br>283-7535 |
| Theodore D. Berns<br>Attorney, Municipality of Anchorage | Pouch 6-650<br>Anchorage, Alaska 99502<br>264-4545 |
| Richard Careaga<br>Planner, City of Unalaska | P.O. Box 89<br>Unalaska, Alaska 99685<br>581-1251 |
| Ginny Chitwood<br>Executive Director, Alaska Municipal League<br>Former Mayor, City & Borough of Juneau<br>Former Chairman, Greater Juneau Charter Commission | 204 North Franklin<br>Juneau, Alaska 99801<br>586-1325 |
| Terry Cook<br>Secretary/Treasurer, Alakanuk City Council | Box 51<br>Alakanuk, Alaska 99554 |
| Samuel L. Coxson<br>Manager, City of Whittier | 6754 Blackberry Street<br>Anchorage, Alaska 99502 |
| Ruby Coyle<br>City of Kenai | P.O. Box 580<br>Kenai, Alaska 99611<br>283-7535 |
| Bill Curtis<br>Manager, City of Palmer<br>Member, AML Legislative Committee | P.O. Box 1368<br>Palmer, Alaska 99645<br>745-3927 |
| Marilyn Dimmick<br>Member, Kenai Peninsula Borough Assembly<br>Member, AML Legislative Committee<br>Former Member, Borough Planning Commission | Box 151<br>Ninilchik, Alaska 99639<br>567-3927 |
| Richard Garnett, III<br>Attorney, Kodiak Island Borough<br>Formerly, Municipality of Anchorage<br>Attorney's Office<br>Formerly, Attorney General's Office | 900 West Fifth Avenue<br>Suite 540<br>Anchorage, Alaska 99501<br>276-2221 |

| | |
|---|---|
| **Bob Jones**<br>**Finance Director, Fairbanks North Star Borough**<br>**President-Elect, Municipal Finance Officers Association**<br>**Member, AML Revenue Sharing Committee**<br>**Member, State Manpower Services Council** | **P.O. Box 1267**<br>**Fairbanks, Alaska 99707**<br>**452-4761** |
| Robert S. Juettner<br>McGrath City Administrator | P.O. Box 57<br>McGrath, Alaska 99627<br>524-3825 |
| Ronald Larson<br>Mayor, Matanuska-Susitna Borough<br>Chairman, AML Legislative Committee | Box B<br>Palmer, Alaska 99645<br>745-4801 |
| John Messenger<br>Preston, Thorgrimson, Ellis Holman & Fletcher<br>AML Associate Member<br>Expertise in Bonding and Finance<br>Former Commissioner of Revenue | 420 "L" Street<br>Suite 404<br>Anchorage, Alaska 99501<br>276-1969 |
| Gene Moore<br>Manager, City of Kotzebue<br>Member, AML Legislative Committee | P.O. Box 186<br>Kotzebue, Alaska 99752<br>442-3401 |
| George Navarre<br>Former Chairman, Kenai Peninsula Borough | Box 580<br>Kenai, Alaska 99611<br>283-7535 |
| * Jim Nordale<br>Attorney, Fairbanks North Star Borough<br>Member, AML Legislative Committee | P.O. Box 1267<br>Fairbanks, Alaska 99707<br>452-4761 |
| Joyce Rasler<br>Manager, City of Wrangell<br>Member, AML Legislative Committee<br>Former Clerk, City of Wrangell | P.O. Box 531<br>Wrangell, Alaska 99929<br>874-2381 |
| Andrew Sarisky<br>Attorney, Kenai Peninsula Borough | Box 850<br>Soldotna, Alaska 99669<br>262-4441 |
| Barbara Shaffer<br>Council Member, City of Nome<br>Member, AML Legislative Committee | P.O. Box 907<br>Nome, Alaska 99762<br>443-2900 |
| Jo Anne Shanley<br>Clerk, City of Seward | P.O. Box 337<br>Seward, Alaska 99664<br>224-5216 |

| | |
|---|---|
| **Gerald Lee Sharp**<br>**Attorney, City and Borough of Juneau**<br>**Member, AML Legislative Committee**<br>**Former Member, Greater Juneau Borough Assembly** | **155 South Seward**<br>**Juneau, Alaska 99801**<br>**586-3300** |
| Donna Sherby<br>Clerk, City of Cordova | P.O. Box 1210<br>Cordova, Alaska 99574<br>424-3237 |
| * Allan E. Tesche<br>Attorney, Matanuska-Susitna Borough | Box B<br>Palmer, Alaska 99645<br>745-3246 |
| Russell W. Walker<br>Attorney, Ketchikan Gateway Borough<br>Attorney, City of Ketchikan | Box 7300<br>Ketchikan, Alaska 99901<br>225-3111 # 327 |
| Michael Walleri<br>Local Government Specialist<br>Tanana Chiefs Conference, Inc. | Doyon Building<br>1st and Hall Streets<br>Fairbanks, Alaska 99701<br>452-8251 |

* Nominees specifically for working group.

MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

The following information was phoned into the League office:

Richard Careaga - Planner, City of Unalaska
P.O. Box 89
Unalaska, Alaska 99685
581-1251

Eight years planning experience:
In Unalaska since February 1, 1980, establishing planning department.

Masters Degree - Regional Planning

Member - American Planning Association
Member - American Institute of Certified Planners

Represents a First Class City in an Unorganized Borough

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

July 9, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 North Franklin
Juneau, Alaska 99801

Re: Title 29 Revision Committee

Dear Ms. Chitwood:

In reference to the announcement from the Alaska Municipal League concerning nominees for a policy committee to study proposed changes in Alaska Title 29, I would like to submit my name for consideration as a member of the committee. I believe that you are already familiar with my background in municipal law. However, for the benefit of other members of the selection team, I would like to offer a brief synopsis. I have been engaged in the practice of municipal law in Alaska for over four years. I am currently serving as Municipal Attorney for the Municipality of Anchorage, and have held my present position for approximatley two and one-half years. As Municipal Attorney, I have been involved in all phases of municipal law, and have served as past president of the Alaska Municipal Attorney's Association. Additionaly, I have spent considerable time during two past legislative sessions as a lobbyist for the Municipality. Included among my duties was substantial responsiblity for drafting state legislation on behalf of the Municipality of Anchorage. A further description of my academic background and other credentials could be provided upon request.

I believe that I am quite familiar with the provisions of the present AS Title 29 with respect to both home rule and general law of municipalities in Alaska. Although I believe the present code is quite adequate in many respects, I'm sure that others share my concern over many ambiguities in the present law involving such critical aspects of municipal government as service area functions, distinctions between home rule and non-home rule powers, and a variety of other concerns. I have been assured by Mayor Sullivan that he has no objection to my making the necessary time available to serve as a member of the commitee.

Municipality of Anchorage

ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN, MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

July 9, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 North Franklin
Juneau, Alaska 99801

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RESUME
1980

COXSON, Samuel L. Telephone: (907) 243-1652, home
6754 Blackberry St.
Anchorage, Alaska 99502

PERSONAL DATA — Born July 22, 1945
Married; two children

EDUCATION

1978 — M.P.A., University of Pittsburgh. Thesis, "Politics of Public Administration: A Case Study of Intergovernmental Lobbying in Alaska."

1971 — B.S. Political Science, Iowa State University

Other Education — Numerous ICMA correspondence courses and short courses in public management.

PROFESSIONAL EXPERIENCE

Present February 1979 — City Manager, Whittier, Alaska. With a summer population of 1,200 and winter population of 300, this diversified community requires a full range of municipal services. The city employs fifteen people, has a budget of approximately $600,000, and occupies 20 square miles. Significant management accomplishments include complete rehabilitation of the city's financial and budgeting procedures; overhaul of financial records of more than $50,000; construction of water system improvements; development and planning for a major recreation area, including road access funds through lobbying; execution of a property tax passed but not levied in prior years; and establishment of an updated and workable personnel system. Additional accomplishments include identification and development of income producing assets owned by the city; risk management evaluation and proper adjustments to risk program; development of tourism brochure for city.

December 1977 May 1975 — Senior Administrative Assistant, Anchorage, Alaska (pop. 200,000). Anchorage, the state's largest city, is approximately 1900 square miles and offers more than the full range of municipal services with its ownership of power and telephone utilities. It has approximately 2,400 employees and an operating budget of $140,000,000. Major management accomplishments as senior administrative assistant were setting up an effective intergovernmental program; assisting in merger of the former City of Anchorage and Greater Anchorage Area Borough and concurrent organizational development concerns; writing and coordinating the execution of

over fifteen million dollars in capital improvement grants and participating as the municipality's first liaison with Anchorage's seventeen community councils.

May 1975
May 1973 — City Manager of Dillingham, Alaska (pop. 1,200). This outpost community, while not only requiring a full range of municipal services, had tremendous logistics problems which affected every facet of municipal management. The city of forty square miles and operating budget of $700,000 required extreme diligence and planning to accomplish the ordinary. Major management accomplishments were the operation of a city-owned fish cold storage plant; expansion and development of an ocean-going barge facility; construction of a sewage treatment plant and establishment of program budgeting and idle cash balance program.

April 1973
September 1972 — Acting Borough Manager, Administrative Assistant, and Administrative Intern of Forest Hills, Pennsylvania (pop. 10,000). Significant management responsibilities were full charge of the $1,200,000 budget, rewriting the purchasing procedures and special projects such as the federal flood plain insurance program.

MILITARY EXPERIENCE — U.S. Army, Army Security Agency, September, 1963-August, 1967.

BACKGROUND SUMMARY — A professional municipal management background in managing two cities; significant contribution to the merger and operation of Anchorage and extensive lobbying on intergovernmental relations for that city. Success in developing municipal infrastructure and encouraging economic development and growth. Proven ability to work with elected officials, the public, business and municipal employees on a cooperative and positive basis.

PROFESSIONAL ACCOMPLISHMENT — Secretary for three years of Alaska Municipal Management Association; membership in the ICMA Academy for Professional Development; university instructor in public administration; participant in research programs in state revenue sharing analysis and labor relations seminars.

REFERENCES — Mr. Vernon R. Johnson, C.P.A., 5310 North Star Dr., Anchorage, AK 99502, (907) 279-8129, home; (907) 276-7401, office.

Mr. Norman Levesque, Manager, Matanuska-Susitna Borough, P.O. Box B, Palmer, AK 99645, (907) 279-8129, home; (907) 276-7401, office.

Mr. Douglas G. Weiford, City Manager, 3900 Main St., Riverside, CA 92501, (714) 787-7552, office.

July 2, 1980

Alaska Municipal League
204 North Franklin
Juneau, AK 99801

To Whom It May Concern:

Regarding public members for the policy committee for revision of the Alaska Municipal Government Code -- Title 29, Bob Juettner, City Administrator for the City of McGrath would be an asset to the committee in it's endeavors. He is an interested, knowledgable person concerned with responsive, meaningful local government.

He has exhibited this concern and knowledge while serving in the community of McGrath. There has been measurable increases in citizen involvement and governmental and community services. Bob works conscientiously, with dedication in all of his objectives.

I would recommend his selection for the policy committee for revision of Title 29 without any reservations. Feel free to contact me if you would like further references about Bob Juettner's character and abilities.

Respectfully,

Michael C Harrington

Michael Harrington,
McGrath City Council

MH:jv

CURRICULUM VITAE OF

ROBERT S. JUETTNER

EDUCATION

1977-Present — Master of Arts in Teaching, University of Alaska. This program consisted of course work and research under the direction of the faculty of the Center ofr Cross Cultural Studies, U. of A., Fairbanks. While engaged in this program I was one of nine graduate assistants who participated in the Small High School Project which gathered data concerning the effectiveness of small high schools in western Alaska established under the Tobeluk consent decree and developed alternative educational program development. I currently hold a Type A, Alaska Secondary Teaching certificate and am six hours short of completing my degree.

1972 — Master of Arts, History, University of Arizona. This program consisted of 30 hours in Chinese and Japanese history and 12 hours of supporting courses in Oriental Studies.

1967 — Bachelor of Arts, History and Philosophy, Defiance College.

HONORS AND PUBLICATIONS

1977 — Kellogg Foundation Assistantship
1971 — Out-of-State Tuition Scholarship, University of Arizona
1969 — Navy Achievement Award with Combat "V".
1979 — Evaluation-Who Needs It? A Small High School Illustration. Bob Juettner, Judith Kleinfeld
1978 — Small High School Programs For Rural Alaska. Barnhardt, et al.
1978 — Iditarod Area School District Small High School Evaluation. Bob Juettner and Judith Kleinfeld.

Certifications--Arizona Community College Academic certificate, major History, minor Philosophy. Type A Alaska Secondary teaching certificate in social studies.

WORK EXPERIENCE

Nov. 1978-Present — City of McGrath, McGrath, Alaska. As City Administrator I perform the managerial functions for the City and supervision of three City employees. I possess a working knowledge of several State and Federal agencies and programs and have been highly successful in securing capital improvement funding for the City. More importantly, I have established good working relationships with Federal and State officials including our legislators in Juneau. In addition, I have successfully coordinated a $2,000,000 City, State, and Federal Capital Improvement Project for this community and combined a direct legislative appropriation with FmHA fund to complete a comprehensive growth plan for the City begun with HUD "70" funds. Besides having a knowledge of programs and intimate awareness of the problems faced by muncipalities in western Alaska, I have a good understanding of the complex relationships that exist as a result of ANCSA, previous BIA policies, Statehood, and the diverse peoples who comprise it's population.

Spring 1977 — Community Education, Southern Arizona. In Pima County, as a volunteer, I initiated and coordinated the first county wide community education meetings including rural school administrators, county education personnel, Southwest Regional Center for Community Education personnel and Project PREP personnel. PREP is a nonprofit, rural outreach organization.

[illegible]

[illegible] 1971- Duval Sierrita Corporation, Sahuarita, AZ. As an Analyst I, my duties
[illegible] 1977 were divided into two areas: administrative and technical. My administrative duties include the training of new personnel in proper laboratory procedures and the review of daily and special project reports. Technical duties include geochemical, oil, environmental analysis and special projects with a strong instrumentation background.

Spring 1973 Continental Elementary School, Continental, AZ. As a volunteer, I conducted the community and resource surveys that led to the Continental Community School.

1967- 1969 United States Marine Corps. I performed the duties of a rifleman and Battalion Mail Clerk. I achieved the rank of corporal befoe my honorable discharge in 1969.

OUTSIDE INTERESTS

Hiking, backpacking, mountaineering, reading and music.

PERSONAL INFORMATION

Maritial Status: Married
Health: Excellent
Number of Dependents: Two

REFERENCES

Available upon request.

SALARY
Negotiable, dependent upon responsibility and duties.

# MAUNELUK ASSOCIATION

P. O. Box 256
Kotzebue, Alaska 99752

Phone
(907) 442-3311
or
(907) 442-3313


July 8, 1980

Ms. Lee McAnerney, Commissioner
Dept. of Community & Regional Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

We recommend that you select for the Title 29 revision committee Mr. Gene Moore, City Manager of Kotzebue.

Mr. Moore has had experience in trying to operate under Title 29 in a bush community, and has ideas on how to revise the statutes. He brings experience from other states which could be useful.

The City of Kotzebue has had to deal with most of the problems endemic to bush communities, including facility development and maintenance on a restricted revenue base.

In addition, he has been involved in discussions at the Municipal League on the unorganized borough, and has been more exposed than others in the State to the combination of Coastal Management, Regional Strategy, and the problems they seek to solve jointly.

While his perspective may be different than the region as a whole, and Kotzebue's problems may not be exactly the same as small villages, he could articulate the problems, and suggest appropriate language for the statutes.

A background resume' is attached. Thank you.

Sincerely,

MAUNELUK ASSOCIATION

Dennis J. Tiepelman
President

DJT/etk

ENCLOSURE

Synopsis of Resume of:

Gene F. Moore
P O Box 186
Kotzebue, Alaska 99752

Home Phone
907-442-3407

Work Phone
907-442-3401

## Employment

| | |
|---|---|
| Oct. 78 - Present | City Manager<br>City of Kotzebue, Alaska |
| Jun. 77 - Oct. 78 | Town Manager<br>Town of Bluefield, Virginia |
| Sept. 75 - Apr. 77 | City Manager<br>City of Manassas Park, Virginia |
| Apr. 74 - Sept. 75 | Dir. Community Development/Acting City Manager<br>City of Manassas Park, Virginia |
| Feb. 54 - Apr. 74 | Superintendent of Operations Control Center<br>Office of the Secretary<br>United States Air Force (Pentagon)<br>Washington, D.C. |

## Education

| | |
|---|---|
| High School: | Sand Hill, Asheville, North Carolina |
| College: | University of Omaha, Omaha Nebraska<br>University of Maryland, Far East Division, Japan |
| Other: | Numerous courses in Public Administration, Engineering, Political Science, Economics and Management both in residence and correspondence. |

## Personal

| | |
|---|---|
| Age: | 43 |
| Date of Birth: | December 23, 1936 |
| Place of Birth: | Asheville, North Carolina |
| Appearance: | Height: 6' ; Weight 185 lbs. |
| Health: | Excellent |
| Affilations: | American Legion<br>V F W<br>Lions Club<br>Alaska Municipal Managers Assoc.<br>International City Management Assoc.<br>American Management Assoc.<br>American Water Works Assoc.<br>American Society of Public Administration<br>Society of Planning Officials<br>Alaska Municipal League<br>National League of Cities<br>American Industrial Development Assoc. |

References and expanded resume available on request.

KENAI PENINSULA BOROUGH
BOX 850 · SOLDOTNA, ALASKA 99669
PHONE 262-4441

DON GILMAN
MAYOR

July 8, 1980

Ginny Chitwood, Executive Director
Alaska Municipal League
204 N. Franklin
Juneau, Alaska 99801

Dear Ginny:

I would like to nominate Andrew Sarisky, Borough Attorney for the Kenai Peninsula Borough, to be appointed to the Policy Committee for the revision of the Alaska Municipal Code.

Andy has an extensive background in utility and municipal law, having practiced in and for the City of Cleveland, Ohio, for many years before coming to Alaska as the first general counsel for RCA-Alascom.

He has some definite ideas and suggestions on how to streamline and consolidate many of the provisions which are overlapping after the consolidation of Title 29 and Title 7 in 1972.

I feel he would be a definite asset to any Policy Committee.

Sincerely,

Donald E. Gilman, Mayor
Kenai Peninsula Borough

DEG:mw

# Alaska Association Chiefs of Police

July 1, 1980

GINNY CHITWOOD -- EXECUTIVE DIRECTOR
ALASKA MUNICIPAL LEAGUE
204 N. Franklin Street
JUNEAU, AK 99801

Dear Ginny:

In response to your letter of June 27, 1980, regarding the appointment of a policy committee for the revision of Title 29, I would like to submit for your review the name of JoAnne Shanley.

JoAnne has been the City Clerk for Seward for the past four years and, in that position, works with Title 29 on almost a daily basis. Although Seward is a Home Rule city, the Clerk refers to Title 29 on a regular basis to make sure the provisions of the Seward City Code are in compliance with the State Statutes; and, furthermore, she makes recommendations for revisions to the Seward Code based on Title 29 provisions. She has proven very knowledgeable in her basic understanding and applicability of the Alaska Municipal Government Code and I am sure she would be an asset to the committee.

Enclosed is JoAnne's resume' for your perusal. Thank you for your consideration of her name as an appointee to the committee.

Sincerely,

LOUIS BENCARDINO
PRESIDENT

Enclosure

LB/jes

# RESUME' - JOANNE SUHR SHANLEY

PERSONAL INFORMATION AND EDUCATION:

| | |
|---|---|
| Birthdate: | April 4, 1951 |
| Marital Status: | Single |
| College: | Central Washington State, Ellensburg |
| Majors: | Business Education/Administrative Management |
| Graduated: | March 16, 1973 |

WORK EXPERIENCE:

City Clerk-Treasurer for City of Seward, Alaska. Employed by seven-member Council. Responsible for preparing agendas and recording proceedings of City Council, Harbor Commission and Planning and Zoning Commission meetings; maintain permanent City records and, upon my arrival in 1976, initiated legislative history system which is now complete for City Council proceedings from 1912-present; drafting of routine legal contracts and agreements, ordinances and resolutions, acting in a paralegal capacity; preparing of departmental budget ($80,000); organized all deeds and easements relative to City property; administer City elections and assist with State and Borough elections; responsible for legal publications; supervise 2-3 employees, establishing specific goals but allowing for employees' discretion in the attainment of the end product. Employed June 16, 1976 - present

Assistant City Clerk for Evelyn L. Roberson, City Clerk, City of South Lake Tahoe, California. ~~Letter of recommendation explaining duties in detail attached~~. Employed September 1975 - May 1976

Manager of The Lakewood Lodge Motel, South Lake Tahoe, California; Ralph and Pat Forgeon, owners. Managed 60 unit motel complex and 5-10 employees depending on the season. Employed December 1974 - September 1975

Administrative Assistant for Seattle/King County Office of the Ombudsman, Seattle. ~~Letter of recommendation explaining duties in detail attached.~~ Employed January - August 1974

Secretary to J.A. McMillan, Labor Relations Administrator, Pacific Maritime Association, Seattle, Duties included routine correspondence, minutes of meetings, duplicating and bulk mailings, kardex and general filing systems and other office/clerical tasks, legal arbitration research. Employed March - September 1973

Director of SERVE - Students Engaged in Research and Volunteer Experiences Prepared annual budget and coordinated office duties of four employees, established program goals and objectives, conferred with off-campus agencies and department heads to arrange for student volunteer, credited experiences. Employed from January - December 1972 while attending college.

AWARDS AND HONORS:

Most Outstanding Junior Award - Junior Class, Kennewick High School, WA (1968)
Girl of the Year and Dormitory President - Jennie Moore Hall, Central Washington State College, Ellensburg, WA (1971)
Who's Who Among Students in American Universities and Colleges - 1972-1973
Who's Who in the West - 1980-1981 edition

REFERENCES:

Available upon request

GERALD LEE SHARP
PERSONAL


Date of Birth: February 9, 1935

Home Address: 957 Gold Belt Avenue
Juneau, Alaska 99801
(907) 586-6862

Office Address: 155 South Seward Street
Juneau, Alaska 99801
(907) 586-3300


## EMPLOYMENT (LAW)

Assistant Attorney, City and Borough of Juneau
August 1973 - June 1974

Attorney, City and Borough of Juneau
July 1974 - present

## EDUCATION

B.A. Political Science, University of Washington, 1970

J.D., University of Washington School of Law, 1973

## MEMBERSHIPS

Alaska State Bar
Washington State Bar
American Bar Association
Alaska Municipal Attorneys' Association (Currently President)
National Institute of Municipal Law Officers
American Association of Hospital Attorneys
Alaska Municipal League Legislative Policy Committee

## PUBLICATIONS

Sharp, Home Rule in Alaska: A Clash Between the Constitution and the Court, UCLA-Alaska Law Review 1, 1973.

# ALLAN E. TESCHE

## PERSONAL


Date of Birth: August 3, 1948

Home Address: P. O. Box 2601
Palmer, Alaska 99645
(907) 376-5384

Office Address: Matanuska-Susitna Borough
Box B
Palmer, Alaska 99645
(907) 745-4801


## EMPLOYEMENT

Matanuska-Susitna Borough, Borough Attorney
August, 1979 - present

I am presently reponsible for handling all legal matters of the Matanuska-Susitna Borough and monitor private counsel retained by the Borough for special projects or overflow work. My duties also include advising the Borough Assembly and numerous Borough boards and commissions during their official proceedings, preparing legal opinions, legal document drafting and review, assisting the Borough Assembly and Manager on labor relations matters including collective bargaining with Borough employees and special projects as assigned. I also serve as Acting Manager of the Borough in the absence of the Borough Manager.

Municipality of Anchorage, Deputy Municipal Attorney
February, 1978 - August, 1979

I was responsible for the supervision of eight attorneys, two legal interns and approximately ten support staff assigned to the Civil Division of the Office of Municipal Attorney. My responsibilities included assignment of cases and opinion requests to attorney staff, allocation of staff to special projects, and review of Municipal Assembly agenda items. Although my primary duties were managerial, I maintained a moderately heavy caseload of land use, regulatory, and miscellaneous litigation. Finally, I advised the Mayor and attended Assembly meetings as Acting Municipal Attorney in the absence or on request of the Municipal Attorney.

Municipality of Anchorage, Assistant Municipal Attorney
August, 1975 - February, 1978

Under the supervision of the Municipal Attorney, I advised the Public Works Department on zoning and building code enforcement matters and handled related litigation from that department,

advised the Municipal Clerk on business licensing regulations, advised the Planning Department on land use matters, assisted in selected labor and personnel problems, handled several pieces of major litigation, assisted in misdemeanor prosecution and legislative drafting. Past assignments with the Department of Law include advising the Municipal Health Department and managing a small collections staff which litigates delinquent utility and tax cases in district court.

Greater Anchorage Area Borough, Legal Intern
June - December, 1974

For six months I participated in the Quarter Away clinical program sponsored by the Greater Anchorage Area Borough and the University of California-Davis Law School. My duties included misdemeanor prosecution, legal research, advising administrative departments on legal matters, and assisting in civil litigation.

State of California, Department of Consumer Affairs, Legal Intern
Summer, 1973

Assigned to the Department's Consumer Affairs Division, I assisted its legal staff in preparation and analysis of state legislation affecting the Department, drafting position papers and testimony, handling routine consumer complaints, and special research projects, including proposed reforms of California's small claims courts.

United States Peace Corps, El Salvador
1970 - 1972

Assigned to a community development program, I had primary responsibility for the promotion, organization, and execution of self-help public works projects in rural communities located in the northwest region of El Salvador. The last six months of my tour consisted of managing a special projects fund for the United States AID program in El Salvador.

## EDUCATION

University of California School of Law, Davis, California
J.D. 1975

Member, Phi Delta Phi legal fraternity.
Graduated in upper half of calss with 2.9 grade point average.

University of California, Davis, California
B.A., 1970

Majors in history and political science.
Graduated with high honors and 3.56 grade point average. Awarded a History Department Citation for undergraduate achievement and President's research fellowship.



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

July 10, 1980

Ginny Chitwood
Executive Director
Alaska Municipal League
204 N. Franklin Street
Juneau, Alaska 99801

Dear Ginny:

In response to an inquiry requesting names for consideration to the Title 29, Policy Review Committee, the Borough Assembly is submitting the name of Russ Walker, Municipal Attorney. The Office of Municipal Attorney does all the legal work for the City of Ketchikan and Ketchikan Public Utilities, as well as the Borough, therefore, Mr. Walker is very knowledgable about the functions and authorities of not only a second-class borough, but also a home-rule first-class city which operates a public utility. You will find a resume from Mr. Walker attached.

In addition to the Assembly's endorsement of Mr. Walker for consideration to the policy committee, I would personally offer my own. Russ Walker is one of the most qualified and knowledgable person concerning municipal government with whom I have been associated. Even though he has not been in Alaska long, he has a thorough working knowledge of Title 29, is familiar with the previous codes, 29 & 7, and brings a wealth of previous municipal knowledge to Alaska. This assignment is going to require persons with the capacity of seeking out and understanding all sides of complex issues. Russ is uniquely capable in this regard.

Please do not hesitate to contact me for further information.

Sincerely yours,

KETCHIKAN GATEWAY BOROUGH

Judith A. Slajer
jw

Judith A. Slajer
Borough Manager

JAS:jw

attachment

RESUME OF:

RUSSELL W. WALKER

P. O. Box 7818
Ketchikan, Alaska 99901
(907) 225-3111, ex. 327 (business)
(907) 247-8585 (home)

## EXPERIENCE

1979 - Present: Municipal Attorney, Ketchikan Gateway Borough and City of Ketchikan, Box 7300, Ketchikan, Alaska 99901.

1974 - 2/1979: Partner, private law practice, WALKER & GANN, Attorneys at Law, 333 South Juniper, Suite 214, Escondido, California 92025, (714) 743-3022

1971-1974 Assistant Attorney General, United States Department of the Interior, Department of Territories.

1968-1971 Partner, private law practice, WALKER, WALKER & GANN, Escondido, California 92025.

1965-1968: Deputy County Counsel III, Office of County Counsel, San Diego, California 92101.

1961-1964: Deputy County Counsel II, Office of County Counsel, San Diego, California 92101.

## QUALIFICATIONS

Education: Doctor of Jurisprudence (J.D.) Degree, 1959 from Hastings College of the Law, San Francisco, California.

Admitted to Bar, State of Alaska, 1979.

Admitted to Bar, State of California, 1960.

Law Review: Hastings Law Journal, Note and Comment Editor, 1958-1959.

Thurston Society, Scholastic Honor Society of the Hastings College of the Law (top 10%).

Allen D. Wilson Memorial Scholar, 1958-1959.

Newhouse Award, 1956 and 1957.

Hastings College of the Law, Student Body President, 1959.

Certification: Bar Membership and admissions to practice:

State of Alaska - 1979.
State of California - 1960.
Supreme Court of the United States.
United States Court of Appeals, Ninth Circuit.
United States District Court, Alaska District.
United States District Court, Southern District of California.
High Court, Trust Territory of the Pacific Islands.
San Diego Trial Lawyers Association.

PERSONAL:

BORN: 1-29-31 in Berkeley, California.
Height: 6'0", weight: 180 lbs.

MARRIED: 1964, Wife KEREN A. WALKER, Masters Degree in Education. 2 children, ages 7 and 2 years.

HEALTH: Good, no physical limitations.

RESIDENCE: Own.

FINANCES: Good order.

RECREATIONAL INTERESTS: Skiing, hunting, camping, fishing and acquatic sports.

SERVICE: United States Marine Corps, 1950-1953, honorable discharge

EXPERIENCE:

1979 - Present: Municipal Attorney, Ketchikan Gateway Borough and City of Ketchikan, Box 7300, Ketchikan, Alaska 99901

1974 - 2/1979: WALKER & GANN, Attorneys at Law, partner, private, general civil, business, real estate, litigation, and public law practice.

1971 - 1974: Assistant Attorney General, United States Department of the Interior, Department of Territories. Assigned as Assistant Attorney General, Trust Territories of the Pacific Islands. Legal counsel to District Administrator on all civil and criminal matters, including immigration, economic, development, and foreign investment, and the preparation and review of legislation, contracts, land use agreements, and represent government in preparation and trial of land acquisition and other litigation by and against public agencies and employees.

1968 - 1971: WALKER, WALKER & GANN, Attorneys at Law, partner, private practice; general civil, business litigation practice, with emphasis on real estate, business litigation, and public agency law.

1961 - 1968: Practiced six (6) years in the office of the County Counsel of the County of San Diego, State of California, attaining the position of Deputy County Counsel III. In this capacity, practice related to the rendition of legal advice to virtually all departments, and to a wide variety of special districts, boards, and committees, including the County Board of Supervisors, Chief Administration Officer, Engineering, Personnel, Probation, and Sheriff's Department, Superior and Municipal Court officers, Welfare Department, and Department of Public Health and Local Agency Formation Commission. These duties involved rendering both written and oral opinions on public law and the statutory structure within which these public agencies function and a close-working relationship with boards, committees and department heads in the drafting and formulation of legislation, both in the form of county and special district ordinances, and proposed legislative bills to be submitted to the State Legislature, California Law Revision Commission, and also at the local level; the preparation and approval of construction bids and contracts to be let by public agencies, leases, and substantially all forms of documents related to the normal functioning of a public agency. Duties also involved extensive preparation and trial of complex litigation involving eminent domain and land acquisition, contracts, judicial review of administrative actions, state and federal preemption, claims against the county and public agencies, and the prosecution of appropriate actions on behalf of the county and the various special districts against given parties; also preparation of appellate briefs and conducting appeals.

1964: Travel throughout Latin America, Europe, and North Africa.

Tanana Chiefs Conference, Inc.
Doyon Building
1st and Hall Streets
Fairbanks, Alaska 99701
Phone (907) 452-8251

July 1, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 North Franklin
Juneau, Alaska 99801

Dear Ms. Chitwood:

I wish to thank you for your recent letter of inquiry regarding the formation of the Policy Advisory Group on Title 29 Code Revision. In response to that letter, I would like to recommend Michael Walleri as a candidate for nomination to this group. I feel Mike is highly qualified to sit on this policy committee. He is a member of the Alaska Bar with an extensive background in local government in rural Alaska. For the last year and a half, he has served as TCC's Village Government Specialist rendering technical assistance to TCC villages and staff on local government matters. He is currently working under a grant from the Department of Community & Regional Affairs on a legal research project dealing with the relationships between various local governments in rural Alaska. In this capacity, he has gained a working familiarity with the history, operation and problems of rural Alaskan local government.

During the last legislature, the issues of local government in rural Alaska were addressed in various bills. The Title 29 revision is an appropriate and timely mechanism for addressing this issue in a coordinated fashion. Mike's background, experience, and knowledge will greatly assist the group as it addresses those issues.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. "Spud" Williams
President

107K3

Tam --

Tillion has affirmed selection of eight of the nine appointees to the Title 29 committee. Arliss's instruction is to call the eight and invite their participation at the upcoming meeting. Then follow up by letter with the mail out.

The problem surrounds Tillion's insistence that Ron Larson replace Jim Eckstedt. Please call Terry Gardiner in Ketchikan and confirm with him this replacement. If Terry is agreeable, contact Larson and advise him of the meeting.

Your letters and phone calls should also make contact with the four legislative members: Sturgulewski, Mulcahy, Parr and Branson.

JC

Ronald Larson
Mayor, Matanuska - Susitna Borough
Chairman, AML Legislative Committee

Box B
Palmer, AK 99645
745-4801

3720
Rep. Gardiner 225-9675
per Billie Bessies - ok Ron Larson confirmed 9/21/80

July 28, 1980

The Honorable Terry Gardiner
Speaker of the House of Representatives
Box 6092
Ketchikan, AK 99901

Dear Representative Gardiner:

CSSCR 66, Legislative Resolve 39 of the recent legislative session, directs the Alaska Legislative Council to revise AS 29, the municipal government code. A policy advisory group is authorized to assist in that task. Together with two members of each house of the legislature appointed by the respective presiding officers, the resolution also authorizes selection by the presiding officers of an unstated number of public members, drawn from recommendations submitted by legislative members, the Departments of Community and Regional Affairs and Law, the Alaska Municipal League, the Rural Alaska Community Action Program, and the legal services division of this Agency.

At my direction, Jack Chenoweth of this office met today with Ginny Chitwood of the Municipal League, Palmer McCarter (speaking for the administration) and, by phone, Bob Lohr, the deputy director of RuralCAP. It is their suggestion, and my recommendation, that nine public members be appointed to serve with the four legislators previously designated for the policy advisory group for the Title 29 revision. Their suggestion included the following recommended nominations:

Ted Berns, municipal attorney
Municipality of Anchorage
Pouch 6-650
Anchorage, Ak 99502
264-4545

Terry Cook, member of the city council
City of Alakanuk
Box ~~54~~ 33
Alakanuk, Ak 99554

Marilyn Dimmick, member of the assembly
Kenai Peninsula Borough
Box 151
Ninilchik, Ak 99639
567-3927

James O. Eckstedt, member of the assembly
Matanuska-Susitna Borough, and of the city council
City of Palmer

James Kohler, city manager
City of Yakutat

Gene Moore, city manager
City of Kotzebue
P.O. Box 186
Kotzebue, AK 99752
442-3401

Donna Sherby, city clerk
City of Cordova
P.O. Box 1210
Cordova, AK 99574
424-3237

Jonathan Solomon, presently working in support of establishment of a rural borough for the Upper Yukon River area, Fort Yukon

Russell W. Walker, attorney
City of Ketchikan and Ketchikan Gateway Borough
Box 7300, Ketchikan AK 99901 225-3111 #327

The policy advisory group provided for by the resolution will have direct and continuing support and assistance from Palmer McCarter of the Department of Community and Regional Affairs, Ginny Chitwood of the Alaska Municipal League, Phil Smith of RuralCAP, Rod Pegues from the Department of Law, and Tamara Brandt Cook, whom I have assigned from the staff of this division.

Your consideration of the nominations suggested in this letter for appointment as public members of the policy advisory board for the revision of AS 29 is appreciated.

Very truly yours,

Billy G. Berrier
Director
Division of Legal Services

BGB:JBC:jdn

bcc: Senator Sturgulewski
Palmer McCarter
Ginny Chitwood
Phil Smith

Rep. Parr
Rep. Branson

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

July 24, 1980

DICTATED 7/22/80
BUT NOT READ

Mr. Billy G. Berrier
Director
Division of Legal Services
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

FILE: Title 29 Revision

Dear Billy:

On June 27, 1980, I sent out to the mailing list which is enclosed a letter alerting various attorneys in the state to the formation of the policy group under the provisions of CSSCR 66 and of the possibility that a working group might also be formed. The enclosed letter to Gary Thurlow sets forth the content of the letter.

Enclosed are copies of the responses. Please note that Gary Thurlow's response is hand-written at the end of my letter to him. If a working group is formed, please do not take the non-response of anyone on the list as an indication of non-interest. I believe Jim Nordale and probably Russ Walker (Ketchikan City and Borough) and others may be willing to serve on such a group.

I have been nominated by the assembly for the policy group. Obviously, if not chosen to serve on the policy group, I would certainly like to be considered for a position on the working group if one is formed. Although I would certainly appreciate some assistance in the way of travel and per diem if travel is involved, I believe I can probably manage some travel and per diem from the budget.

I am leaving Juneau Wednesday, July 23, 1980, and will be out of the state until the latter part of August. I look

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

July 24, 1980

DICTATED 7/22/80
BUT NOT READ

Mr. Billy G. Berrier
Director
Division of Legal Services
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

FILE: Title 29 Revision

Dear Billy:

On June 27, 1980, I sent out to the mailing list which is enclosed a letter alerting various attorneys in the state to the formation of the policy group under the provisions of CSSCR 66 and of the possibility that a working group might also be formed. The enclosed letter to Gary Thurlow sets forth the content of the letter.

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I am leaving Juneau Wednesday, July 23, 1980, and will be out of the state until the latter part of August. I look

forward, upon my return, to working on or with the policy or working group.

Very truly yours,

Gerald L. Sharp/cab

Gerald L. Sharp
Attorney

GLS:cab

Enclosures

cc: Ginny Chitwood
Executive Director, AML

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

June 27, 1980

RECEIVED
JUL 1980
CITY-BOROUGH ATTORNEY

Gary Thurlow, Esq.
Attorney at Law
738 H Street, Suite 200
Anchorage, Alaska 99501

SUBJECT: Title 29 (Municipal Code) Revision

Dear Gary:

Enclosed is the material which I have just received from the Alaska Municipal League. Please review it and take whatever action you believe is appropriate. Note that nominations to the policy committee must be in by July 10, 1980.

There is some possibility that a working group will be formed of municipal attorneys and perhaps others who are intimately involved in the administration of Title 29. If you have the time available and would be interested in serving on such a working group, I suggest that you let me know as soon as possible. If such a group is formed, we will be able to submit the names of those who are interested to those who will be selecting such a group. It appears that the funding for the Title 29 revision is sufficient to cover the per diem and travel expenses of the policy group and perhaps also similar expenses for a working group. If you are willing to serve on the working group you should state whether or not your serving on the group is contingent upon reimbursement for all, some or none of your travel and per diem expenses.

Whether you are interested in serving on either the policy or working group, please note the request in paragraph 3 of the joint RuralCAP, Alaska Municipal League and Department of Community and Regional Affairs letter. Please take time right now, if you have not already done so, to begin a list of Title 29 problems. Any inconsistencies, ambiguities, restrictions, inadequate delegations or other problems which you have encountered in Title 29 should be briefly described and forwarded to Ginny Chitwood whose address is on the attached letters. Please note the July 30, 1980, deadline for this list.

4 NO. CBJ 7

There are many inadequacies in Title 29 which have resulted from oversights when the code was revised in 1972, the passage of time and the expansion of municipal functions, court decisions and legislative modifications in response to special interests. We now have an opportunity to straighten out many of these problems. Even if you are unable to participate as a full-time member in a working group (if one is formed) please let both groups have the benefit of your experience and thoughts regarding needed changes.

Sincerely,

Lee

Gerald L. Sharp
President
Alaska Municipal Attorneys Association

Attachments

Lee
I would like to be
on a working group
committee. Travel &
per diem expenses are
paid. I represent Valdez
Sand

LAW OFFICES OF
HAHN, JEWELL & STANFILL

A. ROBERT HAHN, JR.
ALLEN L. JEWELL
STAN B. STANFILL

542 WEST SECOND AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE 279-1544

HOMER, ALASKA
TELEPHONE 235-8709

July 3, 1980

Gerald L. Sharp, Esq.
President
Alaska Municipal Attorneys Assoc.
155 South Seward St.
Juneau, Alaska 99801

Dear Mr. Sharp:

Thank you for your letter of June 27 concerning possible revisions of Title 29. I would indeed be interested in participating in this long overdue effort. I am City Attorney for Homer and Seldovia and one of my partners represents Port Lions; thus a substantial part of our practice involves municipal law. I would be willing to serve on either the policy or working group. I would prefer that travel and per diem expenses be reimbursed.

Please keep me advised of your progress.

Sincerely,

HAHN, JEWELL & STANFILL

A. Robert Hahn, Jr.

ARH/db

RECEIVED
JUL 7 1980
BOROUGH ATTORNEY

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

July 9, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 North Franklin
Juneau, Alaska 99801

Re: Title 29 Revision Committee

Dear Ms. Chitwood:

In reference to the announcement from the Alaska Municipal League concerning nominees for a policy committee to study proposed changes in Alaska Title 29, I would like to submit my name for consideration as a member of the committee. I believe that you are already familiar with my background in municipal law. However, for the benefit of other members of the selection team, I would like to offer a brief synopsis. I have been engaged in the practice of municipal law in Alaska for over four years. I am currently serving as Municipal Attorney for the Municipality of Anchorage, and have held my present position for approximatley two and one-half years. As Municipal Attorney, I have been involved in all phases of municipal law, and have served as past president of the Alaska Municipal Attorney's Association. Additionaly, I have spent considerable time during two past legislative sessions as a lobbyist for the Municipality. Included among my duties was substantial responsiblity for drafting state legislation on behalf of the Municipality of Anchorage. A further description of my academic background and other credentials could be provided upon request.

I believe that I am quite familiar with the provisions of the present AS Title 29 with respect to both home rule and general law of municipalities in Alaska. Although I believe the present code is quite adequate in many respects, I'm sure that others share my concern over many ambiguities in the present law involving such critical aspects of municipal government as service area functions, distinctions between home rule and non-home rule powers, and a variety of other concerns. I have been assured by Mayor Sullivan that he has no objection to my making the necessary time available to serve as a member of the commitee.

If you have any other questions concerning my interests or qualifications, please do not hesitate to contact me at 264-4236.

Sincerely yours,

DEPARTMENT OF LAW

Theodore D. Berns
Municipal Attorney

TDB:leo

# Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

BOROUGH ASSEMBLY


July 3, 1980

Ms. Lee McAnerney
Commissioner
Department of Community & Regional Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

It is our understanding that through passage of CSSCR 66 that the State Legislature has directed formation of a policy advisory group consisting of two members of each house and four members of the public to assist the Legislative Affairs Agency in presenting a revision of Title 29 of the Alaska Statutes to the First Session of the Twelth Legislature. The purpose of this letter is to place a nomination in the name of Allan E. Tesche, Borough Attorney, for the Matanuska-Susitna Borough for appointment to that policy advisory group.

As the attached resume of Mr. Tesche's qualifications will demonstrate, Mr. Tesche has had substantial experience in municipal government in the State of Alaska, having assisted two Alaskan municipalities in their legal affairs for the past six years. Mr. Tesche is also active in the Alaska Municipal Attorneys' Association and is currently serving as the Secretary-Treasurer of that group. Moreover, Mr. Tesche has represented the AMAA in important Constitutional litigation relating to municipal problems for the Supreme Court of this state and has actively assisted the Board of Directors and Legislative Committee of the Alaska Municipal League in legislation affecting municipalities in Alaska.

If I can answer further questions regarding Mr. Tesche's qualifications for service as a member of the policy advisory group, please do not hesitate to contact me at 745-4801.

Cordially,

John D. Nash

John Nash, Assemblyman
Mayor Pro Tem

er

cc: Phil Smith, Executive Director
RuralCAP
Ginny Chitwood, Executive Director
Alaska Municipal League
Lee Sharp, Attorney
City and Borough of Juneau


RECEIVED
1980
ATTORNEY

CITY OF FAIRBANKS
ALASKA
99701

CHARLES M. GIBSON
CITY ATTORNEY

BRETT M. WOOD
DEPUTY CITY ATTORNEY

HERBERT P. KUSS
DEPUTY CITY ATTORNEY

MICHAEL P. McCONAHY
ASSISTANT CITY ATTORNEY

*Legal Department*
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

July 9, 1980

Gerald L. Sharp, Esq.
President
Alaska Municipal Attorneys Association
155 South Seward Street
Juneau, Alaska 99801

Re: Title 29 (Municipal Code) Revision

Dear Lee:

Thank you for your letter of June 27, enclosing material from the Alaska Municipal League.

I am, of course, keenly interested in the review and revision of Title 29; however, as much as I would like to serve on one of the working groups, I do not have the time available and will have to limit my input to suggestions as to needed changes. I have noted the July 30 deadline for submitted proposals to Ginny Chitwood and will schedule our response accordingly.

It was good to hear from you and hope things are going well.

With kindest personal regards, I remain

Sincerely yours,

Charles M. Gibson
City Attorney

CMG:vms

RECEIVED
JUL 11 1980
CITY-BOROUGH ATTORNEY

A. Robert Hahn, Jr.
Attorney at Law
542 W. 2nd Avenue
Anchorage, Alaska 99501

Charles Gibson, Attorney
City of Fairbanks
410 Cushman Street
Fairbanks, Alaska 99701

Ben T. Delahay, Attorney
City of Kenai
P. O. Box 580
Soldotna, Alaska 99611

Theodore L. Carson, Jr.
City Attorney
City of Soldotna
P. O. Box 1869
Soldotna, Alaska 99669

Raneld H. Jarrell, Esq.
Hughes, Thorsness, Gantz,
Powell & Brundin
509 W. Third Avenue
Anchorage, Alaska 99501

R. Eldridge Hicks, Esq.
Ruskin, Baker & Hicks
630 W. Fourth Avenue
Anchorage, Alaska 99501

Burton C. Biss, Esq.
Star Route Box 5111
Wasilla, Alaska 99687

Noel Kopperud, Esq.
P. O. Box 1630
Wasilla, Alaska 99687

Robert J. Mahoney, Esq.
Cole, Hartig, Rhodes,
Norman & Mahoney
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Richard W. Garnett III
Attorney at Law
900 W. Fifth Avenue, Suite 540
Anchorage, Alaska 99501

Allan E. Tesche, Attorney
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Box B
Palmer, Alaska 99645

James D. Nordale, Attorney
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P. O. Box 1267
Fairbanks, Alaska 99707

Andrew R. Sarisky, Attorney
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Soldotna, Alaska 99669

Conrad Bagne, Attorney
North Slope Borough
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Barrow, Alaska 99723

Richard C. Folta, Esq.
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Haines, Alaska 99827

Russell W. Walker, Attorney
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Pete Hallgren, Attorney
City and Borough of Sitka
P. O. Box 79
Sitka, Alaska 99835

Fred Miller, Esq.
426 Main Street
Ketchikan, Alaska 99901

Gary Thurlow, Esq.
Attorney at Law
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Anchorage, Alaska 99501

L. B. Jacobson, Esq.
Robertson, Monagle, Eastaugh,
& Bradley
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Juneau, Alaska 99802

William Ruddy, Esq.
Robertson, Monagle, Eastaugh
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Juneau, Alaska 99802

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Edward Stahla, Esq.
Christianson, Royce & Stahla
P. O. Box 4
Sitka, Alaska 99835

Paul Dillon, Esq.
Birch, Horton, Bitner, Monroe
Pestinger & Anderson
130 Seward Street, Suite 411
Juneau, Alaska 99801

LAW OFFICES OF
RICHARD W. GARNETT III

THOMAS F. KLINKNER
SUITE 540, 900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501

TEL. (907) 276-2221

July 16, 1980

Lee Sharp
Attorney
City and Borough of Juneau
155 S Seward Street
Juneau, Alaska 99801

RE: Title 29 Revision

Dear Lee:

I would be glad to serve on a work group, policy group, or otherwise in the Title 29 Revision effort. I could donate a fair amount of time, but would need reimbursement for travel.

I have not yet produced a comprehensive listing of needed revisions, but the following came to mind:

29.28.070 (b) - Service area initiatives are potential problems; could lead to Balkanization" of municipalities.

same - Standardize use of "general" and " regular" as to elections to avoid uncertainty as to required number of signatures.

29.28.090 (b) - Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

29.28..40 - More specificity as to whether recall may be based on "political" factors.

29.48.130 (5) - No need to require ordinance for routine fund transfers.

29.48.150 (a) - Majority required to set ordinance for hearing. Should be less to give minority a chance to make it's case.

29.48.170 - Maybe need some procedure for enacting municipal regulations.

29.48.260 - Vote on sale of all property over $25,000 may be unduly burdensome.

29.53.010 - Why not permit exemption of all personalty or various classes.

29.53.025 (b) (1) - Special treatment for boats.

29.63.090 (e) - Reference to "delegation" of powers to service areas needs clarificaton.

29.78.101 (16)- Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

Public Records - Clarify application of public records law, section 09.25.110. to municipality.

Home Rule - More clear criteria for application of non-title 29 provisions to home rule. (Maybe require inclusion in AS 29.13.10 laundry list).

APUC - Consider need for APUC regulation of municipality owned utilities.

29.18 - Clarify rights to VUU land vis a vis state classification under AS 38.

29.41 - Consider need for third class borough.

I look forward to your ideas.

Very truly yours,

Richard W. Garnett III

RG/jec




CITY OF KENAI
"Oil Capital of Alaska"
P. O. BOX 550 KENAI, ALASKA 99611
TELEPHONE 283 - 7535


RECEIVED
JUL 11 1980
CITY-BOROUGH ATTORNEY

July 7, 1980

Mr. Gerald L. Sharp
President
Alaska Municipal Attorneys Association
155 South Seward Street
Juneau, Ak 99801

Re: Title 29 Revision

Dear Lee:

Last Wednesday I brought to the attention of the City Council the combination letter from Ginny Chitwood and others as well as your letter. Several nominations are being made by the Mayor with Council approval for the policy committee which will be forwarded.

I would like very much to serve on either of these committees, but as I told Council I have too many things that I cannot get to on my desk without taking several weeks off to do this work.

I have run into so many road blocks to efficient government in my years with the Borough, the home-rule City of Fairbanks, and City of Kenai that I would certainly like to stir the pot if I only had the time. I expect that you will probably be able to serve on one of these committees - I hope so. If so, I would note that when I was with the Borough several million dollars were saved the Borough by issuance of refunding bonds, but this was complicated because in order to take advantage of differentiation of interest rates, the banks had to have a prompt response. This is hardly the type of thing that I consider appropriate under an emergency ordinance (AS 29.48.160), and it really should not be as difficult to pass as an emergency ordinance. The indebtedness has already been approved by the voters and incurred, and the only question is refunding at a proper time to take advantage of market conditions to lower cost to the taxpayer. I would suggest a new section in AS 29.58 authorizing that an

ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

I believe the chapter on service areas, (AS 29.63) could also stand a lot of clarification. My experience in this Borough would indicate that section has many unwise provisions that should be modified - there is too much authority in the Assembly to handle the decisions in the service area which should be made by those in the service area paying the taxes.

I am sorry that I will not be able to serve with you on one of these committees.

Sincerely,

Ben T. Delahay
City Attorney

BTD/md

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

August 20, 1980

Mr. Ted Berns
Pouch 6-650
Anchorage, AK 99502

Dear Mr. Berns:

Welcome to the Policy Advisory Group which will be involved in the revision of Title 29. Enclosed you will find a copy of Title 29 and copies of bills passed during the 1980 session which changed sections or added sections to Title 29. I am also sending you copies of suggestions for changes to Title 29 which I have received to date.

Despite the short notice, I hope you can attend the initial organizational meeting to be held next week, August 27th and 28th in Anchorage. The meeting is scheduled to begin at 9:00 A.M. in the Legislative Information Office, located at 1024 West 6th Avenue. The telephone number for the Legislative Information Office in Anchorage is 278-3668.

September 22nd and 23rd (Juneau) and November 10th and 11th (Fairbanks) have been suggested as possible dates for future meetings of the Policy Advisory Group. If these dates are not convenient for you, please let me know. Hopefully, a final decision on the dates of future meetings of the group will be made during the meeting in Anchorage.

I look forward to seeing you in Anchorage.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

Enclosures

cc: Billy G. Berrier
Ginny Chitwood
Palmer McCarter
Phil Smith

July 23, 1980

The Honorable Terry Gardiner
Speaker of the House of Representatives
Box 6092
Ketchikan, AK 99901

Dear Representative Gardiner:

CSSCR 66, Legislative Resolve 39 of the recent legislative session, directs the Alaska Legislative Council to revise AS 29, the municipal government code. A policy advisory group is authorized to assist in that task. Together with two members of each house of the legislature appointed by the respective presiding officers, the resolution also authorizes selection by the presiding officers of an unstated number of public members, drawn from recommendations submitted by legislative members, the Departments of Community and Regional Affairs and Law, the Alaska Municipal League, the Rural Alaska Community Action Program, and the legal services division of this Agency.

At my direction, Jack Chenoweth of this office met today with Ginny Chitwood of the Municipal League, Palmer McCarter (speaking for the administration) and, by phone, Bob Lohr, the deputy director of RuralCAP. It is their suggestion, and my recommendation, that nine public members be appointed to serve with the four legislators previously designated for the policy advisory group for the Title 29 revision. Their suggestion included the following recommended nominations:

Ted Berns, municipal attorney
Municipality of Anchorage

Terry Cook, member of the city council
City of Alakanuk

Marilyn Dimmick, member of the assembly
Kenai Peninsula Borough

James O. Eckstedt, member of the assembly
Matanuska-Susitna Borough, and of the city council
City of Palmer

James Kohler, city manager
City of Yakutat

Gene Moore, city manager
City of Kotzebue

Donna Sherby, city clerk
City of Cordova

Jonathan Solomon, presently working in support of establishment of a rural borough for the Upper Yukon River area, Fort Yukon

Russell W. Walker, attorney
City of Ketchikan and Ketchikan Gateway Borough

The policy advisory group provided for by the resolution will have direct and continuing support and assistance from Palmer McCarter of the Department of Community and Regional Affairs, Ginny Chitwood of the Alaska Municipal League, Phil Smith of RuralCAP, Rod Pegues from the Department of Law, and Tamara Brandt Cook, whom I have assigned from the staff of this division.

Your consideration of the nominations suggested in this letter for appointment as public members of the policy advisory board for the revision of AS 29 is appreciated.

Very truly yours,

Billy G. Berrier
Director
Division of Legal Services

BGB:JBC:jdn

bcc: Senator Sturgulewski
Palmer McCarter
Ginny Chitwood
Phil Smith

July 28, 1980

The Honorable Clem V. Tillion
President of the Senate
Halibut Cove, AK 99603

Dear Senator Tillion:

CSSCR 66, Legislative Resolve 39 of the recent legislative session, directs the Alaska Legislative Council to revise AS 29, the municipal government code. A policy advisory group is authorized to assist in that task. Together with two members of each house of the legislature appointed by the respective presiding officers, the resolution also authorizes selection by the presiding officers of an unstated number of public members, drawn from recommendations submitted by legislative members, the Departments of Community and Regional Affairs and Law, the Alaska Municipal League, the Rural Alaska Community Action Program, and the legal services division of this Agency.

At my direction, Jack Chenoweth of this office met today with Ginny Chitwood of the Municipal League, Palmer McCarter (speaking for the administration) and, by phone, Bob Lohr, the deputy director of RuralCAP. It is their suggestion, and my recommendation, that nine public members be appointed to serve with the four legislators previously designated for the policy advisory group for the Title 29 revision. Their suggestion included the following recommended nominations:

Ted Berns, municipal attorney
Municipality of Anchorage

Terry Cook, member of the city council
City of Alakanuk

Marilyn Dimmick, member of the assembly
Kenai Peninsula Borough

James O. Eckstedt, member of the assembly
Matanuska-Susitna Borough, and of the city council
City of Palmer

James Kohler, city manager
City of Yakutat

Gene Moore, city manager
City of Kotzebue

Donna Sherby, city clerk
City of Cordova

Jonathan Solomon, presently working in support of establishment of a rural borough for the Upper Yukon River area, Fort Yukon

Russell W. Walker, attorney
City of Ketchikan and Ketchikan Gateway Borough

The policy advisory group provided for by the resolution will have direct and continuing support and assistance from Palmer McCarter of the Department of Community and Regional Affairs, Ginny Chitwood of the Alaska Municipal League, Phil Smith of RuralCAP, Rod Pegues from the Department of Law, and Tamara Brandt Cook, whom I have assigned from the staff of this division.

Your consideration of the nominations suggested in this letter for appointment as public members of the policy advisory board for the revision of AS 29 is appreciated.

Very truly yours,

Billy G. Berrier
Director
Division of Legal Services

BGB:JBC:jdn

bcc: Senator Sturgulewski
Palmer McCarter
Ginny Chitwood
Phil Smith

July 23, 1980

The Honorable Clem V. Tillion
President of the Senate
Halibut Cove, AK 99603

Dear Senator Tillion:

RE: Policy Advisory Group established in CSSCR 66

As you know the Legislative Council has been directed to revise Title 29 of the Alaska Statutes (Municipal Government) with the help of a policy advisory group composed of persons appointed by the presiding officer of each house. Public members are to be selected from persons recommended by legislative members, the Department of Community and Regional Affairs, the Alaska Municipal League, the Rural Alaska Community Action Program, Inc., the Department of Law, and by the Legal Services Division.

Our office has been contacted with a recommendation for a public member offered by Senator Robert H. Ziegler, Sr. In case you have not heard from him directly, I am forwarding this name to you:

Russell Walker - Attorney for the Gateway Borough and the City of Ketchikan

If our office receives additional nominations to the policy advisory group from senators, I will notify you. Please let me know if I can help in any other way.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Senator Arliss Sturgulewski
Senator Robert H. Ziegler, Sr.

Next Title 29 meeting is set for the

Legislative Information Offices conference area

second floor, 1024 West Sixth Anchorage

for Thursday and Friday, 8/21 and 22 ← meeting in Palmer 27-28 & 22-23

Room is available all day both days

Contact for arrangements is Kathy Baltes, Anchorage office 278-3668

Please confirm this with Marilyn Miller at the Juneau office of Alaska Municipal League, and with Arliss

(Pioneers School, originally suggested, not available for morning meetings)

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

# Alaska State Legislature

POUCH V
JUNEAU, ALASKA 99811
OFFICIAL BUSINESS

July 1, 1980

Senator Robert H. Ziegler, Sr.
307 Bawden Street
Ketchikan, AK 99901

Dear Senator Ziegler:

According to CSSCR 66, the presiding officer of each house is to appoint two members of each legislative body to the policy advisory group involved with the revision to Title 29, the municipal code. In addition, public members shall be selected from among persons recommended by legislators and various organizations. Since Senator Mulcahy and myself are the only members who have been appointed to the policy advisory group so far, I am taking the liberty of contacting you to ask for your recommendations of other persons who ought to be considered for appointment to the group. I am also enclosing a copy of a letter which was sent to approximately 400 interested organizations and persons in an effort to insure that as many qualified individuals as possible are considered for nomination to the group.

As the policy advisory group will be working under considerable time pressure, please send your recommendations for nominations to the group as soon as possible to the Legal Services Division of Legislative Affairs to be forwarded to the presiding officer of your house. For your information, the home address of Senator Clem V. Tillion, President of the Senate, is Halibut Cove 99603.

I would also like to take this opportunity to ask you for any suggestions which you may have concerning changes to Title 29 or issues which you would like the policy advisory group to consider. If you are interested in being kept informed of the progress made in revising the municipal code during the interim, please contact Tamara Brandt Cook, Legal Services Division, Legislative Affairs Agency, Pouch Y, Juneau 99811. I look forward to hearing from you.

Sincerely,

Arliss Sturgulewski
Sig TBC

Arliss Sturgulewski, Senator

Enclosure

Dear Arliss: Don't have time to go through channels. A Russell Walker, Gateway Borough + City atty, is highly recommended. You might pass this on to Legal Svs. also. Don't much

Cite AS 29.53.080. What privately [illegible] parties sell or pay for property need not necessarily reflect f.m.v. Alaskan assessors are supposed to assess at 100% of true value. Ergo, if they can examine + / inspect properties, why in hell can't they appraise w/o involving records of the buyer/seller?

3 —

P.S. (I've lost this argument before!)

July 14, 1980

Arliss Sturgulewski, Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Municipal Recall Statutes

Dear Senator Sturgulewski,

It is my understanding that you are reviewing the problems associated with recalling municipal officials. I believe that due to my recent intimate knowledge of the recall of two officials in the City of Petersburg, that some of the problems found there (and elsewhere in Alaska) could prove illuminating in your efforts to revise the municipal recall statutues.

A list of the problems includes:

1. Sec. 130 of AS 29.28 is unclear as to whether an official is re-callable within six months of being re-elected. It would seem that the original intent of this section was to protect rookie mayors and councilmembers, rather than the official that is re-elected. In any event the language should be clarified to either include or exlude re-elected officials. My personal inclination is to allow a municipal official to be recalled any time after the initial six months have been served, and when that person is re-elected, then he or she may be recalled at any time, and the six months grace period would not apply.

2. The grounds for recall as listed in section 140 are a constant source of argument since the three allowable reasons seem rather narrow in scope. Typically, recall petitions are thrown out based on this section. Many people feel that the three reasons are just legalisms craftily used by municipal attorneys to save their clients political hide. There is no necessity for proving that the stated grounds are in fact true, therefore, the usual scheme of things is to "hang a reason" on one of the three allowable terms. From a practical standpoint, the issue is whether you want to permit recall not based on th three statutory reasons.

3. Section 150 should make clear that a petition must be separate from from other petitions. In other words, a petition may contain only one name on it.Also, the petition should contain the mailing address of each person signing the petition.

4. Section 180 should be clarified to state that a new petition may not be filed sooner than six months after a petition is rejected based on insufficiency( and not lack of signatures).

5. There has been a fear that once a sufficient petition has been submitted and accepted, that members of the council could resign and then be re-appointed to the council. The statutues should preclude such an effort once the petition is sufficient.

6. The problem with the number of signatures required is well known. It is my opinion that a local recall effort should be based on the last regular municipal election, not the state election.

7. Some people have interpreted that once the election has been certified, that a person recalled is at once removed from the seat. This causes a disruption in local government, and if this is the correct method, then a provision should be included to clarify such, and to allow some means to permit a minicipal government to continue to operate when a majority has been recalled from office.

8.

Thanks for listening, and I hope this helps.

Cordially,

Bruce

Bruce Aronson
P.O. Box 923
Petersburg, Alaska 99833

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

July 14, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

Dear Arliss:

I hereby appoint Rep. Bill Parker and Rep. Margaret Branson to the Title 29 revision.

Thank you.

Terry Gardiner

cc: Rep. Parker
Rep. Branson
Myrt Charney
Senator Tillion
Senator Hohman

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

July 10, 1980

Representative Terry Gardiner
Speaker of the House of Representatives
P.O. Box 6092
Ketchikan, AK 99901

Dear Representative Gardiner:

RE: Policy advisory group established in CSSCR 66

As you know, the Legislative Council has been directed to revise Title 29 of the Alaska Statutes (Municipal Government) with the help of a policy advisory group composed of persons appointed by the presiding officer of each house. We have been informed that two members have been appointed to date, Senator Bob Mulcahy and Senator Arliss Sturgulewski. Public members are to be selected by the presiding officer of each house from persons recommended by legislative members, by the Department of Community and Regional Affairs, the Alaska Municipal League, the Rural Alaska Community Action Program, Inc., the Department of Law, and by the legal services divison.

Representative Margaret Branson has contacted our office by mail with recommendations for public members for the policy advisory group. In case you have not heard from her directly, I am forwarding these names to you.

Charles LaPage - Mayor Pro Tem, Councilman, Valdez

Malcolm "Pete" Islieb - Councilman, Cordova

Andy Sarisky - Attorney, Kenai Borough

Erle Cooper - Kenai Borough Assembly

Don McCloud - Borough Assembly

If our office receives additional nominations to the policy advisory group from representatives, I will notify you. Please let me know if I can help in any other way.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Senator Arlisa Sturgulewski
Representative Margaret Branson

Alaska State Legislature

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA
99811

TEL. (907) 595-1265
BOX 740
COOPER LANDING, ALASKA
99572

MARGARET BRANSON
REPRESENTATIVE
DISTRICT 5

Senator Stungulewski

Per your letter of July 1
I would like to recommend:

Charles La Page - Mayor Pro Tem
Councilman
Valdez

Malcolm "Pete" Islich Councilman
Cordova

Andy Sarisky - Attorney Kenai Boro

Erle Cooper - Kenai Boro Assembly

Ian McLeod - Boro Assembly

Rural Alaska Community Action Program, Inc.

Alaska Municipal League

204 North Franklin
Juneau, Alaska 99801

DEPARTMENT OF COMMUNITY
AND REGIONAL AFFAIRS
STATE OF ALASKA

Pouch B, Juneau, AK 99811

The Second Session of the Eleventh Legislature passed Senate Concurrent Resolution 66 directing the Alaska Legislative Council to revise Alaska Municipal Government Code -- Title 29. A copy of this resolution is enclosed for your information.

A policy committee, consisting of four legislators and eight public members, will play a key role in determining what changes are made in Title 29, the Municipal Government Code. Therefore, it is important that interested, knowledgable persons be nominated to sit on this committee Other than demands on committee members' time, costs for transportation and per diem will be paid by the State. Our three agencies have been given the responsibility of nominating persons to fill the eight seats reserved for public members. We would like for you to send to one, or all, of our organizations any recommendations you may have for candidates you feel are qualified to serve on the policy committee. A resume or background sketch of qualifications for each of your nominees will assist us in selecting the best persons to submit as nominees to the President of the Senate and the Speaker of the House of Representatives. Time is critical and we need to receive your recommendations by July 10, 1980.

We would also urge you to make any comments or suggestions which might improve Title 29. If you have problems or concerns about sections of Title 29 we want to know about them; it would be even more helpful if you can suggest specific remedies in the form of deletions, rewritten or additional language, or restructuring of the Municipal Government Code. We need to receive these comments by July 30, 1980.

The Legislature has given all of us a rare opportunity to make needed revisions in Title 29 so that Alaska may have a meaningful, responsive municipal government statute. To make the most of this opportunity for change, we need thorough, well thought-out recommendations and comments. We look forward to hearing from you.

Sincerely,

Phil Smith
Executive Director
RuralCAP

Ginny Chitwood
Executive Director
Alaska Municipal League

Lee McAnerney
Commissioner
Community & Regional Affairs

# Alaska State Legislature

OFFICIAL BUSINESS

POUCH V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

June 5, 1980

Senator Arliss Sturgulewski
Senator Robert Mulcahy

Dear Senators:

According to CSSCR 66, the presiding officer of each house is to appoint two members of each body to the Policy Advisory group concerned with the revision of Alaska Statutes 29, the Municipal Code.

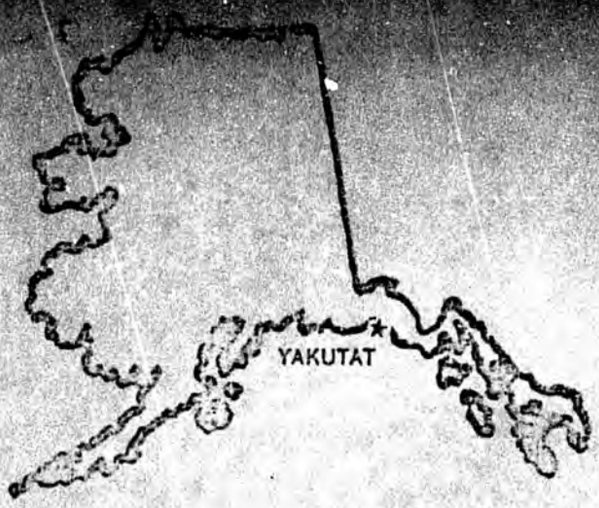
By this letter I am appointing both of you to the Senate positions on that policy advisory group.

Sincerely,

Clem Tillion

Senator Clem Tillion
Senate President

cc: Billy Berrier




CITY of YAKUTAT
P. O. Box 6
YAKUTAT, ALASKA 99689
(907) 784-3323

June 3, 1980

Palmer McCarter
Director, Division of Local
Government Assistance
Dept. of Community and
Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Palmer:

Please accept this letter as a formal request to serve on either the Title 29 review policy committee or working committee.

I have served as the City Manager in Yakutat since February, 1979. Prior to that time I held planning positions with the State of Nebraska and the City of Lincoln, Nebraska.

My experience with Alaskan local government has been tempered strongly with issues ranging from OCS oil exploration to annexation, planning for both corporate and non corporate areas, overseeing the transition of a 1st class municipality from a Mayor/Council form of government to a City Manager form of administration and developing local capital infrastructures to encourage economic growth, specifically fisheries development.

In the process I have daily witnessed the strengths and weakness of Title 29 provisions.

I also bring experience from other systems of local government including a large municipality, a small rural community which I served as Chairman of their Planning and Zoning Commission and a State that was served by a unicameral legislature.

My graduate training is in Anthropology with concentration on systems and the dynamics of systems change.

I can serve the review committee significally and offer the following references for both personal and professional skills and capabilities in this area:

Larry Powell
Mayor
City of Yakutat

Byron Mallott
Chairman, Board of Directors
Sealaska
Juneau, Alaska

Senator Arliss Sturgulewski
Alaska State Senate
Juneau, Alaska

Senator Frank Ferguson
Alaska State Senate
Juneau, Alaska

Ms. Ginney Chittwood
Alaska Municipal League
Juneau, Alaska

Thank you for your consideration.

Sincerely,

James M. Kohler
City Manager

mjr

cc. Larry Powell, Mayor, City of Yakutat
Byron Mallott, Chairman, Board of Directors, Sealaska Juneau
Senator Arliss Sturgulewski, Alaska State Senate, Juneau
Senator Frank Ferguson, Alaska State Senate, Juneau
Ms. Ginney Chittwood, Alaska Municipal League, Juneau

July 1, 1980

Senator Arliss J. Sturgulewski
2957 Sheldon Jackson Street
Anchorage, AK 99504

Dear Senator Sturgulewski:

I have included a copy of the letter I sent to all members of the legislature under your name for your files. I was unable to reach Senator Mulcahy to obtain his consent to add his name to the letter, despite extraordinary efforts by Mary Jo Simmons in the Legislative Information Office in Kodiak to contact him. Apparently, Senator Mulcahy is fishing and was outside of radio contact both yesterday and today.

Ms. Simmons was able to reach a relative or friend of Senator Mulcahy's and was told that the Senator would probably not be back to Kodiak until August. Ms. Simmons informed me that it is possible to leave a message for Senator Mulcahy with her office, but that it would take several days to get it to him through the tenders. I wanted to alert you to this situation in case you should need to get in touch with him during July.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

Enclosures

May 19, 1980

Allan E. Tesche
Borough Attorney
Box B
Palmer, Alaska 99645

Dear Allen:

Thank you for your comments on SCR 66 relating to interim review of the municipal code. A companion bill, HCR 70, has passed from House Judiciary and is now in House Finance.

Neither of these concurrent resolutions have been considered by their respective finance committees. I strongly suggest that you contact appropriate legislators and encourage their positive action on these two resolutions. There was some initial problem on the Senate side on two questions raised by Senator Ferguson, regarding geographic representation on the policy committee. In my conversation with him, he has indicated he is satisfied with some proposed substitute wording. I see no other problems in passing the resolution, with the exception of the critical time. Your support would be appreciated.

Kindest personal regards,

Arliss Sturgulewski
Senator, District 10-H

# Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

BOROUGH ATTORNEY'S OFFICE


May 5, 1980

The Honorable Arliss Sturgulewski
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Arliss:

I have received a copy of the proposed Senate Concurrent Resolution No. 66 relating to interim review of the municipal code. I am very pleased to learn that your committee and you, in particular, recognize the need for a comprehensive revision of that important body of law.

If the Legislature adopts SCR 66 or otherwise approves this project, I am very willing to volunteer my time to assist in review and analysis of Title 29; I am also confident that other members of the Alaska Municipal Attorneys' Association will be able to assist as well.

Thank you for your continued interest in this matter.

Cordially,

Allan E. Tesche
Borough Attorney

er

cc: Mayor Ronald L. Larson
Norman J. Levesque, Borough Manager

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

Date: May 23, 1980

TO: Senate Finance Committee

From: Ginny Chitwood, Executive Director - Alaska Municipal League

Re: SCR 66 - Title 29 Review

Alaska Municipal League urges your favorable consideration of SCR 66. Since the last major revision of Title 29 - Municipal Code, there have been many changes to the original sections of the law. Although a simple meshing of the supplement with the original Title 29 would help those of us who work daily with the municipal provisions, it would be better to have a comprehensive review of the Title 29 - Municipal Code provisions in order to assure resolution of the conflicts created by amendments over the years.

Alaska MUNICIPAL League

TELEPHONES
(907) 586-1325
586-6526

204 N. FRANKLIN ST.
JUNEAU, ALASKA 99801

May 14, 1980

To: Representative Parr, Chairman
House Judiciary Committee
and all members of the Committee

From: Alaska Municipal League

Re: HCR 70

The Alaska Municipal League supports HCR 70 which directs the Alaska Legislative Council to revise AS 29 (Municipal Government).

Attached is a copy of the priority list for 1980 developed by the Board of Directors of the League following the 29th Local Government Conference in Sitka in November of 1979. You will note item "I" refers to a revision of Title 29 and reads as follows: "The League supports the initiation of a complete review of Title 29 as outlined by the Local Government Study recently conducted by the Legislature."

The League feels this is of paramount importance to the municipalities of Alaska and urges this committee to pass out HCR 70 with a do pass recommendation.

The following are the legislative priorities for the Alaska Municipal League for 1980. All of these proposals are of paramount importance to the municipalities of Alaska. They are the highlights of the policy statement which was adopted at the League's 29th annual conference which was held in Sitka on November 2, 1979.

A. State Shared Revenues

1. The League strongly supports increased funding of the State Shared Revenue Sharing Program to a level at least three times the 1979 funding level, including any new programs to foster economic development, and continues to support the philosophy of HB 192 as introduced in the 1st Session of the 11th Legislature.

2. The League supports legitimate and reasonable changes in the amount of money requested for the municipal services shared revenue program and remains adamant in the belief that each Legislature has the obligation to fund the program 100% annually.
— Also, transfer hospital construction out of rev. sharing

B. Municipal Lands

1. The League feels strongly that laws pertaining to the powers of local planning and zoning must allow for the greatest flexibility at the local level.

2. The League supports legislation which would require legal access to all state land disposals; and that, except for state subdivisions in remote areas or for dispersed entry, local subdivision improvement requirements be honored by the state by either installing such improvements or by acquiescing in the formation of service areas and local improvement districts containing such property and honoring the obligation to pay LID assessments on such property while it is in state ownership.

3. The League supports the concept of an Enterprise Fund as a means for the state to provide required improvements in state land disposals.

4. The League supports legislation which mandates land use capability and resource inventory findings for each tract of land included in the disposal bank.

C. Income Tax

1. The League strongly supports the development and implementation of a tax credit program which would allow state income tax payers to use as a tax credit on their state income tax return that portion of Alaska local taxes they pay for local school support.

2. The League supports tax credit programs being installed to reduce the net income tax paid by Alaskan residents and property owners through the existing state income tax system.

D. Economic Development

1. The League supports and urges the state legislature to establish and provide immediate funding of programs which will create, assist, or aid both public and private enterprises to plan, finance, and develop job related industries, businesses, and facilities that are compatible with the desires of local government.

E. Energy

1. The League supports uninterrupted continuance of loan funds from the state for feasible hydroelectric projects within the state and further supports that long-term, low interest loans for these projects be funded from non-renewable resource revenues such as those presently being generated by oil and gas receipts.

F. Apportionment

1. The League is addressing the question of local apportionment. As Legislation is developed, the League will make recommendations regarding a specific bill.

G. School Support

1. The League further encourages the Legislature to continue to support school capital projects at 80% construction level or higher (as defined by the rules and regulations established by the Department of Education) and calls upon the Legislature and the Governor to fund this amount annually. The League strongly supports legislation that will provide for a supplemental appropriation to fully fund the 1979 fiscal year school capital project fund at the legislated 80% level. The League also supports legislation under which the state will provide the 80% funding for all approved school capital projects to the local district at the time of approval.

H. Public Safety

1. The demand for trained competent local police and fire departments is accelerating throughout Alaska. It is urged that the Legislature, at an early date, assure that police, fire and emergency medical personnel training programs throughout the state have adequate facilities and program resources for training of local safety people, and provide financial support to assist the communities who participate.

I. Revision of Title 29

1. The League supports the initiation of a complete review of Title 29 as outlined by the Local Government Study recently conducted by the Legislature.

J. Civic Centers

1. While legislation has been enacted into law to enable the state to assist local communities in the construction, maintenance and operation of cultural, civic, convention and community recreation centers, only minimal funding has been available for this purpose. The League, therefore, urges the Legislature to authorize the issuance of bonds for this or any similar legislation in an amount sufficient to meet the construction requirements in Alaska comminities.

K. Alaska '84

1. The League supports the concept of Alaska '84. We urge the state (1) to provide adequate feasibility funding to determine the viability of the proposal and (2) to provide construction money in accordance with the recommendation of the feasibilty study when completed.

March 31, 1980

TO: Senator Clem Tillion

FROM: Senator Arliss Sturgulewski

RE: Revision of AS 29

It is generally recognized, especially by those who work most closely with it, that AS 29 is in need of revision. Since the time of original enactment, changes in the title, problems in its application, and policy questions of importance have been noted by municipal attorneys, city managers and clerks, and such other municipal officials as assessors. The Legislative Revisor has indicated that AS 29 should be next approached in terms of needed revision.

The work of revision is complicated and, at times, highly technical. I have received numerous inquiries and requests for a process by which to revise AS 29. I have discussed this problem with many people, including Mr. Berrier, and Ms. Chitwood of the Alaska Municipal League.

I would like to suggest the following as an approach to the revision of AS 29 during the period of time between this session and the 1981 session. Funds and responsibility for this project would be directed by the Legislative Council to Mr. Billy Berrier, Legislative Legal Services, to conduct the revision. I foresee the project as follows: two groups would be selected by Mr. Berrier from recommendations provided by the Department of Community and Regional Affairs, Alaska Municipal League and other interested and affected parties. The first group would be a policy advisory group composed of a variety of perspectives and interests, representing the diversity of local governments across the state, and would include a representative of the legislature. The second, a much smaller group, would be a working group, composed of people who have had experience in the application of AS 29. The work group should consist of municipal attorneys, representatives of the Department of Community and Regional Affairs and the Department of Law, as well as a staff member of Legislative Legal Services; other municipal staff functions should also be represented, such as managers or clerks. While the actual technical work would be conducted by the working group, the policy group would provide overall guidance and assistance on policy questions.

Administrative and secretarial responsbility would rest in Legal Services. In order to support this project funds would be required for travel and per diem. Most local governments will be glad to contribute staff time to this project. However, for both the policy and the working group it will be necessary to provide travel funds. As often as possible, teleconferencing will be used to reduce travel needs and to expedite the

project. A draft bill will be ready for January 1981.

It is anticipated that $20,000 should cover the cost of this project. Any funds remaining would be returned.

Thank you for your attention to this matter.

April 28, 1980

J. D. Nordale
Borough Attorney
Fairbanks North Star Borough
Box 1267
Fairbanks, Alaska 99707

Dear Jim:

Enclosed is a copy of SCR 66 which directs the Alaska Legislative Council to revise AS 29, Municipal Government. I'm also attaching a copy of my March 31 memo to Senator Clem Tillion which spoke to this issue. The Senate Concurrent Resolution was drawn as a result of that memorandum. The fiscal note is much higher than I anticipated, however, I think it is important that there be an advisory group and working group, and that funds be provided to bring people together.

I would appreciate whatever support you can lend to see the passage of SCR 66. I will be contacting the House Community and Regional Affairs Committee to request that they introduce a similar resolution on their side, and expedite it as fast as possible through the system. I will be bringing SCR 66 to the Senate Community and Regional Affairs Committee Tuesday, April 29.

Kindest personal regards,

Arliss Sturgulewski
Senator, District 10-H

Enclosure

FAIRBANKS NORTH STAR BOROUGH
Box 267, Fairbanks, Alaska 99707

April 1, 1980

Senator Arliss Sturgulewski
Pouch V
Juneau, Alaska 99811

Re: Municipal Code Revisions

Dear Arliss:

Both because of Alan Teshe's letter of March 18 to you and a recent conversation with Ginny Chitwood, I would urge you to make every effort to provide for the interim review of AS 29. I would urge that the Alaska Municipal League be a participant in the review process either as a contractor, a co-sponsor or in some other capacity. Based upon the discussions at the Local Government Symposium as well as comments received by the Joint House-Senate C & RA hearings, I think that participation from the unorganized borough is desirable.

A good deal of the criticism of and antagonism toward local government stems from inflexibility in portions of the code and vagueness in other parts. The writers of the Constitution were wise in their recognition that strong and flexible local government could best meet the needs of the diverse areas of this state. Too often local governments are unable to respond effectively because of unrealistic restrictions imposed by the state.

I hope that there is something that you can do to accomplish this review, and if I can be of any assistance, please let me know.

Very truly yours,

J. D. Nordale
Borough Attorney

JDN/sy

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI

COMMITTEES
CHAIRMAN
Community & Regional Affairs

VICE-CHAIRMAN
Commerce

Health & Social Services

Senate

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99504
DISTRICT 10-H

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3712

March 25, 1980

note: Dave Walsh agreed to do but has not confirmed in writing

Mr. Dave Walsh, President
Alaska Municipal League
c/o Pouch 6-650
Anchorage, Alaska 99502

Dear Dave:

The ability for municipalities to have a fair and equitable tax base is absolutely critical to healthy local government. I would like to urge the Alaska Municipal League, possibly in conjunction with the Alaska Native Foundation, RuralCap and others, to undertake, prior to next session, a major review of the kind and amount of taxes that the various classes of municipalities can levy and collect. The current Legislature is addressing House Bill 192, dealing with municipal revenue sharing, and Senate Bill 199, dealing with the school foundation program. These two areas provide major cornerstones for municipal school revenues. A third cornerstone, real and personal property tax, is currently faced with possible erosion and decreased credibility.

The Senate Community and Regional Affairs Committee has some twelve bills pending which impact the municipal property tax by allowing certain classes of exemptions, imposing restrictions, etc. Some, but not all, of these bills allow the municipalities to be reimbursed for the changes in their ability to levy and collect real and personal property taxes. Certainly the bills carry a major fiscal impact. I am enclosing a summary of the bills currently before my Committee. Many other tax bills affecting municipalities are before the Legislature, such as changes in the amount of sales tax which can be levied in certain municipalities and elimination of the business inventory tax.

Relating specificially to real and property taxes, it seems to me that policies must be established regarding possible exemption. If such policies are not developed, we will create a hodgepodge of a program that will serve no one well. For example, should we consider exemptions on a need basis rather than exemptions for special groups of people? Should there be equality for a whole group, rather than special interest exemptions within a group? What kind of things would be better left to grant and aid programs as opposed to exemptions in the property tax approach?

The Department of Community and Regional Affairs recently completed a study of the exemption problem. Their study gives a synopsis of information developed that deals with major exemption problems, and in some cases, suggests several options that might be taken. Their broad policy statement favors few, if any, additional exemptions, and they feel that any exemption program should meet the following criteria: "any exemption granted should be either for public property or for sufficient public good to justify a transfer of burden to the balance of the community." They recognize that the credibility of property tax has been questioned continually and with increasing intensity these past few years, and that many taxpayers feel that they are paying more than their fair share.

The state has recognized certain senior citizens' exemptions, as a matter of public policy. These exemptions support a policy of encouraging age diversity in Alaskan society, show esteem for and gratitude to the pioneers of the state and give a method of helping many to afford to stay in our state, rather than have to leave family, and friends to begin a life in another state, where it might be cheaper to live. The senior citizens who are on a fixed income and cannot absorb property taxes increased by inflation certainly are in need of assistance. However, some bills are now reaching into special groups within the senior citizens; for example, allowing for surviving spouses 55 and older of those senior citizens who qualified for real property exemption to continue to benefit from the exemption. But, what about other senior citizens within that same age group who might have just as much, or a greater need for exemptions? Disabled veterans are another group being suggested for special exemptions, but what about the equity question of all other disabled people in our State? Other questions of equity need to be considered.

Each piece of proposed legislation offers a shift in public policy -- new groups which deserve special treatment, new funding approaches, and so forth. However, sound public policy decisions can be made only within the context of effects or impacts on local governments and the general public. How can we create a new special exemption, for example, unless we are certain of municipalities fiscal needs, alternative revenue sources and the impact of using those other sources?

Again, I would urge the Alaska Municipal League to take a leadership position in review of the municipal property tax, as well as the broader impact of local municipalities being able to raise adequate revenues to fund needed municipal services. I would be most pleased to have your response as to whether you feel the Alaska Municipal League finds merit

in this proposal, and if so, I sincerely hope the league will analyze the kind and amount of taxes that the various classes of municipalities can and should levy and collect.

Sincerely yours,

Arliss Sturgulewski
Senator, District 10-H

Enclosures
cc: Alaska Federation of Natives
RuralCap
Governor's Advisory Committee on Aging
Ms. Dove Kull
Commissioner Lee McAnerney
Mayor George Sullivan
Mr. Phil Younker
Senator John Sackett
Senator Bill Ray
Representative Russ Meekins
Sponsors: SB 138, 154, 296, 299, 360, 370, 427, 431, 456, 465 & 510

Taxes (home improvement exemption)

SENATE BILL NO. 138, by Senators Bradley and Stimson. Relates to establishment of tax exemption for home improvements. Amends AS 29.53 by adding section which provides that the "value of an alteration, repair, renovation, addition to, or improvement of an existing structure which is used by a taxpayer as his personal residence is exempt from assessment for purposes of levy and collection of property taxes under this chapter....." Repeals AS 29.53.025(f) & (g) relating to current exemptions for improvements. Provides Act effective January 1, 1979.

Introduced February 13 and referred to Community & Regional Affairs, then to Finance.

Veterans (disabled) (property tax exemption)

SENATE BILL NO. 154, by Senator Bradley. Amends AS 29.53.020(e) to include disabled veterans of any age to section which exempts persons 65 or over from payment of property tax. Applies to resident veterans, honorably separated from service whose service-related disability has been rated at 50% or more. Provides Act effective January 1, 1980.

Introduced February 13 and referred to Community & Regional Affairs, then to Finance.

Residential Property Tax (partial exemption)

SENATE BILL NO. 296, by Senator Stimson. Adds to list of exemptions from municipal property tax in AS 29.53.020(a) "the real property owned and occupied as a permanent place of abode by a resident, not exceeding $25,000 in value." Provides state shall reimburse a borough or city for revenues lost. Repeals AS 29.53.025(a) which allows municipalities to exclude or exempt or partially exempt residential property from taxation by ordinance ratified by voters, the exemption not to exceed $10,000 per residence. Provides Act effective January 1, 1981.

Introduced January 14 and referred to Community and Regional Affairs and then to Finance.

Property Tax (municipal) reduction of)

SENATE BILL NO. 299, by Senator Kerttula. Amends AS 29.53.050(a) (Tax Limitation on Municipalities) to read: "A (NO) municipality may not levy and tax for any purpose in excess of nine-tenths of one (THREE) percent of the assessed valuation of property within the municipality in any one year." Provides Act effective 1/1/81.

Introduced January 14 and referred to Community and Regional Affairs.

Property Tax (disabled Vets exempt)

SENATE BILL NO. 360, by Senators Sumner and Hackney, by request. Exempts from municipal property tax the real property owned and occupied as a permanent place of abode by a disabled veteran. Provides exemption is allowed to veteran "for a percentage of the assessed value of the real property which is the same as his percentage of disability as established by his service disability rating." Provides Act effective January 1, 1981.

Introduced January 24 and referred to Community and Regional Affairs and Finance.

Fire Prevention

SENATE BILL NO. 370, by Senators Colletta and Bradley. Adds to AS 29.53.020 (Municipal Property Tax - Required Exemptions) "Two

percent of the assessed value of a structure is exempt from taxation if the structure contains fire protection systems in operating condition incorporated as a fixture or part of the structure. The exemption is limited to 1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if fire protection systems are a fixture of the real property on January 1, 1981; or an amount equal to two percent of the value of the structure as of January 1 following the installation of the fire protection systems as fixtures of the structure after January 1, 1981.

Introduced January 31 and referred to Community & Regional Affairs.

Sr. Citizens Tax Exemp. (surviving spouse)

SENATE BILL NO. 427, by Senators Ferguson, Ray, Sackett, Meland, Colletta, Sumner, Kerttula, Hohman, Mulcahy and Bradley. Amends AS 29.53.020(e) relating to municipal property tax exemption for senior citizens by adding: "The real property exempt from taxation under this subsection continues to be exempt if owned and occupied as a permanent place of abode by the surviving spouse of the resident, if the surviiving spouse is 55 years or older and has a gross annual income of less than $20,000." Does not provide for effective date.

Introduced February 12 and referred to Community and Regional Affairs, then to Finance.

Property Tax Exemptions (for energy

SENATE BILL NO. 431, by the Rules Committee by request of the Legislative Council by request. Adds new section to AS 29.53 (Municipal Assessment & Taxation) which exempts from municipal property tax "The value of an alternation or improvement of an existing structure that reduces energy consumption in the structure." Section applies to mobile homes also. Provides Act effective January 1, 1981.

Introduced February 12 and referred to Community and Regional Affairs, then to Finance.

Municipal Property Taxes (exemp. sr. citizens--personal property)

SENATE BILL NO. 456, by Senators Stimson and Bradley. Amends Municipal Assessment and Taxation (AS 29.53), required exemptions (020) by stating that the property of certain residents of the state is exempt and further states that "(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over, and the personal property owned by a resident 65 years of age or over, is exempt from taxation of the assessed value of the (REAL) property." Deletes reference to "real" property throughout and repeals AS 29.53.020(i) which defines "real property" as property including, but not limited to mobile homes whether classified as real or personal property for municipal tax purposes. Provides Act takes effect January 1, 1981.

Introduced February 18 and referred to Community & Regional Affairs, then to Finance.

Property Tax (residential-partial exem. from assess)

SENATE BILL NO. 465, by Senators Ferguson, Colletta, Fahrenkamp and Sumner. Exempts from general taxation (Municipal Assessment and Taxation, required exemptions--AS 29.53.020(a)) "(7) the real property owned and occupied as a permanent place of abode by a resident, not exceeding $85,000 in value." Exempts real property owned and occupied by a resident 65 years of age or over from

taxation of the assessed value of property which exceeds $85,000 in value. Repeals AS 29.53.025(a) (Municipal Assessment and Taxation. Optional Exemptions and exclusions. Section (a) states: "Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election."), and amends AS 29.53.020(g) (relating to reimbursement of borough or city for revenue lost by exemption) by deletion of language stating that upon proper application an individual would have been granted an exemption. Provides Act takes effect January 1, 1981.

Introduced February 18 and referred to Community and Regional Affairs, then to Finance.

Municipal Property Tax (exempting business inventory)

SENATE BILL NO. 510, by the Rules Committee by Request (for the Interim Tax Policy Committee). Exempts business inventory from municipal property tax levy and provides for reimbursement to municipalities of tax revenues lost by operation of the exemption. Reimbursement made on the basis of the application of the tax rate of the borough or city to the value of business inventory reported to the state by businesses for the purpose of taxation under the Alaska Net Income Tax Act, and subject to legislative appropriation to the Department of Community and Regional Affairs for the purpose. State Departments may adopt regulations to carry out the provisions of chapter. Repeals sections of Municipal Assessment and Taxation (AS 29.53) relating to assessment of business inventory and reassessment in the case of cessation of business during the tax year. Provides Act takes effect January 1, 1980.

Introduced March 5 and referred to Community and Regional Affairs, then to Finance.

SENATOR
ARLISS STURGULEWSKI

COMMITTEES
CHAIRMAN
Community & Regional Affairs

VICE-CHAIRMAN
Commerce

Health & Social Services

Senate

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99504
DISTRICT 10-H

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3712

April 2, 1980

Jay S. Hammond, Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Jay:

Re: Senior Citizens Tax Exemption from Municipal Property Tax

The legislature has under consideration, SB 328, which would establish an Older Alaskans Commission. In the event this legislation is adopted, I would like to bring to them, through you, a matter for their review and, hopefully, recommendations to the next session of the legislature. I am bringing this matter to the attention of your Advisory Committee on Aging.

The Senate Regional and Community Affairs Committee has had over twelve bills pending which impact the municipal property tax by allowing certain classes of exemptions, imposing restrictions, etc. Some, but not all, of these bills allow the municipalities to be reimbursed for the changes in their ability to levy and collect real and personal property taxes. Since real and property taxes create such a major corner stone of tax revenue source for municipalities, I have asked the Alaska Municipal League to look into the matter of establishing policies regarding possible exemptions. We will create a hodgepodge of a program in the absence of such policy. Dave Walsh, Chairman of the Alaska Municipal League, has indicated to me that the League will undertake such a study. However, I feel it would be important that a commission, dealing particularly with older Alaskans' needs, undertake a study of that part of the real and personal property tax which deals with older Alaskans.

The state has recognized certain senior citizens' exemptions as a matter of public policy. These exemptions support a policy of encouraging age diversity in Alaskan society, they show esteem for and gratitude to the pioneers of the state, and give a method of helping many to afford to stay in the state, rather than to leave family and friends to begin a life in another state where it might be cheaper to live. The senior citizens who are on a fixed income and cannot absorb property taxes increased by inflation certainly are in need of assistance. However, some bills are now reaching into special groups within the senior citizens; for example, allowing for surviving spouses 55 and older of those citizens who qualified for real property exemption to continue to benefit from the exemption. But, what about other senior citizens with the

same age group who might have just as much, or a greater need for exemptions?

Disabled veterans are another group being suggested for special exemptions, but what about the equity question of all other disabled people in our state? Other questions of equity need to be considered. Each piece of proposed legislation that we have considered offers a shift in public policy. New groups which deserve special treatment, new funding approaches, etc. However, sound public policy decisions can be made only within the context of effects or impacts on the general public, and certainly on local governments.

The Department of Community and Regional Affairs recently completed a study of the exemption problem. Their study gives a synopsis of information developed that deals with major exemption problems, and in some cases, suggests several options that might be taken. Their broad policy statement favors few, if any, additional exemptions, and they feel that any exemption program should meet the following criteria: "any exemption granted should be either for public property or for sufficient public good to justify a transfer of burden to the balance of the community." They recognize that the credibility of property tax has been questioned continually and with increasing intensity these past few years, and that many taxpayers feel that they are paying more than their fair share.

Again, I think the matter of senior citizens exemptions merits consideration by the Older Alaskans Commission. If such a commission is established by the legislature I would appreciate it if you would approach them on this subject.

Sincerely,

Arliss Sturgulewski

Arliss Sturgulewski
Senator, District 10-H

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI

COMMITTEES
CHAIRMAN
Community & Regional Affairs

VICE-CHAIRMAN
Commerce

Health & Social Services

Senate

2957 SHELDON JACKSON
ANCHORAGE, ALASKA 99504
DISTRICT 10-H

While in Juneau
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3712

April 3, 1980

Betty Warren, Chairman
Governor's Committee on Aging
Box 116
Kenai, Alaska 99611

Dear Betty:

Enclosed are copies of letters I recently sent to Dave Walsh, President of the Alaska Municipal League, and to Governor Jay Hammond regarding tax exemptions from the municipal property tax. It seems to me that your Committee on Aging would have interest in taking a good look at the issue raised in my letters, particularly as they relate to older Alaskans.

With the pending change before the legislature, regarding the continuation of your Committee on Aging and the possible Older Alaskans Commission, I wanted to be sure to touch all bases. If you feel the issues raised have merit for consideration by your committee, I would be very delighted to have whatever follow-up information you might develop. You might wish to contact Dave Walsh to give input to the work that the Municipal League will be doing over the next year.

Thank you for your consideration of this material, and I do look forward to hearing from you.

Kindest personal regards,

Arliss Sturgulewski

Arliss Sturgulewski
Senator, District 10-H

Enclosure

# Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

BOROUGH ATTORNEY'S OFFICE


March 18, 1980

The Honorable Arliss Sturgulewski
Alaska State Senate
Pouch V
State Capital
Juneau, Alaska 99811

Dear Arliss:

Re. Municipal code revisions.

Attached with this letter is a list of examples of various provisions of Title 29 which should be clarified through revision of that title. This list is by no means exhaustive and I am sure that other attorneys and municipal officials throughout the state could add additional examples and support a thorough revision of Title 29.

As we discussed some time ago in Juneau, I recommend that the Legislature form an interim committee to review AS 29 during the next two years and that the committee be empowered to seek assistance from municipal attorneys throughout the state, hold hearings as it deems appropriate, and present a new municipal code to the Legislature in 1981 or 1982. I have received expressions of support from attorneys representing several municipalities throughout the state and am confident they will assist the Legislature in preparing a revised municipal code.

Thank you very much for your continued attention to this matter. If there are additional questions I can answer regarding Title 29 or if the Legislature is prepared to take action in this matter, please do not hesitate to contact me.

Cordially,

Allan E. Tesche
Borough Attorney

er

cc: Jerry Wertzbaugher
Tom Klinkner
Jim Nordale
Russ Walker
Lee Sharp

# AS 29: Revisions Needed

29.08

Although an attempt has been made in this Chapter to classify the various kinds of Alaskan municipalities, more recent amendments to Title 29 and unification of several cities and boroughs have resulted in confusion over definitions of "cities", "boroughs", and "municipalities". It is not clear, for instance, whether the unified Municipality of Anchorage is a city, a borough, or unified municipality or all three forms of government within existing provisions of AS 29.

29.13.100

The Code should contain a uniform system for designating statutes that expressly apply to home rule municipalities and all such statutes should be consistently cross referenced.

29.23.050

The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

29.23.060(d)

Circumstances, other than financial interests, which allow a member to abstain should be better defined.

29.23.080

The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

29.23.130(B)

Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

29.23.150 and AS 29.23.470

Both require assembly appointmet of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

29.23.170

This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto. For instance, if the mayor vetos a line

item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

29.23.200

The three year residency requirement here is also probably invalid.

29.23.210

As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

29.23.250

Another probably invalid three year residency requirement.

29.23.270

This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

29.23.555

This section has been superceded by AS 39.50.

29.33.070-245

Serious thought should be given to the purpose of the planning, platting and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

29.33.190

This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which has not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even though that person may be the owner of record only by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

29.33.070

It is unlear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

29.33

The current language of this chapter, as it incoprorates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restrictive and should be revised to allow more innovative forms of land use regulation by borroughs and municipalities.

29.33.250

Presumably the transfer required is one from all cities exercising the power rather than from a city.

29.33 and 29.38

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities)?

29.48.030(b) AS 29.48.035(b) and (c)

These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code.

Moreover, AS 29.48.030 and .035, insomuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

29.48.030(a)(12)

The term transportation "system" used in this section should be defined.

29.48.260

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

29.53.135

The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

29.53

Should be amended to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years. An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

29.63.090

The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

8.60.050-100

Regulation of junk yards in this section should be cross-referenced to those sections of Title 29. relating to areawide planning, platting and zoning powers.

9.25.110-120

It is unclear whether public records statutes apply at all to municipal government. If it is the intention of the Legislature to apply the public records laws of AS 9.25.110-120 to cities and boroughs, then those sections should be amended accordingly with an appropriate cross references to Title 29.

January 4, 1980

Mr. Thomas F. Klinkner
Law Offices of Richard W.
Garnett III
900 West 5th Avenue, Suite 540
Anchorage, Alaska 99501

Dear Tom:

Thank you very much for your comments regarding the Local Government Study. Our final report is due out very soon and I will see that you are added to this mailing list. Overall, I am pleased with the results of this study. Although the proposals may seem modest, they seem to follow well the constitional directions set for local governments and certainly can bring some cohesiveness and coordination to the delivery of services to rural Alaska. Your indepth comments and support can certainly help in seeing that this needed legislation is adopted by this session of the Legislature.

Your voice adds to a growing chorus speaking to the need for thorough technical revision of Title 29 of the Alaskan Statutes. When a certain number of amendments have been made to the Statutes, a recommendation is made for a revision of the Title. This is the case, as I understand it, with Title 29 and the recommendation is being made that Title 29 be the next title to be revised. I have had preliminary discussions with Representative Bill Parker regarding this and with several other interested parties, such as the Alaska Municipal League. One possible approach might be the establishment of a short-term committee composed of chairs of the Senate and House Community and Regional Affairs, Mr. Jack Chenoweth, from the Legislative Legal Department, other attorneys who are familiar with working on the Statutes, and other interested persons. I would see this as a working group that would produce revisions to Title 29 for introduction to the next Legislature. It seems to me there needs to be a careful delineation of the so-called housekeeping aspects and other issues that may be of major policy impact. For example, issues dealing with service areas, annexation procedures, etc., may take some special review and consideration.

I will discuss this matter further with Mrs. Ginny Chitwood, Alaska Municipal League, and with Representative Bill Parker as to possible methods for best proceeding with the revision of Title 29. I am sending copies of this letter to a number of people in hopes that both you, Tom, and the ones receiving copies will send me their thoughts and comments as to how best to proceed. It would be very helpful to have some input as to the number of policy issues, in addition to overall revisions that may well need to be addressed. Again, thank you for your interest and I will look forward to hearing from you further on this.

Sincerely,

Arliss Sturgulewski
Senator, District 10-H

cc: Mr. Lee Sharp
Juneau City Attorney
Mr. Bruce Aronson
Petersburg City Manager
Mrs. Ginny Chitwood, Ex. Dir.
Alaska Municipal League
Mr. Alan Tesche
Mat-Su Borough Attorney
Mr. Jim Nordale
North Star Borough
The Honorable Bill Parker
House of Representatives
Mr. Jim Nordale
North Star Borough

LAW OFFICES OF
RICHARD W. GARNETT III

THOMAS F. KLINKNER
SUITE 540, 900 WEST FIFTH AVENUE
ANCHORAGE, ALASKA 99501

TEL. (907) 276-2221

December 5, 1979

Senator Arliss Sturgulewski
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Arliss:

I appreciated the opportunity to attend your discussion group on local government in rural Alaska, and thank you for sending me a copy of the report resulting from that session. I regret that I have not responded sooner to your request for implementation proposals.

While it certainly is not an essential prerequisite to the program you propose, I suggest that you consider as a complementary project a thorough technical revision of Title 29 of the Alaska Statutes. As an attorney for general law municipalities who has had substantial experience working with Title 29, I frequently am exposed to its legal inadequacies as a charter for the operation of small municipalities. Title 29 is at once too vague to be helpful in some areas and too restrictive in others. A new rural municipality can ill afford the added expense of developing a home rule charter and detailed municipal code merely to avoid the deficiencies of Title 29. While the structure of local government organization under Title 29 is basically sound, many of its procedural and administrative provisions do not provide the support and instruction that those who administer small, rural municipalities require.

I believe that if there were support for the project in the legislature it would not be difficult to assemble a committee of attorneys and others with day to day experience in the operation of general law municipalities to undertake a revision of Title 29 to make it more useful to those who operate under it-generally the smaller, more rural municipalities in the state.

LAW OFFICES OF
RICHARD W. GARNETT III



Please let me know if you would be interested in pursuing such a project.

Yours truly,

Thomas F. Klinkner

Thomas F. Klinkner

TFK:pac

**DEVELOPMENT CITY - Title 29**

**Senate Community and Regional Affairs**
**Arliss Sturgulewski**

**February 1979**

Notes by Ann Shook - F

It must be remembered that this statute was written for the Lost River project located near Nome in an unorganized borough containing no inhabitants. When Community and Regional Affairs received the petition for a development city on Afognak Island from the Afognak Island Native Association, they were given the impression that this area was devoid of inhabitants and proceded on this assumption. Most of the inhabitants are, in fact, transient cannery workers and may not wish for a voice in the development stage of a development city. It is not clear if all of the land is owned by the Native Corp. and if so, on whose land are the remaining inhabitants residing. If these inhabitants do not own land, they will not be subject to property tax even when it becomes a first class city. (they must pay tax only on improvements on the land).

29-18-050 (8) Provision for a first class city incorporation

This should be changed if there are inhabitants in the area. This section of the statute does not follow the standard incorporation procedures because it was assumed that a development city would result in an uninhabited area.

29-18-340 Development City Council

Change statute to "the Governor shall appoint no fewer that two public members from a list of nominees designated by the major developer providing the industrial base of the city as measured by employment and capital investment; and two members who are state residents preferably residing in the surrounding area or borough if the development city is located in a borough".

29-18-360 Powers and Duties of the Council

Considerable controversy has arisen over this provision as it gives planning & zoning powers to the division of planning and research and the Dept. of Environmental Conservation during the development stage. The original project for which this was written (Lost River) was located in an unorganized borough whereas Afognak is located within a borough which may want some control over development within its confines. An addition which may alleviate this problem is "except within an organized borough unless the borough waives DPD powers over development, planning, and zoning".

Actually, according to 29-18-290, the petition for a development city may be rejected

Actually, according to 29-18-290, the petition for a development city may be rejected under (4) if the organized borough is capable and willing to carry out the program and activities being considered or if the borough wishes to promote a development city within its area (5) (a) the assembly may "present to the Local Boundary Commission a contractual agreement outlining responsibilities assumed by the borough and the industrial developer to implement the proposed development program."

29-18-380 Procedures

Add "meetings shall be made public".

29-18-390 Development City Capital Improvements

Regulations presently being written by Community and Regional Affairs will clarify this.

29-18-430 Revenue Bonds

Mr. Shey is incorrect in his assumption that issance of Revenue Bonds would result in the 85 residents becoming 1/85 of the taxable base. Revenue bonds are issued from a coporation or bank based on the value of the project or facility thereby placing no liability on the tax payers. In the development stage, the inhabitants will not be taxed,and unless they own property, they will be taxed only on improvements on land when the development city is incorporated. The state may support the area with funds for certain capital improvement projects thereby represently the use of general tax monies. Mr. Shey gives an example of the building of a dock for which he says his concern is "the tax liability of the bond on the city should the industry fail to be profitable. . ." The facility would be liable in the case of Revenue bonds not the city.

Therefore, there are four alternatives before us:

1. Change the law to apply to locations which include a population; providing for a more democratic process in the development state of the project.

2. Repeal the law and in the process disallow certain developments that may be needed and beneficial to Alaska in uninhabited areas of the state.

3. Limit the law to only those areas in unorganized boroughs that have no inhabitants.

4. Leave the statute as is, counting on the regulations from Community and Regional Affairs to clarify the less definitive and confusing aspects of the law.

Chefornak City Council
Chefornak , Alaska 99561

20 June 1980

Local Government Study
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Gentlemen;

We wish to give our full suport to the issue on Capitol Foundation fund. We find it very helpful to our situation because we don't have very much in matching costs to our capitol projects.

Right now we are trying to get funds to build a Cultural Facility but we don't have matching costs. If it is possible, we will introduce the amounts we are trying to get and the matching costs.

We have other capitol projects we would like to get on, but don't have funding.

If we have to fill out forms or questionaires to get those funds, Please don't hesitate to send them to us.

With our support,
Chefornak City Council
Chefornak City Council

cc. D.L.
N.L.

SCOMM

#23:14

| NAME | SENT TO: | DATE: |
|---|---|---|
| Notice of Mtg | EERA list | 11 Sep 80 |
| dtd 10 Sep 80 | Policy group | |
| re: 29 & 30 Sep. Policy | Wkg group, Ex. Off. | |
| mtg. | & others | |

**NOTICE OF MEETING**
**06 January 1981**

**A Policy Advisory Group has been appointed to oversee the revision of the Municipal Code, Title 29 of the Alaska Statutes. The Policy Advisory Group is composed of thirteen members. Of these, nine public members represent a broad range of local officials interested in Title 29. The public and legislative members of the Title 29 Policy Advisory Group are:**

Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
James Kohler, Manager, City of Yakutat
Ronald Larson, Borough Mayor, Matanuska-Susitna Borough
Gene Moore, Manager, City of Kotzeube
Donna Sherby, City Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough
Senator Arliss Sturgulewski, Anchorage
Senator Bob Mulcahy, Kodiak
Representative Margaret Branson, District 5
Representative Charles Parr, Fairbanks

The fifth meeting of the Policy Advisory Group is scheduled for 17 & 18 January 1981. The meeting will begin at 9:00 a.m., in Room 320 of the Court Building, Juneau, Alaska.

The proposed agenda for this meeting is :

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:
   a. Report by subcommittee chairman on AS 29.09.180 (Organization Grants).
   b. Report by subcommittee chairman on AS 29.30.040 (Voter Qualifications).
   c. Presentation of proposed drafts by the Technical Committee.
   d. Other old business.

4. New Business:
   a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
   b. Presentation of proposed items for consideration by Ex-Officio members.
   c. Presentation of proposed items for consideration by the Technical Revision Committee.
   d. Other new business.

January 18th:
1. Introduction of guests and members of the public attending.
2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.
3. Other new business.

It is the intention of the Policy Advisory Group to undertake a through review of Title 29. To make this possible, the Policy Group requests that any questions about Title 29 be forwarded to them. Comments on Title 29 may be sent to:

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

As the review of Title 29 must be completed before the next legislative session, it is important that any suggestions for revision be mailed as soon as possible. It is hoped that all areas of Title 29 needing revision can be identified before this meeting.

Thank you for your interest in the revision of Title 29. Again, any comments on areas of Title 29 that, in your opinion, need review will be helpful to the Policy Advisory Group.

**NOTICE OF MEETING**
**November 24, 1980**

**A Policy Advisory Group has been appointed to oversee the revision of the Municipal Code, Title 29 of the Alaska Statutes. The Policy Advisory Group is composed of thirteen members. Of these, nine public members represent a broad range of local officials interested in Title 29. The public and legislative members of the Title 29 Policy Advisory Group are:**

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Gene Moore, Manager, City of Kotzebue
Donna Sherby, City Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and
Ketchikan Gateway Borough
Senator Arliss Sturgulewski, Anchorage
Senator Bob Mulcahy, Kodiak
Representative Margaret Branson, District 5
Representative Charles Parr, Fairbanks

The fourth meeting of the Policy Advisory Group is scheduled for 15, 16, and 17 December 1980. The meeting will begin at 9:00 a.m. in the Adventure Room of the Captain Cook Hotel, Anchorage, Alaska.

The proposed agenda for this meeting is :

December 15th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:
   a. Report by Pat Poland on material prepared for newsletters.
   b. Report by subcommittee chairman on AS 29.09.180 (Organization Grants).
   c. Report by subcommittee chairman on AS 29.30.040 (Voter Qualifications).
   d. Presentation of proposed drafts by the Technical Committee.
   e. Other old business.

4. New Business:
   a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
   b. Presentation of proposed items for consideration by Ex-Officio members.
   c. Presentation of proposed items for consideration by the Technical Revision Committee.
   d. Other new business.

December 16th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Other new business.

December 17th:

1. Introduction of guests and members of the public attending.
2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.
3. Other new business.
4. Setting of future meeting dates for the Policy Advisory Committee.

It is the intention of the Policy Advisory Group to undertake a through review of Title 29. To make this possible, the Policy Group requests that any questions about Title 29 be forwarded to them. Comments on Title 29 may be sent to:

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

As the review of Title 29 must be completed before the next legislative session, it is important that any suggestions for revision be mailed as soon as possible. It is hoped that all areas of Title 29 needing revision can be identified before this meeting.

Thank you for your interest in the revision of Title 29. Again, any comments on areas of Title 29 that, in your opinion, need review will be helpful to the Policy Advisory Group.

NOTICE OF MEETING
September 10, 1980

A Policy Advisory Group as been appointed to oversee the revision of the Municipal Code, Title 29 of the Alaska Statutes. The Policy Advisory Group is composed of thirteen members. Of these, nine public members represent a broad range of local officials interested in Title 29. The public and legislative members of the Title 29 Policy Advisory Group are:

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Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan Gateway Borough
Representative Charles H. Parr, Fairbanks
Representative Margaret A. Branson, Kenai Peninsula
Senator Bob Mulcahy, Kodiak
Senator Arliss Sturgulewski, Anchorage

The second meeting of the Policy Advisory Group is scheduled for September 29th and 30th, 1980. The meeting will begin at 9:00 am at the Legislative Information Office, 1024 West Sixth Avenue, Anchorage, Alaska. The telephone number there is 278-3668.

The proposed agenda for this meeting is:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:
   a. Recommendations by Ex-Officio members for ways of getting materials and information to the public.
   b. Report on reorganization of Title 29 by the Technical Revision Committee.
   c. Other old business.

4. New Business:
   a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
   b. Presentation of proposed items for consideration by Ex-Officio members.
   c. Presentation of proposed items for consideration by the Technical Revision Committee.
   d. Other new business.

5. Setting of future meeting dates for the Policy Advisory Committee.

It is the intention of the Policy Advisory Group to undertake a thorough review of Title 29. To make this possible, the Policy Group requests that any questions about Title 29 be forwarded to them. Comments on Title 29 may be sent to:

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

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Representative Margaret A. Branson, Kenai Peninsula
Senator Bob Mulcahy, Kodiak
Senator Arliss Sturgulewski, Anchorage

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The proposed agenda for this meeting is:

1. Introduction of guests and members of the public attending.

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**TITLE 29 REVISION COMMISSION**
**Policy Advisory Group Meeting**

**Minutes of November 10 & 11, 1980**

The third meeting of the Policy Advisory Group - Title 29 Revision Commission was held November 10 and 11, 1980 in the East Gold Room of the Traveler's Inn, Fairbanks, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 10:45 a.m.

Present as members of the Policy Advisory Group were: Senator Arliss Sturgulewski, Senator Bob Mulcahy, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Donna Sherby, and Russell Walker. Present as Ex-Offico Members were Palmer McCarter, and Bonnie Hedley from RuralCAP substituting for Phil Smith. The Technical Committee was represented by Ted Berns and Russell Walker as members of both groups, and by Allan Tesche. Present from the staff of Legal Services were Billy G. Berrier, Director and Tamara Brandt Cook, Legislative Counsel.

Guests and members of the public attending were: Stephanie Scott, Haines Borough; Cris Fowler, AOGA; Bob Walker, Exxon; Mike Walleri, Tanana Chiefs; John Arney, Haines Borough; Bob Juettner, City of McGrath; Michael Tavoliero, City of Saxman; Marie Matsuno, Department of Community and Regional Affairs; Ivan Widom, City of Nome; Lisa Buskirk, Tanana Chiefs; John Halliwill, City of Haines; Tommy Nebel, Ketchikan Borough; Kathy Carssow, Ketchikan Borough; Marvin Yoder, Ketchikan Borough; Tom Blanton, Haines Borough; Jerry Clifton, Haines Borough Assembly; Dan Ogt, Kodiak Island Borough; Shirley Collins, Haines; Jack Carpenter, Sitnasuak Native Corporation; Edward A. Stahla, City of Wrangell; Richard Careaga, City of Unalaska; Robert Flint, Wohlforth & Flint; Jack P. Van Leuven, RainierBank.

There were no presentations by guests or members of the public.

Under Old Business, Palmer McCarter reported on ways of getting materials and information to the public. He said the Department of Community and Regional Affairs was planning newsletter inserts and coordinating with the University of Alaska for a special issue of their newsletter to include an insert concerning the revision of Title 29. Chairman Sturgulewski directed Bonnie Hedley to coordinate information activities with Mr. McCarter and Tamara Cook.

Bonnie Hedley gave a report from RuralCAP on special problems of rural communities. She stated that rural communities have little "hook-up" with state agencies and therefore have little access to programs and money. The legislature never meets as the assembly for the Unorganized Borough. It is felt that there are not enough people in small communities to perform all

the required municipal functions as well as the functions of existing forms of government, such as IRA councils. RuralCAP recommends the recognition of IRA councils. Chairman Sturgulewski directed staff to prepare a memo on these issues.

Mike Walleri presented a new draft of his report entitled "Tribal-State Relations, A New Paradigm for Local Government in Alaska". The chair directed staff to review it.

Chairman Sturgulewski reported attending a meeting of the AVCP in Bethel, and said they were getting funds to do a regional government study. She also reported on attending the AFN convention in Anchorage. The people she talked to questioned parallel governments and duplication of functions in the communities where there were municipal governments as well as traditional governments.

Ginny Chitwood of the Municipal League was stranded in Juneau due to weather and her report was postponed.

Billy Berrier reported what the Commission had done to date. Ted Berns said the Technical Committee planned to present final recommendations to the Policy Group by the 15th of December, 1980.

The Technical Committee presented their proposed drafts for consideration to the Policy Group. Representative Branson moved that the Policy Group accept all recommended changes except those requiring more discussion. The motion was seconded and carried. The following sections were accepted. (Note: There were wording changes in some in the following) Sec. 29.06.010, Sec. 29.06.050, Sec. 29.12.260, 29.15.020, 29.15.050, 29.15.110, 29.65.050, 29.30.010, 29.30.020, 29.30.030, 29.30.050, 29.30.095, 29.30.110, 29.30.120, 29.30.130, 29.30.140, 29.30.150, 29.30.160, 29.30.170, 29.30.180. Sections 29.09.180 and 29.30.040 were sent to subcommittees for study.

The meeting was recessed until 9:00 a.m. 11 November 1980.

At 9:00 a.m. 11 November 1980 the meeting was again called to order in the East Gold Room of the Traveler's Inn, Fairbanks, Alaska. All members of the Policy Advisory Group were in attendance. Members of the public and guests who attended the day before were present and the following people attended as well: Ginny Chitwood, Ex-Officio Member; Gerald Lee Sharp, Title 29 Technical Committee; Richard Garnett, III, Title 29 Technical Committee, David Dye, Department of Community and Regional Affairs; Leo Rasmussen, City of Nome; L.C. Farnen, City of Homer; Kathy Herold, City of Homer; Carol Maser, Anchorage Assembly; Jenny Files, Fort Yukon; and former Mayor Bill Wood, Fairbanks.

Mayor Wood gave the first presentation. He spoke on the need for municipalities to have developmental authority in order

to encourage investments within the cities and boroughs. He submitted a letter from the City of Fairbanks regarding tax incentive programs and referred to Fairbanks ordinance 3906. The Technical Committee was directed to review AS 29.53.025.

John Halliwill, Mayor of Haines spoke in favor of the elimination of Third Class Boroughs.

Bob Juettener, City Manager of McGrath spoke on the problems of communities with small populations supporting the large number of organizations making up municipal government. He recommended an evaluation of second class cities and abolishing those that are not functioning. He suggests that the group providing the best service delivery be chosen as the governing body of a community. He feels the different classifications of cities should be abolished and provisions made for local options con erning the assumption of powers and form of government. He sees a need in the bush for a means of dealing with the executive branch of government, perhaps a regional or sub-regional elected body in the Unorganized Borough.

Ivan Widom, City Manager of Nome said there was a need to regionalize concepts in order to see what is happening in specific areas. He recommends giving communities mechanisms for reaching the state in order to benefit from services offered. Mr. Widom also recommended giving communities the option of choosing their own form of government, such as home rule.

Michael Tavoleiro, City Manager of Saxman spoke next, saying there was no definition of local government, i.e , no expressed definition of eligibility characteristics. He feels that second class cities within an organized borough are disenfranchised from planning powers. He stated also that second class cities should have direct access to federal and state programs instead of being required to go through the borough. Mr. Tavoliero cited the Historical Districts program as an example. He feels that local communities should be allowed more self-sufficiency.

Larry Farnen, City Manager of Homer spoke in reference to 29.48.260. He recommended raising the dollar amount in that section from $25,000 to $250,000. He wants cities to have the authority to lease land to beneficial new industry. In reference to planning and zoning powers, Mr. Farnen recommended the statutory language be changed to allow boroughs to assume planning and zoning powers if the cities are not willing to exercise them.

Dan Ogt, Mayor of the Kodiak Island Borough cited AS 29.30.160 saying there was no provision for special elections, and recommended special elections be mandated in the statutues.

Richard Careaga, Planning Director for the City of Unalaska wants more definition/clarification of mandatory powers and duties.

Leo Rasmussen, Mayor of Nome said small government feels that it has lost control of its own destiny. Planning is being taken over by REAAs and SRAAs. He said Nome feels threatened by the possible organization of the Unorganized Borough and he asked for more local automony.

Returning to Old Business, the Policy Group continued its review of the recommended drafting changes submitted by the Technical Committee. Sec. 29.30.210 was reviewed. James Kohler moved to not accept the drafted change but to retain the current language. Charles Parr amended the motion, and it carried. The chair directed staff to clarify the wording of the current statute and resubmit it at the next meeting of the Policy Group. Secs. 29.30.220, 29.30.225, 20.30.230, 29.30.240, 29.30.250, 29.30.260, 29.30.270,29.30.280, 29.30.290, 29.30.300, 29.30.310, 29.30.320, were accepted with no changes or some wording changes. 29.30.330 was sent back to the Technical Committee for redrafting.

Two subcommittees were formed and are to give reports at the next meeting on AS 29.09.180 Organization Grants (Chair-McCarter) and AS 29.30.040 Voter Qualifications (Chair-Dimmick).

Two sections of Title 29 considered obsolete were discussed. The Policy Group will recommend the repeal of the sections on Involvement of Young People in Local Government and the repeal of the sections on Development Cities.

The dates of the next meeting of the Policy Advisory Group were set for 15, 16, and 17 December, 1980 in Anchorage.

Staff is to review the definition of "petitioner".

The meeting was adjourned at 4:30 p.m.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary, Title 29 Commission

TITLE 29 REVISION COMMISSION
Policy Advisory Group Meeting

Minutes of September 29 & 30, 1980

The second meeting of the Policy Advisory Group of the Title 29 Revision Commission was held September 29, 1980 in Courtroom K of the Alaska Court System Building, 303 K Street, Anchorage, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Group were: Senator Arliss Sturgulewski, Representative Charles H. Parr, Ronald Larson, Russell W. Walker, Marilyn Dimmick, Donna Sherby, Jonathan Solomon, James Kohler, Ted Berns, and Dennis Sheldon representing Terry Cook. Ex-Officio members present were Ginny Chitwood and Phil Smith. Richard Garnett, III was there as a member of the Technical Committee. Ted Berns and Russell Walker are members of both the Policy Group and the Technical Group. Present from the staff of Legal Services were Jack Chenowith and Tamara Cook.

There to make presentations to the Policy Group were C. Demming Cowles, Deputy Commissioner of the Department of Environmental Conservation; David Dye, Planner for the Department of Community and Regional Affairs; Dr. Fred McGinnis, Deputy Commissioner of the Department of Health and Social Services; Stephanie Scott, representing the Haines Borough Assembly; and Mike Walleri representing Tanana Chiefs, Inc.

Guests and members of the public attending were: Stuart Bowdoin, Bristol Bay Borough; Gary Bradford, Bristol Bay Borough, Glen Svendsen, Administrative Assistant, Senate Community and Regional Affairs Committee; Cris Fowler, AOGA Regulatory Reform Committee; Ray Menninger from Haines; Jim Bennett, researcher for AVCP (Calista Corporation); Ellen Greenburg, and Emily Larson.

After the meeting was called to order and guests introduced themselves, Commissioner Cowles began the presentations. He spoke regarding the functions of the Department of Environmental Conservation which could be locally done and raised policy questions about whether state or local government should be in charge of the following functions:

1. Water system and sewage disposal inspections.
2. Subdivision review of on-site sanitation capabilities.
3. Basic sanitation inspections of restaurants, hotels, etc.

4. Clean up of small oil spills.

5. The issuing of oily waste burn permits and surface oiling permits.

6. Litter control.

7. Vehicular emmissions control.

Changes to Title 29 would have to be made to allow for delegation of these powers. Commissioner Cowles suggested that the statutes could make it optional for small communities to assume these powers and provide for state reimbursement, because money for communities to perform these services is a problem.

Stephanie Scott representing the Haines Borough Assembly spoke next. The borough of Haines would like a clarification of the powers of third class boroughs. She reported that the Borough Chairman had the following recommendations to make:

1. Rewrite 29.48.260(e) to relieve procedural requirements under Libby vs. Dillingham.

2. Include inventories as optional exemptions from personal property taxation.

Ms. Scott stated there would be teleconference facilities available in Haines December 1, and there was a great deal of local interest in participating in a teleconference with the Policy Group.

David Dye, Planner III for the Department of Community and Regional Affairs made these recommendations from his division:

1. The law should be amended to allow municipal land exchanges with individuals. Municipal expansion land in some cases is located too far from the community to be used for municipal expansion. The definition of "municipal purpose" should be clarifed.

2. Subsection (c) of 29.48.260 sets out two procedural requirements for land disposal. Mr. Dye reccommends that lottery be added as an equitable way of disposing of land which is not based on wealth.

3. The provision for voter ratification of disposal of land valued at more than $25,000.00 should be changed to reflect current land values. A more realistic figure would be 50,000.00 to 100,000.00 dollars.

4. Subsection (d) of 29.48.260 exempts lands derived from the state from procedural requirements. C&RA suggests that exemption turn on the purpose of disposal, not the source of the land.

5. Under ANCSA, people who have occupied land after December 18, 1971 do not receive title to that land. C&RA would like a preference right for occupiers of land after that date to allow them to purchase land without having to bid.

6. Mr. Dye would like a definition of "official map".

7. The wording of AS 29.23.090 should be changed to substitute "land use regulation" for "zoning".

8. C&RA suggests that rather than a platting waiver provision, the section include a "short plat" provision to allow for additional platting requirements if the land were subsequently re-subdivided.

9. AS 29.33.070(b)(2) allows boroughs to delegate planning and zoning to cities. The Department of Community and Regional Affairs believes in consistent area-wide planning and wants only the delegation of enforcement and administration of planning.

10. The sections regarding Development Cities should be deleted.

Mike Walleri of Tanana Chiefs, Inc. spoke regarding municipal lands disposal and the need for preference to occupiers of land regarding purchasing rights. This should, however, be subject to the municipality's sanction of the use of the land. Mr. Walleri recommends a waiver of the requirements for land payments to the municipality, or that the state assist buyers in paying for the land. Tanana Chiefs would support a lottery system if the preference rights and waiver of payments to municipalities were included. Mr. Walleri spoke in favor of integrating traditional native governments into the municipal system, possibly through recognition by the state of the status of native governments as local state governments.

Dr. Fred McGinnis of the Department of Health and Social services told us that his department recommends the delegation of health powers to municipalities. If municipalities were to take over the providing of services, the DHSS would still receive federal funding, would disburse the funds, would audit programs, supervise, and be responsible to the federal government for the administration of the programs. He emphasized that these powers should be optional rather than mandatory, and that in the absence of local government being able to take over the function of health services, a local contractor could provide them.

After the presentations, the committee considered Old Business. Phil Smith gave a report on the conclusions of the Information Dissemination Committee. Their recommendations are: take advantage of scheduled meetings and conventions being held by interested groups; put inserts in newsletters; buy space in newspapers; and use the teleconference network. Mr. Smith reported that the Alaska Federation of Natives Convention will be making a room available for us at the Sheraton. Chairman Sturgulewski said a member of each group should be available to attend the AFN Convention. She also directed the Department of Community and Regional Affairs to prepare an article on the Title 29 revision project for newsletters.

Ted Berns gave a report from the Technical Committee. He explained the draft index of Title 29, saying the reorganization had been done by subject matter. Mr. Berns told the Policy Group that the Technical Group was now ready to start drafting and the group had broken up into smaller groups to work on specific changes.

Chairman Sturgulewski said the Policy Group would like justification of all drafted changes in the form of memos pointing out the pluses and minuses of each change.

Ted Berns suggested that the Policy Group go through the index section by section and determine policy questions.

The Policy Group reviewed the index until recessing at 4:30.

The meeting was called to order 30 September 1980 at 9:00 a.m. by Chairman Sturgulewski. With the exception of Bob Lohr sitting in for Phil Smith, the same members were present. Guests were: Bob Walker of Exxon; Cris Fowler of the AOGA Regulatory Reform Committee; David Dye from the Department of Community and Regional Affairs; Stephanie Scott, Ray Menninger, and Vivian Menniger from the Haines Borough; Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee; and Mike Walleri, Tanana Chiefs, Inc.

The Policy Group continued their review of the Title 29 index and the Technical Group was directed to make recommendations regarding the following:

1. AS 29.13.100. Review and make recommendations as to the limitations of home rule powers.

2. Edit the whole of Title 29 so that definitions are consistent.

3. List those procedures which can be handled by ordinances.

4. Prepare drafts to change prohibitions on powers.

5. Draft changes to the statute regarding initiative and referendum.

6. Draft provisions for emergency situations arising from the lack of a quorum.

7. Redraft statute enabling budget actions to take place other than by ordinance. Enable an individual municipality to set it's own limits.

8. Make recommendations regarding whether first class boroughs should be eliminated and consider the impact of this step.

9. Find out whether second class boroughs would still be able to implement a similar program if the statute about the Involvement of Young People in Local Government were to be deleted.

Chairman Sturgulewski directed that the Local Boundary Commission and Alan Tesche be invited to make a presentation in defense of retaining the statutes regarding Development Cities.

Ron Larson moved the Policy Group retain the 3-year residency requirement for candidates for municipal office. The motion was seconded, Jim Kohler raised a point of order. The motion carried.

Marilyn Dimmick moved that the wording of the grounds for recall be deleted. The motion was seconded. Ron Larson moved to table the motion. Larson's motion failed. Ted Berns moved to postpone the motion until the next meeting. The motion for postponement passed.

Bob Lohr of RuralCAP was directed to come back with specific recommendations for the Technical Group regarding small communities and their problems.

The meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary

TITLE 29 REVISION COMMITTEE
Policy Advisory Group Meeting

Minutes of August 27 & 28 1980

The first meeting of the Policy Advisory Group of the Title 29 Revsion Committee was held August 27, 1980 in the Conference Room of the Legislative Information Office, 1024 6th Avenue, Anchorage, Alaska. The meeting was called to order by Billy G. Berrier, Director of the Division of Legal Services at 9:00 am.

Present were: Ted Berns, Terry Cook, Marilyn Dimmick, James Kohler, Gene Moore, Donna Shelby, Jonathan Solomon, Russell W. Walker, Ronald Larson, Senator Arliss Sturgulewski, Senator Bob Mulcahy, Representative Margaret Branson, Representative Charles H. Parr as members of the Policy Group. Also present were Phil Smith and Mr. Palmer McCarter, Ex Officio Members of the Policy Advisory Group. Allan E. Tesche attended representing the Technical Committee. Ted Berns and Russell Walker are also members of the Technical Committee. Mike Walleri of the Tanana Chiefs Conference, Inc., and Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee were present. Billy Berrier and Tamara Cook were present representing the Division of Legal Services, Legislative Affairs. Tam Cook explained that Ginny Chitwood from the Alaska Municipal League could not be present but would attend future meetings as an Ex Officio member.

The first order of business was the selection of a chairman for the committee. Nominations were opened and Senator Sturgulewski was nominated by Representative Parr. The nomination was seconded and Senator Sturgulewski was elected Chairman by acclamation.

Mr. Berrier spoke on the role of the Technical Revision Committee and asked for an appointment of a group. A motion to set up a Technical Revision Group was made by Representative Branson. The motion was seconded and carried. The Technical Revision Committee members will be Ted Berns, Richard Garnett, III; John Messenger, Jim Nordale, JoAnne Shanley, Gerald Lee Sharp, Allan Tesche, and Russell Walker.

The Ex Officio members were introduced and there was discussion as to their role. It was agreed that they should sit at the table and take part in the discussion. Palmer McCarter spoke about the role of Community and Regional Affairs. He said that there would be a representative of C&RA at every meeting, either he or Patrick Poland would attend. Mr. McCarter also presented a letter from the Local Boundary commission requesting the statutes regarding Development cities be left in Title 29 but improved. Phil Smith spoke on the concerns of RuralCAP regarding the impact of government on villages and rural areas.

Representative Parr suggested directions for the Policy Committee: 1). greater self determination and latitude for local governments; and 2.) that elected officials should be able to understand Title 29 without the help of attorneys. Senator Sturgulewski agreed that Title 29 needed clarification.

The members present of the Technical Committee met briefly and Ted Berns, as spokesman, gave a report regarding the ideas they discussed. The group recommended that Title 29 be broken down into three sections.

1. The first section to be general provisions applying to all local government.
2. The second section to be delineation of procedures and additional limits on specific forms of government.
3. The third section to be directory provisions to be used unless the local government adopts ordinances of their own.

It was decided that the Technical Committee should attempt to reorganize Title 29 along these lines and present a draft at the next meeting.

Mike Walleri, Village Government Specialist, Tanana Chiefs Conference, Inc., spoke, saying he would like a simplification of government.

A list of items pertaining to Title 29 included in the preliminary draft of the Alaska Municipal League 1981 policy statement was handed out.

Future meeting dates and places were discussed. None were decided upon.

The kinds of things applicable to all municipalities were discussed, such as incorporation, dissolution, boundary changes, classification of government, extraterritorial powers, merger/consoldiation, revenue, taxation, bonding, and intergovernmental relations.

Protection of people in service areas who are not represented by local government, such as persons living outside city limits, was discussed.

The meeting recessed at 4:00 pm.

The meeting was called to order the second day at 9:00 am., Chairman Sturgulewski presiding. In addition to the persons present at the first day's meeting, Chris Johnson of House Research and Nels Franklin from near Dillingham were present, and introduced by Chairman Sturgulewski.

Ted Berns gave a recap of the first days meeting.

Terry Cook was appointed repository of ridiculous laws.

Senator Mulcahy spoke on the problem of getting information, drafts, and policy issues to all municipalities within the time constraints. Phil Smith suggested a teleconference and said that he would be presenting material at the Alaska Federation of Natives Convention (23-25 October 1980, in Anchorage). It was decided that the problem of getting materials and information to the public would be an agenda item at the next meeting. Palmer McCarter, Phil Smith, and Ginny Chitwood of the Alaska Municipal League were appointed to a committee to research this problem and make recommendations.

Melissa Fouse was introduced as the new secretary to the Title 29 Revision Committee.

As part of the reorganization of Title 29, there was discussion as to which statutues belonged in which category.

Representative Parr wants a uniform provision on executive session. There was discussion on executive sessions.

The question of retaining present categories of government was raised and discussed. Ted Berns suggested only two classes of boroughs and home rule, pointing out that there are no first class boroughs.

The question of development cities was raised and discussed. Should we retain, restructure, or eliminate development cities?

There was discussion on the third category. If a municipality choses to follow procedures, should they be required to follow all of them?

Senator Mulcahy's legislation regarding the recognition of village governments was discussed. Copies of HB 192 are to be mailed to committee members.

There was discussion of persons representing committee members being allowed to vote. Mr. Berrier had reservations based on the appointment of the members of the commission according to resolution. It was decided that persons filling in for committee members be allowed to take part in the discussion, but would not be allowed to vote.

The meeting was adjourned at 12:00 pm.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse

SCOMM

#23:16

| NAME | SENT TO: | DATE: |
|---|---|---|
| Minutes - Aug 27 & 28 Mtg<br>Attached: SB 505<br>Ltr Wells Anderson<br>City of McGrath | Ex officio, Wkg Grp<br>Policy group, Sweden | 11 Sep 80 |
| Minutes: | Policy, Tech, Ex-Off & others | 3 Oct 80 |

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Marilyn Dimmick moved that the wording of the grounds for recall be deleted. The motion was seconded. Ron Larson moved to table the motion. Larson's motion failed. Ted Berns moved to postpone the motion until the next meeting. The motion for postponement passed.

Bob Lohr of RuralCAP was directed to come back with specific recommendations for the Technical Group regarding small communities and their problems.

The meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Melissa Aber Fouse

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Secretary

**TITLE 29 REVISION COMMISSION**
**Policy Advisory Group Meeting**

**Minutes of November 10 & 11, 1980**

The third meeting of the Policy Advisory Group - Title 29 Revision Commission was held November 10 and 11, 1980 in the East Gold Room of the Traveler's Inn, Fairbanks, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 10:45 a.m.

Present as members of the Policy Advisory Group were: Senator Arliss Sturgulewski, Senator Bob Mulcahy, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Donna Sherby, and Russell Walker. Present as Ex-Offico Members were Palmer McCarter, and Bonnie Hedley from RuralCAP substituting for Phil Smith. The Technical Committee was represented by Ted Berns and Russell Walker as members of both groups, and by Allan Tesche. Present from the staff of Legal Services were Billy G. Berrier, Director and Tamara Brandt Cook, Legislative Counsel.

Guests and members of the public attending were: Stephanie Scott, Haines Borough; Cris Fowler, AOGA; Bob Walker, Exxon; Mike Walleri, Tanana Chiefs; John Arney, Haines Borough; Bob Juettner, City of McGrath; Michael Tavoliero, City of Saxman; Marie Matsuno, Department of Community and Regional Affairs; Ivan Widom, City of Nome; Lisa Buskirk, Tanana Chiefs; John Halliwill, City of Haines; Tommy Nebel, Ketchikan Borough; Kathy Carssow, Ketchikan Borough; Marvin Yoder, Ketchikan Borough; Tom Blanton, Haines Borough; Jerry Clifton, Haines Borough Assembly; Dan Ogt, Kodiak Island Borough; Shirley Collins, Haines; Jack Carpenter, Sitnasuak Native Corporation; Edward A. Stahla, City of Wrangell; Richard Careaga, City of Unalaska; Robert Flint, Wohlforth & Flint; Jack P. Van Leuven, RainierBank.

There were no presentations by guests or members of the public.

Under Old Business, Palmer McCarter reported on ways of getting materials and information to the public. He said the Department of Community and Regional Affairs was planning newsletter inserts and coordinating with the University of Alaska for a special issue of their newsletter to include an insert concerning the revision of Title 29. Chairman Sturgulewski directed Bonnie Hedley to coordinate information activities with Mr. McCarter and Tamara Cook.

Bonnie Hedley gave a report from RuralCAP on special problems of rural communities. She stated that rural communities have little "hook-up" with state agencies and therefore have little access to programs and money. The legislature never meets as the assembly for the Unorganized Borough. It is felt that there are not enough people in small communities to perform all

the required municipal functions as well as the functions of existing forms of government, such as IRA councils. RuralCAP recommends the recognition of IRA councils. Chairman Sturgulewski directed staff to prepare a memo on these issues.

Mike Walleri presented a new draft of his report entitled "Tribal-State Relations, A New Paradigm for Local Government in Alaska". The chair directed staff to review it.

Chairman Sturgulewski reported attending a meeting of the AVCP in Bethel, and said they were getting funds to do a regional government study. She also reported on attending the AFN convention in Anchorage. The people she talked to questioned parallel governments and duplication of functions in the communities where there were municipal governments as well as traditional governments.

Ginny Chitwood of the Municipal League was stranded in Juneau due to weather and her report was postponed.

Billy Berrier reported what the Commission had done to date. Ted Berns said the Technical Committee planned to present final recommendations to the Policy Group by the 15th of December, 1980.

The Technical Committee presented their proposed drafts for consideration to the Policy Group. Representative Branson moved that the Policy Group accept all recommended changes except those requiring more discussion. The motion was seconded and carried. The following sections were accepted. (Note: There were wording changes in some in the following) Sec. 29.06.010, Sec. 29.06.050, Sec. 29.12.260, 29.15.020, 29.15.050, 29.15.110, 29.65.050, 29.30.010, 29.30.020, 29.30.030, 29.30.050, 29.30.095, 29.30.110, 29.30.120, 29.30.130, 29.30.140, 29.30.150, 29.30.160, 29.30.170, 29.30.180. Sections 29.09.180 and 29.30.040 were sent to subcommittees for study.

The meeting was recessed until 9:00 a.m. 11 November 1980.

At 9:00 a.m. 11 November 1980 the meeting was again called to order in the East Gold Room of the Traveler's Inn, Fairbanks, Alaska. All members of the Policy Advisory Group were in attendance. Members of the public and guests who attended the day before were present and the following people attended as well: Ginny Chitwood, Ex-Oificio Member; Gerald Lee Sharp, Title 29 Technical Committee; Richard Garnett, III, Title 29 Technical Committee, David Dye, Department of Community and Regional Affairs; Leo Rasmussen, City of Nome; L.C. Farnen, City of Homer; Kathy Herold, City of Homer; Carol Maser, Anchorage Assembly; Jenny Files, Fort Yukon; and former Mayor Bill Wood, Fairbanks.

Mayor Wood gave the first presentation. He spoke on the need for municipalities to have developmental authority in order

to encourage investments within the cities and boroughs. He submitted a letter from the City of Fairbanks regarding tax incentive programs and referred to Fairbanks ordinance 3906. The Technical Committee was directed to review AS 29.53.025.

John Halliwill, Mayor of Haines spoke in favor of the elimination of Third Class Boroughs.

Bob Juettener, City Manager of McGrath spoke on the problems of communities with small populations supporting the large number of organizations making up municipal government. He recommended an evaluation of second class cities and abolishing those that are not functioning. He suggests that the group providing the best service delivery be chosen as the governing body of a community. He feels the different classifications of cities should be abolished and provisions made for local options concerning the assumption of powers and form of government. He sees a need in the bush for a means of dealing with the executive branch of government, perhaps a regional or sub-regional elected body in the Unorganized Borough.

Ivan Widom, City Manager of Nome said there was a need to regionalize concepts in order to see what is happening in specific areas. He recommends giving communities mechanisms for reaching the state in order to benefit from services offered. Mr. Widom also recommended giving communities the option of choosing their own form of government, such as home rule.

Michael Tavoleiro, City Manager of Saxman spoke next, saying there was no definition of local government, i.e., no expressed definition of eligibility characteristics. He feels that second class cities within an organized borough are disenfranchised from planning powers. He stated also that second class cities should have direct access to federal and state programs instead of being required to go through the borough. Mr. Tavoliero cited the Historical Districts program as an example. He feels that local communities should be allowed more self-sufficiency.

Larry Farnen, City Manager of Homer spoke in reference to 29.48.260. He recommended raising the dollar amount in that section from $25,000 to $250,000. He wants cities to have the authority to lease land to beneficial new industry. In reference to planning and zoning powers, Mr. Farnen recommended the statutory language be changed to allow boroughs to assume planning and zoning powers if the cities are not willing to exercise them.

Dan Ogt, Mayor of the Kodiak Island Borough cited AS 29.30.160 saying there was no provision for special elections, and recommended special elections be mandated in the statutues.

Richard Careaga, Planning Director for the City of Unalaska wants more definition/clarification of mandatory powers and duties.

Leo Rasmussen, Mayor of Nome said small government feels that it has lost control of its own destiny. Planning is being taken over by REAAs and SRAAs. He said Nome feels threatened by the possible organization of the Unorganized Borough and he asked for more local autonomy.

Returning to Old Business, the Policy Group continued its review of the recommended drafting changes submitted by the Technical Committee. Sec. 29.30.210 was reviewed. James Kohler moved to not accept the drafted change but to retain the current language. Charles Parr amended the motion, and it carried. The chair directed staff to clarify the wording of the current statute and resubmit it at the next meeting of the Policy Group. Secs. 29.30.220, 29.30.225, 20.30.230, 29.30.240, 29.30.250, 29.30.260, 29.30.270,29.30.280, 29.30.290, 29.30.300, 29.30.310, 29.30.320, were accepted with no changes or some wording changes. 29.30.330 was sent back to the Technical Committee for redrafting.

Two subcommittees were formed and are to give reports at the next meeting on AS 29.09.180 Organization Grants (Chair-McCarter) and AS 29.30.040 Voter Qualifications (Chair-Dimmick).

Two sections of Title 29 considered obsolete were discussed. The Policy Group will recommend the repeal of the sections on Involvement of Young People in Local Government and the repeal of the sections on Development Cities.

The dates of the next meeting of the Policy Advisory Group were set for 15, 16, and 17 December, 1980 in Anchorage.

Staff is to review the definition of "petitioner".

The meeting was adjourned at 4:30 p.m.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary, Title 29 Commission

# TITLE 29 REVISION COMMISSION
## Policy Advisory Group Meeting

## Minutes of December 15, 16, & 17, 1980

The fourth meeting of the Policy Advisory Group - Title 29 Revision Commission was held December 15, 16, & 17, 1980 in the Adventure Room of the Captain Cook Hotel, Anchorage, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Advisory Group were: Senator Arliss Sturgulewski, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, James Kohler and Jonathan Solomon. Present substituting for Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. The Technical Committee was represented by Ted Berns and Russell Walker as members of both groups. Present from the staff of Legal Services was Tamara Brandt Cook, Legislative Counsel.

Guests and members of the public attending were: Stephanie Scott, Haines Borough; Cris Fowler, AOGA; Robert Walker, Exxon; Carl Mogli, Napakiak; David Dye, Community Planning, Department of Community and Regional Affairs; and Jim Gottstein.

There were no presentations by guests or members of the public.

Chairman Sturgulewski reported on attending the meeting of the Rural Development Council. She says they are concerned with the definitions of "rural" and the relationship of rural communities with Title 29.

The chair requested copies of the Alaska Municipal League Policy Statement issued as a result of its November convention in Fairbanks.

The minutes of the previous meetings were approved as distributed with no corrections or additions.

Under Old Business, Patrick Poland reported that the news release prepared by Legal Services had been distributed and was expected to appear in the December issue of the RuralCAP newsletter. The newsletter distributed by the University of Alaska at Fairbanks was not expected to be published in December but the news release would be included when it was published.

The subcommittee report regarding AS 29.09.180 (Organization Grants) as postponed due to Marilyn Dimmick not being present.

The subcommittee report on AS 29.30.040 (Voter Qualification) was postponed to 17 December.

Ted Berns reported on the Technical Committee's three day meeting saying they had covered a great deal of material in those three days and he hoped that the Policy Group would be able to review all the material produced by that meeting.

Tamara Brandt Cook reported on the format of the presentation of the bill. She said that a draft would be prepared, going first to the revisor of statutes, then to the legal editor and would then be put into final form for presentation to the rules committee for introduction into the legislature.

Turning to the proposed drafting changes submitted by the Technical Committee, it was agreed that the original motion to approve all changes unless otherwise noted would be held in force.

Approved by the Policy Group without changes were: AS 29.24.050, 29.24.125, 29.24.160, 29.24.206, 29.24.210, 29.24.240. Approved with minor wording changes were: AS 29.24.140, 29.24.145, 29.24.150, 29.24.175, 29.24.200, 29.24.250. Sections with substantive changes made by the Policy Group were: AS 29.24.170 and 29.24.205.

The meeting was recessed at 4:30 p.m. until 8:30 a.m. 16 December.

At 8:30 a.m. the meeting was called to order at the Captain Cook Hotel in the Quarterdeck 19 conference room. Policy Advisory Group members attending were: Senator Arliss Sturgulewski, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, and Jonathan Solomon. Representing Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. Guests and members of the public attending were Stephanie Scott, Haines Borough; Robert Walker, Exxon; Cris Fowler, AOGA; David Dye, Community Planning, Department of Community and Regional Affairs, and Carl Mogli, Napakiak.

There were no presentations by guests or members of the public.

Approved by the Policy Group without changes were: AS 29.24.160, 29.24.200(e), 29.24.210, 29.24.390, 29.24.430, 29.24.450, 29.24.480, 29.24.510, 29.24.515, 29.24.570, 29.24.620, 29.24.630, 29.24.640, 29.24.670, 29.33.030, 29.33.190, 29.33.210, 29.33.220, 29.42.020, 29.42.030, 29.42.060, 29.42.070, 29.42.085, 29.42.090, 29.42.100, 29.42.115, 29.42.120, 29.42.130, 29.42.150. Accepted by the Policy Group with wording changes were: AS 29.24.010, 29.24.530, 29.24.680, 29.24.690, 29.33.090, 29.42.010, 29.42.050, 29.42.080, 29.42.160. Sections with substantive changes made by the Policy Group were: 29.24.420, 29.33.010, 29.33.020, 29.33.070, 29.33.130, 29.33.140, 29.33.150, 29.33.160, 29.33.200, 29.29.060. A drafted section sent back to the Technical Committee for further review was 29.42.040. Drafted changes not accepted by the Policy Group were AS 29.33.120 and 29.33.110.

Section 29.39.060 (Planning & Land Use Regulation) was earmarked as a policy issue to be reviewed later.

The meeting was recessed at 4:30 p.m. due to lack of a quorum.

At 8:30 a.m. 17 December 1980 the Policy Advisory Group meeting was again called to order in the Captain Cook Hotel, Quarterdeck 19 conference room. Members attending were: Senator Arliss Sturgulewski, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, and Jonathan Solomon. Representing Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. Guests and members of the public attending were Stephanie Scott, Haines Borough; Robert Walker, Exxon; Cris Fowler, AOGA; Carl Mogli, Napakiak; David Dye, Community Planning, Department of Community and Regional Affairs; and Timothy Troll, City Manager of St. Mary's. John Messenger represented the Technical Committee briefly, explaining the changes to the sections regarding bonding.

Sections accepted without changes by the Policy Advisory Group were: AS 29.39.060, 29.39.070, 29.39.080, 29.45.010, 29.45.020, 29.45.050, 29.45.100, 29.45.140, 29.45.150, 29.45.220, 29.45.240, 29.45.250, 29.45.260, 29.45.300, 29.45.310, 29.45.320, 29.45.400, 29.45.410, 29.45.440, 29.45.450, 29.45.460, 29.45.570, 29.45.590, 29.48.010, 29.48.020, 29.48.030, 29.48.040, 29.48.050, 29.48.060, 29.48.070, 29.48.080, 29.48.090, 29.48.105, 29.48.115, 29.48.120, 29.51.280, 29.51.340, 29.51.370, 29.51.390, 29.51.420, 29.51.430, 29.51.440, 29.51.250, 29.51.380, 29.51.370, 29.51.050, 29.51.150, 29.51.305, 29.51.240, 29.51.350, 37.30.100. Sections accepted with wording changes were: AS 29.27.080, 29.36,170, 29.36.270, 29.45.210, 29.51.410. Sections accepted with substantive changes made by the Policy Group were: AS 29.45.030, 29.45.545. Sections not accepted were AS 29.45.030 and 29.48.090. A section sent back to the Technical Committee for new language was 29.45.610. The Policy Group moved to repeal AS 29.45.060.

The chair directed the Technical Committee to review the following: Can a city be inside/a part of a service area? Staff is to review service area language throughout the Title. The Technical Committee is to bring back wording to allow the transition from any class of city to Home Rule.

Stephanie Scott representing the Haines Borough spoke in defense of third class boroughs. The Haines Borough objects to the recommendation that third class boroughs be eliminated. She distributed a letter from the mayor of the Haines Borough asking what the basis for the recommendation was. The Haines borough wants a list of the reasons for the elimination of the third class borough. Marilyn Miller said that the Alaska Municipal League concurred with the elimination of third class boroughs, or at least opposed the formation of any more third class boroughs. The City of Haines also concurs with the elimination of third

class boroughs. Ted Berns made a motion that the Policy Group go on the record as concuring with the Alaska Municipal League's position that third class boroughs be eliminated. The motion carried. The chair directed the Technical Committee to draft language which eliminates the formation of third class boroughs but which does not alter the status of the Haines Borough.

The question of Organization Grants is to be held for the next meeting of the Policy Group.

The chair directed the Department of Community and Regional Affairs to look into dissemination of information regarding non-taxable property to state assessors.

Tim Troll says the 14c3 negotiations are affected by the current municipal properties statute and approves of the recommended change.

The dates of the next Policy Advisory Group meeting were set for the 17th and 18th of January, 1981 in Juneau. The Technical Group will have one more meeting as well.

The meeting was adjourned at 4:30 p.m. 17 December 1980.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary, Title 29 Revision Commission

10 NOV
Attending: Am.

Stephaie Scott, Haines Borough
Cris Fowler, AGOA
Bob Walker, Exxon WANTS TEXT & NOTICE OF TECH MTG.
Mike Walleri, Tanana Chiefs
John Arney, Haines Boro
✓ Bob Juettner, McGrath (Draft Text)
Michael Tavoliero, City Saxman
copies of ALL resolutions Box 8676, Ket. 99901
Marie Matsuno, C&RA
Ivan Widon, Nome
Lisa Buskirk, Tanana Chief
John Halliwill, Mayor Haines
Tommy Nebel, Ket Boro
Kathy Carssow, Ket Boro
Marvin Yoder, Ket Boro
Tom Blanton, Haines Atty
Jerry Clifton, Haines Assembly
Dan Ogt, Mayor KIB Kodiak Island Boro.
Allan Tesche.
Shirly Collins, Haines Clerk

11 Nov

Stephanie Scott
Cris Fowler - Text 425 G. Suite 750
01
Bob Walker
John Arney
John Halliwill
Tom Blanton, Haines Atty

Bob Juettner, McGrath
Mike Walleri, Tanana Chiefs
Michael Tavoliero, City of Saxman
David Dye, CERA
Lee Sharp, Tech Grp
Allan Tesche Tech Grp
Richard Careaga, Planning Dir Unalaska
Richard Garnett, Tech Grp
Leo ~~Rossenwasser~~ Rasmussen, Mayor of Nome
Kathy Herold, City Clerk ) Box 335 Minutes
L.C. Furnen, City Mgr Homer ) 99603
Carol Maser, Anch Assy.
Jerry Clifton, Haines Assy.
Jenny Files, Ft. Yukon
Marie Matsuno

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

# TITLE 29 REVISION COMMISION
## Policy Advisory Group Meeting

### Minutes of January 17th and 18th, 1981

The fifth meeting of the Policy Advisory Group - Title 29 Revision Commission was held January 17th and 18th, 1981 in Room 320 of the Court Building, Juneau, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Advisory Group were: Senator Arliss Sturgulewski, Senator Charles Parr, Senator Bob Mulcahy, Ted Berns, Margaret Branson, Tim Troll substituting for Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, James Kohler and Jonathan Solomon. Present as Ex-Officio members were Palmer McCarter, Ginny Chitwood, and Phil Smith. Present representing the Technical Committee were Lee Sharp and Jim Nordale. Ted Berns and Russell Walker are members of both groups. Present from the staff of Legal Services were Tamara Brandt Cook, Legislative Counsel, and Bernie Tuggle, Legal Extern.

Guests and members of the public attending were: Senator Don Gilman, Chairman, Senate Community and Regional Affairs Committee; David Dye, Legislative Assistant; Stephanie Scott, Haines Borough; Glen Svendsen, Legislative Assistant to Senator Sturgulewski.

Larry Kimball of the Division of Community Planning, Department of Community and Regional Affairs gave a presentation concerning planning for small communities.

Under Old Business, the approval of the minutes was postponed until copies of the minutes could be distributed and read by all the members present.

The report by the subcommittee chairman on AS 29.09.180 was postponed due to the Technical Committee resubmitting a recommendation and the Department of Community and Regional Affairs having drafted a bill changing the current statute.

The subcommittee report on AS 29.30.040 Voter Qualification resulted in the section being changed to require voters to be registered to vote 30 days before the municipal election in which they are seeking to vote. Municipalities may require, by ordinance, that voters be registered within their own precincts.

Presentations of recommendations by the Technical Group followed the subcommittee reports. The Policy Group adopted the recommended changes to Sections 29.06.010, 29.06.040, 29.06.050, 29.12.390, 29.24.170, 29.24.590, 29.27.050, 29.27.080, 29.30.160, 29.30.300, 29.30.330, 29.42.180, 29.33.200. Sections adopted by the Policy Group with wording changes were: 20.30.030. Recommendations not adopted were: 29.09.180, 29.24.010, 29.24.430, 29.27.010.

The minutes for the December Policy Group meeting were approved as corrected.

Senator Parr asked if minority reports would be part of the submission of the bill. The Chair said it would be individual repsonsibility to make available.

The meeting recessed at 5:00 p.m.

The meeting was called to order at 9:00 a.m. 18 January 1981 in the House Finance Committee Room. With the exception of Marilyn Miller substituting for Ginny Chitwood and the absence of Phil Smith the members attending were the same as the previous day. Guests and members attending were Stephanie Scott, Haines Borough; David Dye, Legislative Assistant, Senate Community and Regional Affairs Committee, and Glen Svendsen, Administrative Assistant to Senator Sturgulewski.

There were no presentations by guests or members of the public.

Tim Troll of St. Mary's had questions to ask on behalf of Terry Cook, Policy Group member from Alakanuk. All of the questions had been satisfied during the revision process with the exception of the post audit requirement for second class cities. The Chair directed Palmer McCarter to check into the audit requirement and respond to Tim Troll.

Ted Berns submitted a reorganized Municipal Powers and Duties section. The recommendation was accepted with the following exceptions: 29.33.010, 29.33.050(b), 29.33.070, 29.33.140, 29.33.150 wording changes. Sections 29.33.130 and 29.33.160 were accepted with substantive changes. (NOTE: These numbers are those used in Mr. Berns draft.)

Under policy issues discussed by the group: The chair will investigate wording and the issue of including unified municipalities in the mandatory powers sections. Land use being a specific problem. The Chair will also oversee the issue of municipalities having the power to accept grant monies. The Chair directed staff to clarify the wording of sections 29.33.160(c) and 29.36.130(c). Section 29.33.080 has been affected by legislation changing Title 42 and needs to be changed to conform.

The issue of differing rates of taxation for real and personal property was discussed. Palmer McCarter says the current interpretation used by C&RA is that the rates must be the same. Staff was directed to draft a provision clarifying that real and personal property must be taxed at the same rate.

Staff was directed to draft language to allow the Third class borough to go directly to Home Rule status. The issue of including language guiding the existing third class borough in the current statute was discussed. Ms. Cook said it would be inconsistent with previous "grandfathered" provisions. Palmer McCarter said the Department of Community and Regional Affairs would be willing to put out a handbook for Haines to follow.

Ronald Larson made a motion allowing staff and the Chair to review and clarify inconsistencies in the final draft.

The revised Title 29 was adopted unanimously and the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary, Title 29 Revision

# TITLE 29 REVISION COMMISION
## Policy Advisory Group Meeting

### Minutes of January 17th and 18th, 1981

The fifth meeting of the Policy Advisory Group - Title 29 Revision Commission was held January 17th and 18th, 1981 in Room 320 of the Court Building, Juneau, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Advisory Group were: Senator Arliss Sturgulewski, Senator Charles Parr, Senator Bob Mulcahy, Ted Berns, Margaret Branson, Tim Troll substituting for Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, James Kohler and Jonathan Solomon. Present as Ex-Officio members were Palmer McCarter, Ginny Chitwood, and Phil Smith. Present representing the Technical Committee were Lee Sharp and Jim Nordale. Ted Berns and Russell Walker are members of both groups. Present from the staff of Legal Services were Tamara Brandt Cook, Legislative Counsel, and Bernie Tuggle, Legal Extern.

Guests and members of the public attending were: Senator Don Gilman, Chairman, Senate Community and Regional Affairs Committee; David Dye, Legislative Assistant; Stephanie Scott, Haines Borough; Glen Svendsen, Legislative Assistant to Senator Sturgulewski.

Larry Kimball of the Division of Community Planning, Department of Community and Regional Affairs gave a presentation concerning planning for small communities.

Under Old Business, the approval of the minutes was postponed until copies of the minutes could be distributed and read by all the members present.

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Presentations of recommendations by the Technical Group followed the subcommittee reports. The Policy Group adopted the recommended changes to Sections 29.06.010, 29.06.040, 29.06.050, 29.12.390, 29.24.170, 29.24.590, 29.27.050, 29.27.080, 29.30.160, 29.30.300, 29.30.330, 29.42.180, 29.33.200. Sections adopted by the Policy Group with wording changes were: 20.30.030. Recommendations not adopted were: 29.09.180, 29.24.010, 29.24.430, 29.27.010.

The minutes for the December Policy Group meeting were approved as corrected.

Senator Parr asked if minority reports would be part of the submission of the bill. The Chair said it would be individual repsonsibility to make available.

The meeting recessed at 5:00 p.m.

The meeting was called to order at 9:00 a.m. 18 January 1981 in the House Finance Committee Room. With the exception of Marilyn Miller substituting for Ginny Chitwood and the absence of Phil Smith the members attending were the same as the previous day. Guests and members attending were Stephanie Scott, Haines Borough; David Dye, Legislative Assistant, Senate Community and Regional Affairs Committee, and Glen Svendsen, Administrative Assistant to Senator Sturgulewski.

There were no presentations by guests or members of the public.

Tim Troll of St. Mary's had questions to ask on behalf of Terry Cook, Policy Group member from Alakanuk. All of the questions had been satisfied during the revision process with the exception of the post audit requirement for second class cities. The Chair directed Palmer McCarter to check into the audit requirement and respond to Tim Troll.

Ted Berns submitted a reorganized Municipal Powers and Duties section. The recommendation was accepted with the following exceptions: 29.33.010, 29.33.050(b), 29.33.070, 29.33.140, 29.33.150 wording changes. Sections 29.33.130 and 29.33.160 were accepted with substantive changes. (NOTE: These numbers are those used in Mr. Berns draft.)

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# TITLE 29 REVISION COMMISION
## Policy Advisory Group Meeting

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Ted Berns submitted a reorganized Municipal Powers and Duties section. The recommendation was accepted with the following exceptions: 29.33.010, 29.33.050(b), 29.33.070, 29.33.140, 29.33.150 wording changes. Sections 29.33.130 and 29.33.160 were accepted with substantive changes. (NOTE: These numbers are those used in Mr. Berns draft.)

Under policy issues discussed by the group: The chair will investigate wording and the issue of including unified municipalities in the mandatory powers sections. Land use being a specific problem. The Chair will also oversee the issue of municipalities having the power to accept grant monies. The Chair directed staff to clarify the wording of sections 29.33.160(c) and 29.36.130(c). Section 29.33.080 has been affected by legislation changing Title 42 and needs to be changed to conform.

The issue of differing rates of taxation for real and personal property was discussed. Palmer McCarter says the current interpretation used by C&RA is that the rates must be the same. Staff was directed to draft a provision clarifying that real and personal property must be taxed at the same rate.

Staff was directed to draft language to allow the Third class borough to go directly to Home Rule status. The issue of including language guiding the existing third class borough in the current statute was discussed. Ms. Cook said it would be inconsistent with previous "grandfathered" provisions. Palmer McCarter said the Department of Community and Regional Affairs would be willing to put out a handbook for Haines to follow.

Ronald Larson made a motion allowing staff and the Chair to review and clarify inconsistencies in the final draft.

The revised Title 29 was adopted unanimously and the meeting was adjournted at 4:00 p.m.

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary, Title 29 Revision

Title 29 Commission - Policy Group Members

Gene Moore
P.O. Box 186
Kotzebue, AK 99752
442·3401

James Kohler
P.O. Box 6
Yakutat, AK 99689
~~567·3927~~ 784·3324

Jonatha Solomon
P.O. Box 269
Fort Yukon, AK 99740
662·2479·0/456·7092·H

Ronald Larson
Box B
Palmer, AK 99645
745·4801

Russell W. Walker *
Box 7300
Ketchikan, AK 99901
225·3111 ext. 327

Ted Berns *
Pouch 6-650
Anchorage, AK 99502
264·4545

Terry Cook
Box 33
Alakanuk, AK 99554
238·3313

Donna Sherby
P.O. Box 1210
Cordova, AK 99574
424·3237

Marilyn Dimmick
Box 151
Ninilchik, AK 99639
567·3927

262·4441 · K. BORO CLERK

Pouch V Juneau

~~Representative~~ Senator Charles H. Parr
S.R. Box 50599
Fairbanks, AK 99708
456·5029·0/488·2555·H

Campaign Hdqtrs
456·1228

~~Representative~~ Margaret A. Branson
P.O. Box 740
Cooper Landing, AK 99572
595·1265

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, AK 99501
279·4939

Senator Bob Mulcahy
P.O. Box 246
Kodiak, AK 99615
486·3561

Pouch V Juneau

* Members of both groups

Minutes Jan. 17, 18
Sent to these people

TITLE 29 COMMISSION - Working Group Members

Ted Berns
Pouch 6-650
Anchorage, AK 99502
264-4345

Richard Garnett, III
~~900 West Fifth Avenue, Suite 540~~ Suite 201
~~Anchorage, AK 99501~~ 1345 W. 9th Ave
276-2221 Anchorage, AK 99501

John Messenger
420 "L" Street, Suite 404
Anchorage, AK 99501
276-1969

Jim Nordale
P.O. Box 1267
Fairbanks, AK 99707
452-4761

Gerald Lee Sharp
155 South Seward
Juneau, AK 99801
586-3300

Allan E. Tesche
~~Box F~~ 645
~~Palmer, AK 99645~~ See Berns
~~745-3246~~ 4801

Russell W. Walker
Box 7300
Ketchikan, AK 99901
225-3111 ext 327

JoAnne Shanley
P.O. Box 337
Seward, AK 99664
224-5216

**Title 29 Commission - Ex Officio Members**

Pat Poland
276-1721
224-2201

Palmer McCarter
Director, Division of Local Government Assistance
Department of Community and Regional Affairs
Pouch B
Juneau, AK 99811
Mail Stop # 2100
465-4707

Ginny Chitwood
Alaska Municipal League
204 North Franklin
Juneau, AK 99801
586-1325

Phil Smith
RuralCAP
P.O. Box 3-3908
Anchorage, AK 99501
327 Eagle St.
279-2511

Note: These ex-officio members will probably attend meetings of both the Policy and Working groups.

Minutes

1 Exxon, USA ATIN: Bob Walker
Pouch 6601
Anchorage, AK 99502

Theresa Heber - Attended tech mtg 04 & 05 Dec

2 Bob Loescher, Tlingit-Haida Central Council
1 SeAlaska Plaza, Suite 400
Juneau, AK 99801

3 Ron Whitcraft, Room 508 Capitol Building
Pouch V
Juneau, AK 99801

4 ~~Glenn Svendsen~~
~~Admin. Asst., Senat Committee C&RA~~
~~Mail Stop 3100~~

5 Stephanie K. Scott, Admin. Asst.
Box H
Haines, AK 99827

6 Ivan Widom, City Manager
Box 281
Nome, AK 99762

4 Glenn Svendsen
Admin. Asst., Senate Committee C&RA
Mail Stop 3100

City Mgr
Haidaburg, AK

Look up Zip

Ms Mike Dalton
Rural Dev. Council
Mail Stop #2100

Mr. Conrad Begnie
North Slope Borough
P.O. Box 69
Barrow, Ak 99723

Melissa -

Please send attached material to:

Sharon Zandman
North Pacific Rim
Suite 203
903 W. Northern Lights Blvd
Anchorage, Alaska 99503

Along with:

1.) copies of minutes to date
2.) copy of Resolution establishing project
3) copies of the appendices xeroxed from Arlin's final committee Report

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

| MEMBERS: | PRESENT: | Vote #1 | Vote #2 | Vote #3 | Vote #4 | Vote #5 | Vote #6 | Vote #7 | Vote #8 |
|---|---|---|---|---|---|---|---|---|---|
| Ted Berns | ✓ | | | | | | | | |
| Margaret Branson | ✓ | | | | | | | | |
| Terry Cook | ✓ | | | | | | | | |
| Marilyn Dimmick | ✓ | | | | | | | | |
| James Kohler | AFT | | | | | | | | |
| Ronald Larson | ✓ | | | | | | | | |
| Gene Moore | ✓ | | | | | | | | |
| Bob Mulcahy | ✓ | | | | | | | | |
| Charles Parr | ✓ | | | | | | | | |
| Donna Sherby | ✓ | | | | | | | | |
| Arliss Sturgulewski | ✓ | | | | | | | | |
| Jonathan Solomon | | | | | | | | | |
| Russell Walker | ✓ | | | | | | | | |
| Substitute<br>name: Bonnie<br>for: Hedley Phil Smith | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| Substitute<br>name:<br>for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| EX-OFFICIO MEMBERS: | | | | | | | | | |
| Ginny Chitwood | A | | | | | | | | |
| Palmer McCarter | ✓ | | | | | | | | |
| Phil Smith | A | | | | | | | | |
| Substitute<br>name:<br>for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |

Pat Poland

| MEMBERS: | PRESENT: | Vote #1 | Vote #2 | Vote #3 | Vote #4 | Vote #5 | Vote #6 | Vote #7 | Vote #8 |
|---|---|---|---|---|---|---|---|---|---|
| Ted Berns | ✓ | No | | | | | | | |
| Margaret Branson | ✓ | No | | | | | | | |
| Terry Cook | ✓ | Yes | | | | | | | |
| Marilyn Dimmick | ✓ | No | | | | | | | |
| James Kohler | ✓ | Yes | | | | | | | |
| Ronald Larson | ✓ | No | | | | | | | |
| Gene Moore | ✓ | No | | | | | | | |
| Bob Mulcahy | ✓ | No | | | | | | | |
| Charles Parr | ✓ ✓ | Yes | | | | | | | |
| Donna Sherby | ✓ | Yes | | | | | | | |
| Arliss Sturgulewski | ✓ | No | | | | | | | |
| Jonathan Solomon | ✓ ✓ | Yes | | | | | | | |
| Russell Walker | ✓ | No | | | | | | | |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| EX-OFFICIO MEMBERS: | | | | | | | | | |
| Ginny Chitwood | | | | | | | | | |
| Palmer McCarter | ✓ | | | | | | | | |
| Phil Smith | | | | | | | | | |
| Substitute name: Bonnie Hedley for: Phil Smith | ✓ | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

## Proposed Agenda

The proposed agenda for the meeting is:

1. Introduction of policy advisory group members.
2. Selection of a chairman.
3. Discussion of the role of the technical revision committee.
4. Discussion of the role of proposed ex-officio members representing Community and Regional Affairs, Ruralcap, and the Municipal League.
5. Presentation of proposed items for consideration by staff and ex-officio members.
6. Open discussion.
7. Setting future meeting dates for the policy advisory group.

September 10, 1980

Ms. Ginny Chitwood
204 North Franklin
Juneau, AK 99801

Dear Ms. Chitwood:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

The dates for the next meeting of the Policy Advisory Group have been set for the 29th and 30th of September, 1980. The meeting will be held in Anchorage at the Legislative Information Office, 1024 West 6th Avenue. It will begin at 9:00 am in the conference room on the second floor.

Please let me know if there is anything I can do to assist you regarding this or any other of our meetings. I will be happy to make travel or hotel reservations, and send or bring copies of information you would like to have. My telephone number in Juneau is 465-3809, or you can call 465-3867.

Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook

September 10, 1980

Mr. Phil Smith,
327 Eagle Street
Anchorage, AK 99501

Dear Mr. Smith:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

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cc: Billy G. Berrier
Tamara Brandt Cook

September 10, 1980

Mr. Palmer McCarter
Pouch B, Mail Stop 2100
Juneau, AK 99801

Dear Mr. McCarter:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook

September 10, 1980

Ms. Marilyn Dimmick
Box 151
Nimlchik, AK 99639

Dear Ms. Dimmick:

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. James Kohler
P.O. Box 6
Yakutat, AK 99689

Dear Mr. Kohler:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Melissa Aber Fouse
Secretary, Title 29 Commission

maf

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cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Gene Moore
P.O. Box 186
Kotzebue, AK 99752

Dear Mr. Moore:

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

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enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Ms. Donna Sherby
P.O. Box 1210
Cordova, AK 99574

Dear Ms. Sherby:

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Secretary, Title 29 Commission

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cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Russell W. Walker
Box 7300
Ketchikan, AK 99901

Dear Mr. Walker:

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Representative Margaret Branson
P.O. Box 740
Cooper Landing, AK 99572

Dear Representative Branson:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Representative Charles H. Parr
S.R. Box 50599
Fairbanks, AK 99708

Dear Representative Parr:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Senator Bob Mulcahy
P.O. Box 246
Kodiak, AK 99615

Dear Senator Mulcahy:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson Street
Anchorage, AK 99501

Dear Senator Sturgulewski:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Bevrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Ronald Larson
Box B
Palmer, AK 99645

Dear Mr. Larson:

Enclosed are the Minutes for the Title 29 Revision Committee Policy Advisory Group meeting of August 27 and 28, 1980. Also enclosed is a copy of SB 565, a letter from Representative Nels Anderson of Dillingham to Mr. Palmer McCarter, and a letter from Robert S. Juettner, City Administrator of McGrath, to Senator Sturgulewski.

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Jonathan Solomon
P.O. Box 269
Fort Yukon, AK 99740

Dear Mr. Solomon:

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Terry Cook
Box 33
Alakanuk, AK 99554

Dear Mr. Cook:

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

September 10, 1980

Mr. Ted Berns
Pouch 6-650
Anchorage, AK 99502

Dear Mr. Berns:

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Sincerely,

Melissa Aber Fouse
Secretary, Title 29 Commission

maf

enclosures

cc: Billy G. Berrier
Tamara Brandt Cook
Ginny Chitwood
Palmer McCarter
Phil Smith

Billie Berrier

Attended
Ad. Members.
Wkg. Mem.
Others

Allan Tesche
Gene Moore
Russ Walker
Jim Kolher
Bob McCahy
Ted Berns

Ron Larson -
Donna Sherby
Margaret Branson
Arliss
Charlie Parr

MORE!

Terry Cook

1) Working draft - re-organization

Business

I Selection of Chairman

Solomon?

1) Sen. Sturgeweski - nominated by whom.
Seconded
2) Nominations closed

~~II Recess to fill coffee cups~~

III - Meeting called to order: Others present
9:00AM DATE, Leg. Info Office
1024 6th Ave. ANCH

Phil Smith - Rural cap
Glen Svendsen - Adminstrative Asst to Senator ~~Sturgeweski~~ CERA
Carter McCarter
Walleri - Tanana Chiefs
Walleri Tanana Chiefs Conference, Inc.

4996

IV Billie - on role of technical revision committee - Ask for appointment of technical revision group made up of municipal attorneys. No provision for them in the resolution, but funding left in.

On suggo of → 1. Motion to set up group by Branson
2. Second
- Motion carried

DISCUSSION OF Time FRAME
May ask for extension
(Leg)

Wkg w̄ RuralCAP, Mun. Lg.

TECHNICAL REVISION GROUP!

Phil Smith * Status of village govts in relationship to State govt. ~~[illegible]~~. Avenues of part - no control. Plan to attend mtgs & contribute.

P. McCarter will attend. / Patrick POLAND
Municipal space for League - active /
CERA has collected looked at AG's opinions for muni. from 1972 concerning language of Title 29. Feels valuable in ident. sections needing to be looked at. Will be providing ~~information collected~~ recommendations by Div of Comm. Planning re: planning sections of T. 29
Local boundary commission - dev. cities leg
Letter fm staff ↑ recc. left in wked concept on and improved.

Mary Jo Weits, CERA, Nov 5, 6 & 7 MTE, ANCH

Barrier Conflict between detail & self-determination local autonomy - looked at carefully.

V* Role of ex-officio members. Billie

Municpalities of C&RA to be represented by Palmer McCarter Contr. [illegible]
rep by ML RuralCap - Phil Smith
1 Pat Palm may attend at times

exc. conduir to mun; C&RA to St. Gov., RURALCAP local govt tied into RURALCAP

Billy Major → Terry Cook arrived comb. large outreach capability

wkg closely w/division Pleased w contribution of 3.

role, att. P. McCarter - in defensive of municipal league

mtgs, contrib & be invited to part. Vote? Jim so vote.

have been active up to now & will continue despite not attending

Presented letter from Local Boundary Commission - wanting Dev. Cities left in, but improved

Place at table. Agreed to.

→ Jonathon Solomon arrived

Phil Smith - CONCERNS of RURALCAP - impact of govt on villages rural areas

Rep Pass - Suggests directions for committee.

1) Greater self-determination latitude for local gov.

2) Elected official should be able to understand title 29 without help of attorneys.

↑ supported by Ted Beens

1/3 to long

Open Discussion

Sen. Sturg. clarification

VI Organization problems - Billie

Break

~~Side 2 - Tape 1~~ Tape 2

VII Organization of Title 29 - Billie

Tape -

Open discussion

Ch 3 Laws applicable to all boroughs

-

-

-

-

Help to have
Concept recon. needs

3 cat/areas
1. Handled uniformly state-wide
2. Loc. gov. case by case must be the law
3. outline proc - given choice of making own ordinances or following guidelines by state

Terry: Sections "OR order by ordinance" local implementation

Modified form of Home Rule. - for Gen Rule municipalities

Origins of Title 29
Title 10 of const.
Rev.

Org struc & def of Title 29
Three things to keep in mind.

Local Gov Law
Not much help for laws in other states.
Amendments made since 72 need to be codified & look at compare policy chgs.
Re-org so as to be easier access findable!

Motion to Allow who? techical group to re-organize -
Submit work product
Motion carried.

Tanana Chiefs - Mike Walleri - Village Gov
Specialist Tanana Chiefs Conference
- beats w/ unorganized borough
- would like a simplification of gov.

(Pass out from Municipal League
- ~~others Items pert. to T. 29~~
incl. in prelim draft in AML 1981
policy statement.
- Palmer - MacCarter - Incorporate programs located in other Titles into 29. (public disclosure, service roads) etc.

- ~~Motion~~ - report from staff on other Titles effecting 29 Directly, to be presented

Future meeting dates, places

Tape 2, side 2

-

- Staff coordinate with Municipal league to present material to committee (Committee to present material to league?)

Recess

Tech Comm. - org. arrangement

Starting point - limitations of home Rule powers

Recess meeting

1) What kinds of things are applicable to all municipalities

- 1 Incorporation - formation (boundaries, extraterritorial powers)
  2 taxation - foreclosure, bonding
  3 Inter-governmental relations (hot water)

- Elections
- How far to go setting procedures for initiative, referendum, recall
- Democratic principles (open meetings, etc)
- Powers

A municipality shall by ordinance provide for:

Local gov powers not prohibited test for home rule

Gen. law - list of power + ability to adopt by referendum

What areas do smaller municipalities need precess details for as to procedure.

What types of additional restrictions

Recess

Meeting - Ted Beers

Cat I. - Identify statutes to apply to all gov.

A. Revenue, Taxation, bonding

B. Incorporation, dissolution, boundary changes, classifications of gov., extra-territorial powers, merger/consolidation

C. Inter-governmental relations (city/boro distinctions)

2. - All municipalities shall provide by ordinance for: A. Election, initiative, public record · procedures to be optional

3. - Local gd powers, gen. law boroughs define & describe. A list of essential powers

- municipality could provide for other powers by referendum

What types of additional procedures & restrictions would be mandated for gen. law boroughs & cities (2ND CAT)
What sort of directory provisions would be useful - with local gov. able to alter them by ordinance.

Open discussion

Model ordinances - org · IMFLO C&RA.

More types of categories?
Delineation of roles & responsibilities - CAT II

SB inger section

Revenue, taxation, bonding

- Uniformity desirable. Some question as to whether limitations (sales tax limited to 5%) are necessary.
- Equalization board - Assembly shall provide by ordinance for an equalization board, and may provide that they are the board. Procedures needed or model legislation. Clarification of Statute needed.

Extraterritorial power. Allows citys to do things outside their borders.

Discussion of service areas. Trans, utilities, Road construction, operation of services. Enforcement of

Tape 3 side 2 1?

Can cities, as well as boroughs, set up service areas?

Protection for people in service areas who are not represented on assembly. - Subcharge

Revenue

Revenue Sharing

Property Tax, REAL & personal Exemptions should exemp be mandated? Optional exemp. by municipalities mandated by State.

Position papers re: fm Melissa

Procedural matters Unification Law

Merger/Dissolution } Needs clarification

Consolidation " development?

~~Intergovernmental Relations~~

MOTION to ADJOURN

Ad. GRP
29th & 30th ANCH

Technical group meeting

1) All Municipalities
2) Exceptions, further restrictions
3) Optional - procedures to use absent ordinance

6th or 7th

Summarize & Sort suggestions

Adj 4:00

Same Heading

2nd day

Note: Phil Smith need copies of 1980 Acts, suggestions which were mailed.

Need copy.

Chris Johnson House Research

Ted Berns - recap of 1st days meeting

1) Re-organize Title 29 along 3 categories

1) Apply to all local gov.

2) Procedure, additional limits on certain boroughs

3) Directory provisions to be used unless gov. adopts ordinance

Nels Franklin SW of Dilling ham

1) Includes

A Financial, taxation, bonding

B.

Terry Cook - Extension of curfews outside city

Terry appointed repository of ridiculous laws

Bob Mulcahy - problem of getting information, drafts, policy issues to all municipalities within time constraints

Phil Smith suggests teleconference

Presenting material to AFN convention 23-25 Oct 80

✓ Agenda item next meeting — will be how to get materials & information to public

Palmer Phil Marilyn comm.

Melissa Fouse introduced as new sec.

Open discussion on which thing ought to be in what category

- Executive session - Parr, can they meet over anything? Parr wants a uniform provision on executive session.

Open discussion on ex. session

Regional govt & their relationship w/ the state

Local gov. powers applicable to do gen. law
Ted Berns - perhaps you could list mandatory health, welfare, safety & allow gen. law to acquire additional powers not expressly or impliedly prohibited by law by referendum.
Open discussion

Issue Should we retain present categories of gov.?
open discuss
Ted Berns - suggest only 2 classes of boroughs + home rule, pointing out that there are no 1st class boroughs

ISSUE Should we retain, restructure, or dominate development cities?

Discussion on optional procedure (3 category)
Issue: Ted Berns if city mun choses to follow procedures, should they be required to follow all of them? Thus, they would have a complete ordinance or use all of title.

Copy leg. regarding recognition of village gov.
- Submitted by Mulcahy
HB 192 - gave money to "native gov.")

Issue create body of law about procedure for establishing service areas, requirements as a procedure which could be opted out of.
Personnel - a body of law on municipal employment, hiring practices
liability for innocently committed acts under Federal law. Perhaps this will help people avoid fed implications.

Are we paying alternatives?

Alternatives persons who represent a committee member - Should they be allowed to vote?
Berrier - reservations based on appointment of member according to resolution.

Nov. 10, 11, 12 -
Sept. will depend on special session

Summ
Palmer - 3 Categories good idea!
Donna - Careful not to impose tomany election restric.
Margaret - Likes going from Form to Policy.
Jonathon - couldn't hear. [redacted]
Charlie - NC
Marilyn - NC
Tam - Urged the group to continue to identify issues.
2970 Terry - NC
Ted - Encourage everyone to look ahead & formulate ideas & be ready for next mtg.
Bob -

Comm Palmer
Phil
Chtwood
WORK ON Best outreach & reach public

$12:00

Jim - Energy

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PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

**AGENDA**
**TITLE 29 REVISION COMMISSION POLICY GROUP MEETING**

December 15th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:
   a. Reading of minutes/motion for waiver of reading of minutes and approval.
   b. Report by Pat Poland on material prepared for newsletters.
   c. Report by subcommittee on AS 29.09.180 (Organizational Grants).
   d. Report by submcommittee on AS 29.30.040 (Voter Qualification).
   e. Other old business.

4. New Business:

   a. Presentation of proposed items of consideration by members of the Policy Advisory Group.
   b. Presentation of proposed items of consideration by Ex-Offico members.
   c. Presentation of proposed items of consideration by the Technical Revision Committee.
   d. Other new business

December 16th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Other new business.

December 17th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items from consideration.

3. Other new business.

4. Setting of future meeting dates for the Policy Advisory Committee.

| MEMBERS: | PRESENT: | Vote #1 | Vote #2 | Vote #3 | Vote #4 | Vote #5 | Vote #6 | Vote #7 | Vote #8 |
|---|---|---|---|---|---|---|---|---|---|
| Ted Berns | ✓ | No | Yes | No | No | | | | |
| Margaret Branson | ✓ | No | Yes | ✓ | No | | | | |
| Terry Cook | ✓ | Yes | Yes | No | No | | | | |
| Marilyn Dimmick | ✓ | Yes | ✓ | No | Yes | | | | |
| James Kohler | ✓ | Yes | ✓ | ✓ | | | | | |
| Ronald Larson | ✓ | No | ✓ | Yes | Yes | | | | |
| Gene Moore | ✓ | Yes | ✓ | No | No | | | | |
| Bob Mulcahy ✓ | | | | ✓ | | | | | |
| Charles Parr | ✓ | Yes | ✓ | Yes | Yes | | | | |
| Donna Sherby | NA | | | ✓ | | | | | |
| Arliss Sturgulewski | ✓ | Yes | ✓ | No | | | | | |
| Jonathan Solomon | ✓ | No | ✓ | No | No | | | | |
| Russell Walker | ✓ | NO | ✓ | No | No | | | | |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| EX-OFFICIO MEMBERS: | | | | | | | | | |
| Ginny Chitwood | Marilyn Miller | | | | | | | | |
| Palmer McCarter | PAT POLAND | | | | | | | | |
| Phil Smith | | | | | | | | | |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |

| MEMBERS: | PRESENT: | Vote #1 | Vote #2 | Vote #3 | Vote #4 | Vote #5 | Vote #6 | Vote #7 | Vote #8 |
|---|---|---|---|---|---|---|---|---|---|
| Ted Berns | ✓ | NO | N | N | N | N | N | Y | |
| Margaret Branson | ✓ | Yes | N | N | N | N | N | Y | |
| Terry Cook | ✓ | Yes | Y | Y | N | N | Y | Y | |
| Marilyn Dimmick | ✓ | Yes | N | N | Y | Y | Y | Y | |
| James Kohler | | | | | | | | | |
| Ronald Larson | ✓ | NO | N | N | N | Y | Y | | |
| Gene Moore | ✓ | Yes | Y | N | N | N | Y | Y | |
| Bob Mulcahy | Ab | | | | | | | | |
| Charles Parr | ✓ | NO | Y | Y | Y | Y | Y | N | |
| Donna Sherby | Ab | | | | | | | | |
| Arliss Sturgulewski | ✓ | Yes | | N | N | | | | |
| Jonathan Solomon | ✓ | NO | Y | N | N | N | N | Y | |
| Russell Walker | ✓ | Yes | N | N | N | N | N | N | |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| EX-OFFICIO MEMBERS: | | | | | | | | | |
| Ginny Chitwood | | | | | | | | | |
| Palmer McCarter | | | | | | | | | |
| Phil Smith | | | | | | | | | |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |

| MEMBERS: | PRESENT: | Vote #1 | Vote #2 | Vote #3 | Vote #4 | Vote #5 | Vote #6 | Vote #7 | Vote #8 |
|---|---|---|---|---|---|---|---|---|---|
| Ted Berns | | ✓ | ✓ | | | | | | |
| Margaret Branson | | ✓ | ✓ | | | | | | |
| Terry Cook | | ✓ | ✓ | | | | | | |
| Marilyn Dimmick | | | ✓ | | | | | | |
| James Kohler | | | | | | | | | |
| Ronald Larson | | ✓ | ✓ | | | | | | |
| Gene Moore | | ✓ | | | | | | | |
| Bob Mulcahy | | | | | | | | | |
| Charles Parr | | | | | | | | | |
| Donna Sherby | | | | | | | | | |
| Arliss Sturgulewski | | ✓ | N | | | | | | |
| Jonathan Solomon | | | N | | | | | | |
| Russell Walker | | ✓ | N | | | | | | |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| EX-OFFICIO MEMBERS: | | | | | | | | | |
| ~~Ginny~~ Chitwood | Marilyn Miller ✓ | | | | | | | | |
| ~~Palmer McCarter~~ | Pat Pollard ✓ | | | | | | | | |
| Phil Smith | | | | | | | | | |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |

Reservations:
Dinnick (will share).

Larson: will move to make grounds for recall the same

Motion by Dinnick.
Motion carries 1 dissenting vote.
Meet in Juneau
17 & 18 Jan 80
poss w CERA committees

Svendsen, Police Issues } identify for mtg.
2nd class
Planning
JRA councils

Dec. 15th

Marilyn Miller - AML - Ex-Officio
Jim Gottstein -
Carl Motgi - ~~NAPAKIAK~~
David Dye - NAPAKIAK
Bob Walker
Cris Fowler
Stephanie Scott
Roll Call
Invitations to speak

Chair report on Rural Dev. Circ! Definitions of Rural & relationship w Title mtg. 29.
Requested AML policy stmt

Minutes - Moved to accept by Larson seconded. Approved.

Reports
News
Dec RuralCAP Newsltr
Not university thr

Sub comm. Copies of CERD proposed legislation
Lee Sharp Letter
Tech Grp Report
3 days not quite enough time look our!
Time later for discussion of Recall

Report fm Tam. re: format of presentation of bill.

Kept original motion to approve unless otherwise noted.

Chair directs to put in wdg re: lyr terms for mayors

Voter Qualification for discussion
17 JAN 80

See 29.30.210 Pg 23
for Larson's new section (b).
Lee Sharps Letter
# of days initiative
(75) look at - staff

staff
eg. 100K 42.180 repeal.

Note: pg #s of wk draft on sec chgs

Subcommittee: 29.24.205
2nd class city major

— Berns to report wording for 17 Dec Mtg. ~~1st/Ap 11 Mtg 16 Dec.~~

Walker amendment 2924.630
Suspension & appt of officials
add: "appt, sus, or rmv". carries
"to serv as pers of" unless gov bdy auth to appt carries

— 29.33.200 Mun. prop. hold for 16 Dec
AFTERNOON KOHLER REQUEST.

Perdiem form for Larson & Dimmick

(27.010 - MUNICIPAL ENACTMENTS

Subcommittee: Transitional Assistance
29.09.180

Lunt
- Parr
- Larson
- Branson
- Dimmick - Motion
- McCarter & Berns to be available

Lunt Subcommittee: Voter Qualification
29.30.040

Dimmick
Parr
Sherby
Berns - Advisor

Subcommittee:

Dr. Woods to present recommended change to (29.33.220) ~~29.42.150~~

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

17 Dec

29.45.060 Mining claims. REPEAL

Tim Troll - St. Mary's

29.45.610 Back to tech committee

Dimmick

36.270 Can a city be inside, service area. (a part of)

Bring specific language to TAM for tech mtg.

Chair directs staff to prepare changes re: Service Areas.

C&RA look into dissemination of information of exempt (non-prop to Assessors

Cook: motion
staff direct to add no chg wdg.

---

Organizational Grants:
hold & discuss 16 JAN 80

Alaska Municipal League Policy
Stmt distributed

Service Area
Assumption of Powers.

Stephanie Scott:
speaking in defense of third class boroughs
petition circulating in Haines
@ 400 sign.
service area basis organization
if third class boroughs elim. - insist on list

HR & the 3 Mandatory powers

Board of Directors
AML Teleconference 16 Dec 80
Marilyn Miller
AML against more 3rd cl. Boros.
City of Haines · John Hallinwell Letter

Separate legislation recommendations:
FROM TO Home Rule

Motion by Dimmick 2ND BRANSON carried
Direct staff to bring BACK
wording on transition to HR
from any class of muni.
Wants copies of CERA bill

Berns motion to go on record as
concurring with AML's rec. re: 3rd cl.
boroughs, elim - carried

Tim Troll
14c3 Negotiations affected by
municipal properties Statute

Audience introduced themselves

Running Coales - Dept. of Environmental Conservation

Functions of DEC which might be locally done.

1) On lot inspections of lots for sewage disposal, ck water supply system - These done for banks. If DEC does not do this, banks indicate that loans would be difficult to appraise. Issue: Is DEC the appropriate group to review this or should a local intity do this?

- I missed one

2) Basic sanitation inspections, restraunts, hotels, etc. Should this be done on a local level? Some communities (Anchorage, Ketchican, Fairbanks) are assuming some of these functions already. Problem: financing for local entities

3) Small oil spills. DEC suggests that small communities should do more of the clean up because it is hard to get staff there. Are working on developing a program to allow communities to develope their own clean up plans and capability.

5) Oily waste haven permit. and surface oiling permits.

6) Litter control.

7) Vehicular emmissions - Anch/Fairbanks are the only communities with air pol. problems (carbon emmissions) Would like to see communities assume responsibility for emmissions.

Changes to Title 29 would have to be made to allow for this delegation

* - Will present change to Tech. Committee

1) optional

2) State reimbursement

Problems

1) Money for communities to perform these functions

II Speaker - Stephanus Scott - 3rd class Borough

1) Clarification of Gen. Powers of third class boroughs Are third class boroughs prohibited, except on a service are basis, from exercising the general powers? S.S. argues that the general powers must apply to third class borough.

- Tech. changes 29.41.020 weighted voting
29. 23.021 (c)

"The borough executive is president of the school board..."

Recommendations

1) Support adoption of 29.48.260(e) to relieve procedural requirements under Libby v Dillingham

2) Inventories be exempted from personal ppty tax as optional exemption.

Oct 26 - teleconference system will be operative & request that they be kept involved with Title 29 revision.

III Speaker - David Dye, D of C & RA

Problems

1) 29.48.~~46~~ 260 - "Land no longer required of municipal purposes..."

A) Allow municipal land exchanges w/ individuals. Municipal expansion land in some cases is located too far from the community to be used for expansion.

B) Refine "municipal purpose" Disposal of land for beneficial industry has been held not to be "municipal purpose."

C) Subsection (c) mentions 2 procedures for land disposals. Would like to add "lottery" as an equitable way of spreading land not based on wealth – i.e. no "higher bidder."

D) Voter ratification for any disposal of land valued at $25,000 – raise 2 to 4 times present figure.

E) Subsection (d) exempts state land from procedural requirements. Suggests that exemption turn on purpose of disposal, not source of land.

F) Subsection (e) disposal of land for "beneficial industries" – should this type of disposal be excused from procedural requirements?

2) Sec. 14(c) of ANCSA – preference in ~~for~~ right of person using land ended Dec. 18, 1971. People who have occupied land after that date are not entitled to the land. Would like a preference right in users to purchase land without having to bid.

3) Wants definition of "official map"

4) Wants change in wording 29.23.090 – change "zoning" to land use regulation"

5) 29.23.170 – platting waiver – rather than waiver provision, would like "short plat" provision.

6) 29.33.070(b)(2) – allows boroughs to delegate planning/zoning to cities. Dept. believes in consistent areawide planning – wants only delegation of enforcement/admin. of planning

7) Dev. cities – Eliminate

IV - Speakers - Mike Walleri - Tanana Chiefs

1) Problems re getting title to people who have moved onto lands after 1971 - Supports a preference right for these people under approval of local governing body. Blanket preference would sanction squatters on municipal land.

2) 14(c) ANCSA - provision for waiver of payment to municipal land. Assessed value of in town lots is beyond the means of current residents. State should assist rural residents by encouraging waiver of payment on part of city council. Question should be left to local community, to view as revenue lands if desired.

3) Evolving native governments into state system.

- Hard for state to delegate performance of function to local gov., if they don't exist.
- Parallel systems of gov. - native/city are lines of jurisdiction are unclear & expensive to operate 2 gov.
- Enactment of Tribal State Compact Act eminent dlt would provide authorization for state/tribal gov. to enter into agreements for performance of services + fed. funds when state operates programs thru tribal gov.

Solutions

1) Incorporate under state law problem tribal character is lost, fed. gov. does not recognize them as tribal gov.

II - Speaker Fred McGinnis, Dept of HESS.

Dept. is decentralizing the provision of services.

1) If authority were statutorily delegated to local governments to administer provision of services - HESS would still receive Fed funds & disperse them, contract audits, & be subject to audit. Would like local administration of Fed. programs

18 states are state supervised, administered by local gov.

- Note: failure to provide for ~~administration~~ delegation which complies w/ fed requirements will jeopardize Fed funds.

Recess - Noon

Phil Smith - Ex-Officio Committee on reaching public. Recommends that title 29 comm. utilize existing planned meetings - rep. from Title 29 to talk, solicit public comment.

Inserts in newsletters of various organizations

Teleconference Network - before we finalize recommendation, hold telecony. hearings (around Dec. 1)

Gen. news releases.

Purchase of space in newspapers

Stang. - Team to work w/ CERA to prepare material to go into newsletters of RuralCap, Municipal League, CERA.

Plan to make contact with AFN Convention Municipal league

#3. Would like to see leg. addressing this
#1. Ok to clarify whether home rule = unified
→ Request Dept. of RECA to suggest amount of organization grant. Sec. 29.18.180

Distribution of assets / liabilities when an area splits out of an existing municipality. (exclusions)
I.E. – direct boundary commission to establish distribution. in 29.68

29.68.020 -

Next day – Bob Lory sitting in for Phil Smith
Ginny Clutwood suggests next meeting time
Nov. 10, 11
Tues. allow extra time for public speakers on the agenda -

29.13.100 - Limitation of H.R. Powers. Technical Group to bring back recommendation as to which can be eliminated.

Specific request to Local Boundary Commission to present alternative dev. city statute + Alkan Tesche report.

Note to me → AS 39.50 - does it supercede the title 29 conflict of interest statute. Send "dev cities pub." to Ross Walker

Public information issue to be set aside now – No

Request Technical Committee to bring back
1) Suggestions as to which things can be done by option or changed by local ordinance
2) Expand powers – let classes adopt additional powers by vote of people

Motion - Leave residency requirement at 3 years. Passed.
After lunch recess

29.28.030 - municipality may require precinct residency for local elections. Redraft -
1) What election (State or Fed.)
2) % of signatures needed
3) Timing of electing (at time petition is filed)

Recall - Look at when a person is recalled motion to eliminate ~~reas~~ reasons for recall postponed to next meeting.

Drafters to address problem of recall of more than quorum - ~~when~~ how does gov function

Transfer of money - draft "unless provided otherwise by ordinance — except that a municipality may by ordinance provide for transfers by resolution.

→ Flag issue of eliminating 1st class borough leave ~~ex~~ mayoral veto alone.

Youth Commission - if eliminated could 2nd class cities fund such a program or appoint 17 year olds to boards/commissions.

Oct. 13, 1980 - Get proposals generated by assessors
Call Terry Eadly.

SCOMM

#23:17

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

[illegible]
Esche
Sharp
Garnett
Walker

Forbes
Wkg Grp Mtg 20 Oct 80

Burns & Sharp

CH3 NOCHG

29.06.010 29.08.010 - Add ref to new municipalities

29.18.180
Costs of forming new boroughs - toss out per voter amount because of small populations in areas eft to be organized.
Reccommend to Policy Grp $150,000.00

12.260
29.68.310 Charter Comm:
Note to Policy Group w alternatives on formation
1. City, Borough ~~Area~~wide, appt. their own. ~~Appointment~~ to Charter Comm. (5 votes)
2. Discard idea (5 votes)
~~[illegible]~~ Draft of each alternative
→ Write in considerations
Garnett
Move to reconsider vote - passed
New VOTE 2 12
1. 1

~~Re~~ Reccommend allowing second class cities to

Reconsider utilities deletion
suggested by Burns

Section pg 60 Line 6

...ve of
07 Nov 80

53.415 Limitation? ON Sales Tax

Land selection statutes · Burns

Sharp moved to drop ten days extra (29.30.290). Discussion
- Petition sigs. have to be valid to get extra 10 days - motion (redraft)

- Keep grounds for recall?
Include affadavit in petition?
Standards? 1 No Standards 12

Person being recalled can challenge sufficiency of signatures ~~to assembly or court~~
Appeal clerk's decision.
Yes The clerk's decision is final until challenged in superior court.

29.30.250 %?
Tesche motion regular 35% of voters voting in the election last municipal in which votes were cast for that office. ~~electing official being recalled.~~ 1 opposed
6 mon. on each end.
1 yr term exempt fm recall

- list of those elected off subject to recall school bds etc.

Initiative & Referendum:
Shanley & Sharp.
Filing time

29.30.160 (b) –

Move to ADD sec ~~allowing~~ 29.90-180 Apply mun. to ~~exempt~~ except themselves fr as otherwise prov by ord rat by voters of munic paddy

NOTE: AS recc to Policy group.

AS 29.28 ELECTIONS (NEW CHAPTER 30)

## Article 1. Regular and Special Elections

| New Sec. No. | Old Sec. No. | Sec. Title |
|---|---|---|
| 29.30.010 | 29.28.010 | Administration |
| 29.30.020 | 29.28.015 | Nominations |
| 29.30.030 | 29.28.020 | Election dates |
| 29.30.040 | 29.28.030 | Voter qualifications |
| 29.30.050 | 29.28.040 | Majority elections |
| 29.30.060 | 29.28.050 | Election contest and appeal |

## Article 2. Initiative and Referendum

| | | |
|---|---|---|
| 29.30.090 | 29.28.060 | Reservation of powers |
| 29.30.100 | 29.28.062 | Petition filing |
| 29.30.110 | 29.28.062 | Contents of petition |
| 29.30.120 | 29.28.070 | Required signatures |
| 29.30.130 | NEW SEC. | Petition circulation and certification |
| 29.30.140 | 29.28.073 | Petition--Sufficient, Insufficient, Supplemental |
| 29.30.150 | 29.28.075 | Protest |
| 29.30.160 | 29.28.077 | New petition |
| 29.30.170 | 29.28.080 | Presentation of initiative |
| 29.30.180 | 29.28.090 | Presentation of referendum |
| | 29.28.110 | Effect (reworded and moved to 30.180) |
| 29.30.190 | 29.28.110(b) | Unsuccessful initiatives or referendums |
| 29.30.200 | 29.28.090(c) | Municipal charter amendment |

## Article 3. Recall

| | | |
|---|---|---|
| 29.30.210 | 29.28.130 | Scope of Recall |
| 29.30.220 | 29.28.140 | Grounds for recall |
| 29.30.230 | 29.28.150 | Contents of petition |
| 29.30.240 | NEW SEC. | Petition circulation and certification |
| 29.30.250 | 29.28.160 | Petition--Sufficient, Insufficient, Supplemental |
| | 29.28.170 | |
| 29.30.260 | NEW SEC. | Protest |
| 29.30.270 | 29.28.180 | New petition |
| 29.30.280 | 29.28.190 | Submission |
| 29.30.290 | 29.28.200 | Recall election |
| 29.30.300 | 29.28.210 | Form of recall ballots |
| 29.30.310 | 29.28.220 | Election procedure |
| 29.30.320 | 29.28.230 | Majority required |
| 29.30.330 | 29.28.240 | Effect |
| 29.30.340 | NEW SEC. | Certification of election results |
| 29.30.350 | 29.28.250 | Election or appointment of successor |

29.30.010

## 29.28 ELECTIONS

### Article 1. Regular and Special Elections

OK

Sec. 29.28.010. Administration.

(a) The borough assembly or city council shall prescribe the general rules for conducting municipal elections and [APPOINT AT LEAST THREE JUDGES FOR EACH POLLING PLACE.] shall appoint election boards, composed of at least three judges, for each precinct. The judges shall, to the extent possible, be appointed from among the qualified voters of each of the precincts for which they are appointed. [See AK 15.10.120] [The municipality may not alter voter qualification requirements of this title.]

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

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Attempted to clarify election board appointment and referenced '80 revised AK 15.10.120 for consistency. Deleted "The municipality may not alter . . ." because issue is addressed at Sec. 29.28.030.

## 29.28 ELECTIONS

**Sec. 29.28.015. Nominations.**

(a) The assembly or council shall provide by ordinance the procedure for the nomination of elected officers by [PROVIDING FOR] declaration of candidacy, or petition requiring the signatures of not more than 10 [VOTERS] ~~qualified electors~~ voters, or both. Motion to delete "qualified" passed.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

---

Lee Sharp suggests that it should be left to local option as to whether the mayor in a manager-type municipality should be permitted to be a member of the legislative body so long as he does not have the veto power. If the Committee supports this suggestion, (b) should be amended.

29.30.030

## 29.28 ELECTIONS

clean up language.

Sec. 29.28.020. Election dates.

(a) [THE DATE OF A] Regular municipal elections [IS THE] shall be held on the first Tuesday of October annually [, OR ON A DATE OF ELECTION] or at an interval of years as provided by ordinance. Leave & clarify

(b) The assembly or council may call a special election upon at least 20 days' notice.

29.30.010

29.28 ELECTIONS

Sec. 29.28.030 Voter qualification.

(a) A person may vote at any election who meets the requirements of AS 15.05.010 - .040, who is registered to vote in State elections and is not disqual'fied under Article V of the State Constitution, who has been a resident of the municipality for 30 days immediately preceding the election, (added: 00 is registered in ~~and whose name appears on the official registration list for~~ the precinct in which he presents himself to vote.) (See AS 15.07.010 - '80)

(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements.

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

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Incorporates Municipal League recommendation.

29.28 ELECTIONS Alternate A

Sec. 29.28.040 Majority elections

(a) An assembly or council may by ordinance provide the requirement for a runoff election if no one candidate receives in excess of 40 percent of the votes cast for a respective office.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

---

This amendment would require municipalities to enact an ordinance providing for runoffs; otherwise, all municipalities would be exempt from this present requirement

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Alternate B

Sec. 29.28.040 Majority elections

(a) If in a municipal election no candidate receives in excess of 40 percent of the votes cast for his respective office, the assembly or council shall hold a runoff election between the two candidates receiving the greatest number of votes for the office. The runoff election shall be held within three weeks from the date of certification of the election for which the runoff is required and notice of the runoff election shall be published at least five days prior to the election date. An assembly or council may by ordinance exempt its elections from the requirements of this section.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

---

Sec. 29.28.040 cont'd
Alternate B

This amendment would allow municipalities to enact an ordinance which would exempt them from the runoff requirement. The change to three weeks (from two weeks) for the date of the runoff allows the additional time necessary so cities within boroughs can coordinate their runoffs and hold them at the same time.

---

Sec. 29.28.040 Majority elections Alternate C

(a) If in a municipal election no candidate receives in excess of 40 percent of the votes cast for his respective office, the assembly or council shall hold a runoff election between the two candidates receiving the greatest number of votes for the office. The runoff election shall be held within three weeks from the date of certification of the election for which the runoff is required and notice of the runoff election shall be published at least five days prior to the election date. A municipality may exempt itself from the requirement of this section if a majority of the voters voting on the question at any regular election or a special municipality-wide election called for that purpose, vote to exempt its municipal elections from the requirements of this section.

(b) An assembly or council may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

---

This amendment would allow municipalities to exempt itself from the runoff requirement by means of voter ratification. Incorporates Municipal League recommendation.

29.30.060

AS 29.28 ELECTIONS

Sec. 29.28.050 Election contest and appeal.

UNCHANGED



**Sec. 29.28.050. Election contest and appeal.** (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the assembly or council, by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two per cent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects. (§ 2 ch 118 SLA 1972)

'80 addition

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.23.060 (c), of a member of a city council under AS 29.23.210(b), of a borough mayor under AS 29.23.130(f), or of a city mayor under AS 29.23.255 is final and is not subject to judicial review.

## Article 2. Initiative and Referendum.

### Sec. 29.28.060. Reservation of powers.

Unchanged

Sec. 29.28.060. Reservation of powers. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by § 7, art. XI, of the state constitution. (§ 2 ch 118 SLA 1972)

Borough voters may use an initiative to acquire an areawide power for a borough which cities refuse to transfer. 1965 Op. Att'y Gen., No. 6.

### Sec. 29.28.062 Petition filing.

Unchanged

Sec. 29.28.062. Petition. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election. (§ 2 ch 118 SLA 1972)

### Sec. 29.28.065 Contents of petition.

Unchanged

Sec. 29.28.065. Contents of petition. A petition for an initiative or referendum shall

(1) embrace only a single comprehensive subject;

(2) set out fully the ordinance or resolution sought by the petition;

(3) state upon the petition, when circulated, the date of first circulation of the petition;

(4) contain the statement, when circulated, that the signatures on the petition must be secured within 90 days from the date of the first circulation;

(5) have the required signatures, dates of signatures and resident addresses of the signers. (§ 2 ch 118 SLA 1972)

29.30.120

29.28 ELECTIONS

Sec. 29.28.070. Required signatures.

(a) The necessary signatures on a petition shall be secured within 90 days from the date of the first circulation of the petition. The petition shall be signed in ink or indelible pencil.

(b) Every municipal initiative or referendum petition [FOR EITHER THE INITIATIVE OR REFERENDUM IN THE GOVERNMENT OF A MUNICIPALITY] shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities, to a service area, or to a district, by a number of qualified voters residing within the respective area [OUTSIDE CITIES OR WITHIN THE SERVICE AREA, AS THE CASE MAY BE, EQUAL TO THE FOLLOWING] equal to 25/30 percent of the total number of votes cast at the last [GENERAL] regular election preceding the date of first circulation of the petition[IN THE CITY OR BOROUGH OR BOROUGH AREA CONCERNED OR SPECIAL ELECTION CALLED FOR THE PURPOSE OF ELECTING CITY OR BOROUGH OFFICERS:] in the respective area concerned.

[(1) 25 PERCENT, WHEN A CITY OR BOROUGH HAS FEWER THAN 7,500 PERSONS, OR

(2) 15 PERCENT, WHEN A CITY OR BOROUGH AS 7,500 PERSONS OR MORE.]

(c) When signing a petition each voter shall write or print after his signature the date of signing the petition and his resident and mailing address.

(d) Illegible signatures unless accompanied by a legible printed name may be rejected by the municipal clerk.

(e) A petition signer may withdraw his signature upon written application to the clerk within seven days after the petition has been filed with the clerk.

---

Amendment does not address Richard Garnett III's concern regarding service area petitions. In (b) Municipal League supports 30 percent, Clerks support 25 percent.

29.30.125
(new section)

29.28 ELECTIONS

NEW SECTION

Sec. 29.28.071 Petition circulation and certification.

(a) Petitions shall be circulated only by a sponsor and only in person. If more than one sponsor is circulating copies of a petition, one spokesman shall be appointed by the sponsors for purposes of receiving notification of petition sufficiency, and the clerk shall receive written notice of the spokesman's name and mailing address.

(b) Before being filed, each petition shall be certified by an affidavit by the sponsor who personally circulated the petition. The affidavit shall state:

(1) the person signing the affidavit was the only circulator of the petition;

(2) the signatures were made in his actual presence; and

(3) to the best of his knowledge, the signatures are those of the persons whose names they purport to be.

---

Has the effect of requiring a witness to the signatures on a petition; conforms to State law.

Sec. 29.28.073. Petition--Sufficient, Insufficient, Supplemental.

(a) Within 10 days from the date of filing, the municipal clerk shall certify the petition as to its sufficiency and shall so notify the sponsor or spokesman.

(b) The clerk shall notify the sponsor or spokesman that the petition is insufficient if he determines that the petition does not meet the requirements as set forth in this article.

(c) Upon receipt of notice that the filing of the petition was improper, the sponsor/s may amend and correct the petition by circulating and filing a corrected or supplementary petition within 10 days of the date that notice was given if 90 days from the petition's first circulation have not yet expired.

(d) Within 10 days from the date of filing of a corrected or supplementary petition, the municipal clerk shall recertify the petition. If the petition is still insufficient, the petition shall be rejected and filed as a public record and the sponsor or spokesman shall be so notified.

(e) For the purposes of this article, all notices required of the clerk to be given to the sponsor or spokesman shall be by certified mail.

days to correct w/ notice?

29.30.140→.160



Sec. 29.28.075. Protest

Unchanged

Sec. 29.28.075. **Protest.** If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting to the assembly or council which shall hear and decide the protest. (§ 2 ch 118 SLA 1972)

SEc. 29.28.077. New petition

Unchanged

Sec. 29.28.077. **New petition.** Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

29.30.160

29.28 ELECTIONS

Sec. 29.28.080. Presentation of initiative.

(a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council, excepting powers of an administrative nature and not otherwise restricted by §60 of this chapter, the clerk shall present it to the assembly or council at its next regular meeting following [AFTER] certification. The assembly or council may reject the petition if the subject matter of the initiative [OR REFERENDUM] is within the restrictions of §60 of this chapter or is determined to be of an administrative nature.

(b) Unless the petition is granted within 30 days of its submission to the assembly or council, the clerk shall, with the assistance of the municipal attorney, prepare an ordinance or resolution to implement the petition and shall submit it to the voters at the next regular election. The ordinance or resolution shall be published in full in the notice of election but may be summarized on the ballot to indicate clearly the proposal submitted.

(c) If a majority of those qualified electors voting favor the proposal, it becomes effective [WHEN THE ELECTION RESULTS ARE OFFICIALLY DECLARED] ~~30 days~~ immediately following certification of the election results, is not subject to veto, and may not be repealed within two years of its effective date. It may be amended at any time.

(d) The assembly or council may at any time not less than 10 days from the date of election adopt an ordinance or resolution to implement the petition. In that event an election shall not be held. The adopted resolution or ordinance is not subject to veto(?) may not be repealed within two years of its effective date. It may be amended at any time.

---

Rewrite attempts to incorporate recommendations of Lee Sharp, Richard Garnett III, and follows provisions of Article XI §6 of the Constitution.

29.28 ELECTIONS

Sec. 29.28.090 Presentation of referendum.

(a) When a petition seeks a referendum vote on an ordinance or resolution, excepting legislation determined to be of an administrative nature, the clerk shall submit the ordinance or resolution to the voters of the municipality at the next regular or special election. If no regular or special election [OCCURS] is scheduled to occur within 75 days of the filing of a sufficient petition with the clerk, the assembly or council shall schedule and hold a special election within 75 days of filing. If the clerk determines that the subject of the petition is of an administrative nature, he shall present the petition to the assembly or council at its next regular meeting following certification of the petition. The assembly or council may reject the petition if the subject matter is determined to be of an administrative nature.

(b) If a sufficient petition for referendum is filed within 30 days after final passage of the ordinance, or before the effective date of the ordinance, [THE ORDINANCE AGAINST WHICH THE PETITION IS FILED SHALL BE SUSPENDED PENDING THE REFERENDUM ON THE ORDINANCE. DURING THE PERIOD OF SUSPENSION] the assembly or council may [NOT ENACT AN ORDINANCE SUBSTANTIALLY SIMILAR TO THE SUSPENDED ORDINANCE BUT MAY] repeal the [SUSPENDED] ordinance. If an ordinance against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum, the council or assembly may not enact substantially similar legislation for a period of [ONE YEAR] two years after repeal.

(c) If a majority of those voting favor the referendum legislation, it remains in effect. If a majority rejects the legislation, it is repealed and becomes void 30 days after certification of the election results, and the assembly or council may not, within two years, act in any way to modify or negate the effect of a successful [INTIATIVE OR] referendum.

29.30.170
(explanatory notes)

Sec. 29.28.090 cont'd

(a) incorporates recommendations of Lee Sharp and Richard Garnett III and Wolf v. Alaska State Housing Authority re: legislation of an administrative nature

(b) reflects ruling in Walters v. Cease (referred to in State Constitution XI § 6) re: suspension of legislation

(c) conforms to State Constitution XI § 6 re: when legislation becomes void

29.30.180 → .18
(new title) (new section)

29.28 ELECTIONS

Sec. 29.28.110 Effect

Deleted - (a) reworded and moved to 29.28.090

Sec. 29.28.110 Unsuccessful initiatives or referendums (NEW TITLE)

(a) An unsuccessful initiative or referendum precludes the filing of a new petition for the same purpose sooner than six months after voter disapproval of the initiative or referendum.

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this is previous Sec. 29.28.110 (b)

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Sec. 29.28.120 Municipal charter amendment (NEW SECTION)

(a) A municipal charter may be amended as provided in the charter or by initiative and referendum as provided in Article 2 of this chapter.

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this is a portion of previous SEc. 29.28.090 (c)

29.30.210 → .290

**29.28 ELECTIONS**

**Article 3. Recall.**

**Sec. 29.28.130 Scope of Recall (NEW TITLE)**

**(a) All [AN] elected officials [OF A HOME RULE OR GENERAL LAW MUNICIPALITY MAY BE RECALLED] are subject to recall [BY THE VOTERS] after [HE HAS SERVED] having served six months in office.**

**Sec. 29.28.140 Grounds for recall (NEW TITLE)**

**The grounds for recall are misconduct in office, incompetence, failure to perform prescribed duties and to uphold the laws and ordinances of the municipality, and corruption.**

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Alternate: Delete 29.28.140, 29.28.150 (2) + 29.28.210 (1)
B No grounds

---

Alternate: Leave in 29.28.140 but provide for more stringent petition requirements if official is subject to recall w/out grounds being specified.
C

Sec. 29.28.150 Grounds of Petition.

(a) A petition seeking the recall of [ONE OR MORE] an elected municipal official[S] is filed with the municipal clerk. The petition shall contain:

(1) the name and office of the person to be recalled;

(2) a statement of the grounds for recall stated with particularity as to specific instances, limited to 200 words;

(3) the signatures, [AND] resident addresses and mailing addresses and date of signing of [A NUMBER OF VOTERS AS PRESCRIBED IN §70(b) OF THIS CHAPTER FOR INITIATIVE AND REFERENDUM] a number of qualified voters residing within the territorial limits of the area from which the elected official was elected equal to 25/30? percent of the total number of votes cast at the last regular election preceding the date of first circulation of the petition.

(4) a statement of the date of first circulation of the petition and a statement that the signatures on the petition must be secured within 60 days from the date of the first circulation.

(b) If more than one elected municipal officer is being considered for recall simultaneously, a separate petition shall be filed for each official.

(c) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition.

(d) No recall petition shall be filed within 90 days of the termination of the term of office of the public official who is the subject of the recall petition.

29.30.235 (new section) +.240

29.28 ELECTIONS

Sec. 29.28.155 Petition circulation and certification (NEW SECTION)

(a) Recall petitions are subject to the requirements for initiative and referendum petition circulation and certification as prescribed in AS 29.28.071.

Sec. 29.28.160 Petition--Sufficient, Insufficient, Supplemental (NEW TITLE)

Revise of .160 + .170

(a) Within 10 days from the date of filing, the municipal clerk shall certify the petition as to its sufficiency and shall so notify the sponsor or spokesman. Until the petition is accepted as sufficient, a petition signer may withdraw his signature upon written application to the clerk.

(b) The clerk shall notify the sponsor or spokesman that the petition is insufficient if he determines that the petition does not meet the requirements as set forth in this article.

(c) If a petition is rejected because of insufficient signatures, it may be supplemented by additional signatures within 10 days after the date of rejection if 60 days from the petition's first circulation have not yet expired. Within 10 days after the supplementary filing, the clerk shall recertify the petition as to its sufficiency and so notify the sponsor or spokesman. If the petition is still insufficient it shall be rejected and filed as a public record.

(d) A petition found insufficient for any reason other than the lack of sufficient signatures shall be rejected and filed as a public record.

(e) For the purposes of this article, all notices required of the clerk to be given to the sponsor or spokesman shall be by certified mail.

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(Also includes provisions of previously numbered Sec. 29.28.170 Supplemental Petition)

29.30.255 (new section) + .260 → .280 Soon

Sec. 29.28.170 Protest. (NEW SECTION)

(same as protest provisions for initiative and referendum)

If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting of the assembly or council, which shall hear and decide the protest.

SEc. 29.28.180 New Petition

Unchanged.

**Sec. 29.28.180. New petition.** Failure to secure sufficient signatures does not preclude the filing of a new recall petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

Sec. 29.28 190 Submission.

If a recall petition is sufficient, the clerk shall [IMMEDIATELY] submit it to the assembly or council at its next regular meeting.

Sec. 29.28.200 Recall election

(a) If a regular election occurs within 75 days of submission of a sufficient petition, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days of submission.

(c) If a vacancy occurs in the office after a recall petition is filed, the petition shall not be submitted to the voters and such vacancy is filled as a vacancy caused by any other reason is filled. The resigning official who was the subject of the recall petition shall not be eligible for appointment to the vacant position.

Should this be a separate section?

29.30.290 - .320

29.28 ELECTIONS

Sec. 29.28.210 Form of recall ballots

Unchanged

**Sec. 29.28.210. Form of recall ballots.** A recall ballot contains:

(1) the grounds as stated in the recall petition;

(2) the officer's statement of 200 words or less, if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? Yes [ ] No [ ]". (§ 2 ch 118 SLA 1972)

Sec. 29.28.220 Election procedure

Unchanged

**Sec. 29.28.220. Election procedure.** Procedures for conducting a recall election are those of a regular election. (§ 2 ch 118 SLA 1972)

Sec. 29.28.230. Majority ~~election~~ required

Unchanged

**Sec. 29.28.230. Majority required.** A majority vote on the question is required to recall an officer. (§ 2 ch 118 SLA 1972)

Sec. 29.28.240. Effect

Unchanged

**Sec. 29.28.240. Effect.** If an incumbent is not recalled at the recall election, a petition to recall the same incumbent may not be filed sooner than six months after the recall election. (§ 2 ch 118 SLA 1972)

29.30.325 (new sec.) + .330

29.28 ELECTIONS

Sec. 29.28.245 Certification of election results (NEW SECTION)

If a majority of the votes cast on the question of recall favor the removal of the official, the assembly or council shall so certify and the office becomes vacant the day following certification.

Sec. 29.28.250 Election or appointment of Successor

(a) If the voters recall an officer, the remaining council or assembly members shall appoint a successor to serve until an election shall be held. The clerk shall conduct an election for a successor to fill the unexpired term of the recalled official, which election shall be held at least 10 but not more than 45 days from the date of the recall election. However, if a regular or special election occurs within 75 days of the recall election, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section.

(b) If the voters recall a number of officials which has the effect of leaving the legislative body with less than a quorum, the remaining council or assembly members shall have the emergency power to appoint successors to serve until an election shall be held.

(c) If the voters recall an entire legislative body, the executive officer? shall have the power to appoint successors to serve until an election shall be held.

(d) If no candidates file to have their names placed on the ballot to replace the recalled officer, the remaining council or assembly members shall appoint a successor to serve for the unexpired term of the recalled official. If an entire legislative body has been recalled and no candidates

**29.28 ELECTIONS**

29.28.250 cont'd

file for the vacancies, the executive officer shall have the power to appoint successors to serve for the unexpired terms of the recalled officials.

(e) All appointed successors shall have the qualifications and meet the requirements established for election to the position to which appointed and shall not be one of the officials recalled.

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It's difficult to address all the "what ifs"; I'm sure I missed some!

# TITLE 29 REVISION

## PROPOSAL FOR INITIATIVE AND REFERENDUM
(Formerly AS 29.28.060-110)

October 20, 1980

29.30.090 Reservation of Powers. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by §7, art. XI of the State Constitution.

(Unchanged.)

29.30.095 Application. An initiative or referendum is proposed by an application containing the legislative matter to be initiated or referred. The application shall be signed by not less than ten qualified voters as sponsors, shall contain the address to which all correspondence relating to the application may be sent, and shall be filed with the clerk. The clerk shall certify the application if he finds that the application is in proper form, and in addition, if the application is for an initiative, that the matter to be initiated is not restricted by §90, embraces only a single subject, and as to each part, would not be unenforceable as a matter of law. The clerk's certification or denial of certification shall be subject to judicial review.

(This section is new. The first part is modeled after §2 of the initiative article in the state constitution. As drafted, this section would also make it clear that the clerk is to review initiatives for substantive legality and that the clerk's decision is subject to appeal. This procedure will allow for a judicial determination of the legality of an initiative prior to the expense of an election.)

NOT MORE than 2 wks ea. way

29.30.110 Petition. After certification of the application, a petition containing a summary of the subject matter shall be prepared by the clerk for circulation by the sponsors. The petition shall

(1) set out fully the ordinance or resolution sought to be initiated or referred by the petition;

(2) state upon the petition the date first issued by by the clerk;

(3) contain the statement, when circulated, that the signatures on the petition must be secured within 60 days of the date first issued;

(4) contain spaces for the required signatures, the printed name of each person signing the petition, the date of each signature, and both the resident and the mailing address of each signer;

(5) contain a statement to be signed and sworn to by the circulator stating the number of signatures on the petition page or pages, that ~~the~~ each circulator personally circulated the page or pages, that all signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names they purport to be, that each signer had an opportunity before signing to read the full text of the proposed initiative or referred measure, and that he believes each signer to be a qualified municipal voter.

(This section would require the clerk to provide the petition forms to the petitioners. This is similar to the requirement levied upon the Lieutenant Governor in state

initiative proceedings. The petition contents are essentially the same as present law (AS 29.28.065) with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the petition signers must provide, and the addition of the circulator's affidavit in (5) of the section.)

29.30.120 Required Signatures. (a) The necessary signatures on a petition shall be secured within ~~60~~ 90 days of the date the clerk first issues the petition. The petition shall be signed in ink or indelible pencil.

(b) Every petition, whether dealing with an areawide

or a non-areawide matter, shall be signed by a number of registered voters residing within the territorial limits of the municipality equal to 25 percent of the number of votes cast at the last regular municipal election in the municipality which was held on or prior to the date of the first issuance of the petition.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk at any time prior to certification of the petition by the clerk.

(e) The petition pages shall be assembled and filed as a single instrument.

(This section carries forward the 60 day signature gathering period. Although it does not eliminate the possibility of an initiative or referendum on a matter which affects only a service area, it does require that such petitions contain the same number of signatures as a petition on an areawise matter. Permitting a service area to initiate and vote upon a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body. If service areas are permitted to initiate and vote upon service area only initiatives, service areas will have the authority to become essentially autonomous units of government without a governing body. Other minor changes were made to require rejection of signatures which were illegible or failed to have additional legible information accompanying the signature.)

29.30.130 Sufficiency of Petition. (a) Within ten days of the date the petition is filed, the municipal clerk shall certify on the petition whether or not it is sufficient.

(b) If the petition is insufficient, it may be amended or supplemented with additional signatures which are obtained within ten days after the date on which the petition is rejected as insufficient.

(c) Within ten days after the supplementary filing, the clerk shall recertify the petition. If the petition is still insufficient, the petition is rejected and filed as a public record.

(The only significant change is to make it clear that in providing supplementary signatures, the petitioners have only ten days to gather the signatures and may not use petition signatures which were gathered prior to the first filing but not submitted, and that they may not use signatures gathered during the period in which the clerk is checking the petition.)

29.30.140 Protest. If the clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting of the assembly or council which shall hear and decide the protest.

(No change.)

29.30.150 New Petition. Failure to secure sufficient signatures does not preclude the filing of a new application for an initiative or referendum petition. However, a new application for a petition may not be filed sooner than six months after the petition is rejected by the clerk.

(This section was changed slightly to take into account the application procedure and to indicate that the rejection from which the six months is counted is a rejection by the clerk, not a rejection which might be deemed to have occurred if the matter is appealed to the assembly and the assembly sustains the clerk's rejection.)

29.30.160 Presentation of Initiative. (a) When a petition seeks enactment of an ordinance or resolution ~~within the powers of the assembly or council and not otherwise restricted by §90 of this chapter~~, the clerk shall present it to the assembly or council at its next meeting or spec. mtg called for that purp. after certification. The assembly or council may reject the petition if it determines the subject matter of the initiative or referendum is within the restrictions of §90 of this chapter or is unlawful.

make consistent w/ ↑

(b) An initative measure presented to the assembly or council and not rejected under section (a) shall be submitted to all the voters of the municipality at the next regular municipal election held more than 45 days after submission of the petition to the assembly or council, unless the assembly or council adopts substantially the same measure. If the assembly or council adopts substantially the same measure, the petition shall be void and the question shall not be submitted to the voters.

VETOS

(c) The ordinance or resolution shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(The changes here allow for the submission of an initiative measure at any time during the year, but it would be placed before the voters at the first regular municipal election occuring 45 days after submission to the assembly or council, unless rejected for cause or adopted in substantially the same form as presented. It also requires an areawide vote whether the matter is areawide or non-areawide for reasons outlined above.)

29.30.170 Presentation of referendum. (a) When a

**petition seeks a referendum vote on a legislative ordinance or resolution, the clerk shall submit the ordinance or resolution to all the voters of the municipality at the next regular or special election unless the assembly or council repeals the ordinance or resolution to be referred. If no regular or special election occurs within 75 days of the certification of a sufficient petition by the clerk, the assembly or council shall hold a special election within 75 days of filing.**

(b) If a sufficient petition for referendum is certified before the effective date of the ordinance or resolution, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum on the matter. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure but may repeal the suspended ordinance or resolution.

(c) If the assembly repeals the ordinance or resolution before the election, the petition shall be void and the referred measure shall not be placed before the voters.

(d) If a majority of those voting favor the repeal of the referred measure, it is repealed; otherwise, it remains in effect or, if suspended under section (b), it shall become effective upon certification of the election results by the assembly or council.

(The ability to suspend an ordinance or resolution which had taken effect if a referendum petition was filed

within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to be able to exercise a temporary repeal of the measure. The reference to amending a charter by initiative or referendum was deleted as it is already covered under AS 29.13.080. This also requires submission of the question to the areawide voters for reasons outlined above.)

29.30.180 Effect. (a) The assembly or council may not, within two years of its effective date, repeal an ~~ordinance or resolution~~ adopted through the initiative process nor may it amend such an ordinance or resolution in a way to substantially modify or negate the effect of the successful initiative.

(b) If an ~~ordinance or resolution~~ against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum election, or if an ~~ordinance or resolution~~ is repealed by the voters in a referendum election, the council or assembly may not enact substantially similar legislation for a period of one year after the repeal. A measure which is repealed in a referendum election shall be repealed effective upon the certification of the election results by the assembly or council.

(c) An unsuccessful initiative or referendum precludes the filing of a new application for the same or substantially the same purpose sooner than six months after the initiative or referendum election results are certified by the assembly or council.

(Minor changes to make dates more certain and to accommodate the petition application process.)

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# Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE ~~745-3246~~ 4801

BOROUGH ATTORNEY'S OFFICE


October 14, 1980

To: Members of AS 29 Technical Committee

Dear Member:

Enclosed please find drafts of AS 42 and 23 relating to planning, platting, and land use regulations and municipal officers and employees.

I would appreciate and welcome your comments on these drafts before or during the next meeting of the Technical Committee, scheduled for October 20, 1980.

Cordially,

Allan E. Tesche
Borough Attorney

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Enclosure

Section
10. Planning, platting, and land use regulation
20. Planning commission
30. Comprehensive plan
40. Land use regulations
50. Appeals from administrative decisions
60. Judicial review
70. Platting jurisdiction and power
80. Application to state and political subdivisions
90. Waiver in certain cases
100. Procedure
110. Information required
120. Alteration of replat petition
130. Notice of hearing
140. Hearing and determination
150. Recording
160. Title to vacated area
170. Penalties

Sec. 29.42.010. Planning, platting, and land use regulation. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section (except as otherwise provided in this chapter) to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

[adapted from AS 29.33.070]

(Alternate section suggested by Joanne Shannley)

Sec. 29.42.010. Planning, platting and land use regulation. (a) First and second class boroughs shall provide for planning, platting and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section (except as otherwise provided in this chapter) to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the Borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

[adapted from AS 29.33.070]

Sec. 29.42.020. Planning commission. (a) By ordinance the assembly shall establish a planning commission consisting of not less than five persons appointed and confirmed as provided by law. The assembly by ordinance shall also prescribe the qualifications, terms, and compensation of planning commissioners.

(b) In addition to those responsibilities prescribed by law, the planning commission shall:

(1) Prepare and recommend to the assembly a comprehensive plan for the systematic and organized development of the borough, as defined in .030 of this chapter.

(2) Prepare, recommend, and as required by law to administer those measures necessary to implement the comprehensive plan.

[adapted from AS 29.33.080]

Sec. 29.42.030. Comprehensive plan. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

(b) The assembly shall adopt a comprehensive plan based upon the recommendations of the planning commission. The assembly shall, with the advice and recommendations of the planning commission, undertake an overall review of the plan and update the plan as necessary to ensure the continued validity and effectiveness of the plan.

[adapted from AS 29.33.085]

Sec. 29.42.040. Land use regulation. In accordance with a comprehensive plan adopted under Section .030 of this chapter and in order to implement that plan, the assembly by ordinance and as a legislative act, may enact or amend regulatory measures governing the use and occupancy of land, including but not limited to:

(1) Zoning regulations which restrict or govern use of land and improvements by geographic districts;

(2) Construction, fire and life safety codes governing placement, erection and occupancy of structures;

(3) Land use permit systems designed to encourage specified uses and structures and to discourage others, or to minimize unfavorable externalaties of certain uses and structures.

(4) Other regulatory measures reasonably necessary to further the goals and objectives of the comprehensive plan.

**(5) Measures defining and regulating public nuisances.**

**[adapted from AS 29.33.090]**

Sec. 29.42.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for appeals from administrative decisions of borough employees or boards and commissions made in the enforcement, administration, or application of land use regulations adopted by the borough under this chapter to a board of adjustment, hearing officer, or other independent quasi-judicial body established by the borough.

(b) By ordinance the assembly shall provide for appointment of hearing officers, or the composition, appointment and terms of office of a board of adjustment or other quasi judicial body established to hear appeals from administrative actions specified in (a) of this section and the assembly may define proper parties, prescribe evidentiary rules and standards of review and define remedies available to such bodies or hearing officers. [adapted from AS 29.33.110 and .120]

Sec. 29.42.060. Judicial review. (a) The assembly shall provide by ordinance for appeals from decisions of the board of adjustment, hearing officer or other quais-judicial board established under Sec. 050 of this chapter to the Superior Court by a municipal officer or person jointly or severally aggrieved.

(b) Appeals to the Superior Court under this section are administrative appeals and shall be governed by Rules of Court applicable to appeals from decisions of administrative agencies.

(c) Appeals are heard on the record established by the administrative agency, and the court may affirm, reverse, wholly or partly, the decision

appealed from. Issues in proceedings under this section have preference over all other civil actions and proceedings.

[adapted from AS 29.33.130]

Sec. 29.42.070. Platting jurisdiction and power. (a) First and second class boroughs shall exercise the power to regulate platting and the subdivision of land on an areawide basis. By ordinance the assembly shall enact subdivision regulations:

(1) governing the form, size and other aspects of subdivision, dedications, and vacations of land;

(2) regulating dimensions and design features of lots or tracts;

(3) establishing strict width, arrangement, and right of way, including allowance for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements.

(4) requiring dedication of streets, rights of way, public utility easements and other areas deemed by the platting authority necessary for future public use.

(b) The assembly by ordinance shall establish a platting board to administer subdivision regulations adopted by the borough and perform other duties prescribed by law. The platting board may, in whole or in part, consist of members of the planning commission or of other municipal bodies, boards and commissions.

[adapted from AS 29.33.150]

Sec. 29.42.080. Application to state and political subdivisions. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of this chapter and AS

29.42.080 -- 29.42.170, or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter and AS 29.42.080 -- 29.42.170, or under home rule authority, in the same manner and to the same extent as subdivisions made by private landowners.

[AS 40.15.200]

Sec. 29.42.090. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that:

(1) each tract or parcel of land will have adequate legal and physical access by the public to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of 29.42.080 -- 29.42.170 of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development which constitutes an isolated transaction and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

[AS 29.33.170]

Sec. 29.42.100. Procedure. (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010 -- 40.15.020.

[AS 29.33.160]

Sec. 29.42.110. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

[AS 29.33.180]

Sec. 29.42.120. Alteration of replat petition. No recorded plat may be altered or replatted except upon petition of the owners of a majority of the land affected by the application or replat or by the platting board. No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

[AS 29.33.200]

Sec. 29.42.130. Notice of hearing. The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a copy of the notice to each affected property owner not signing the petition.

[AS 29.33.210]

Sec. 29.42.140. Hearing and determination. At the hearing the platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

[AS 29.33.220]

Sec. 29.42.150. Recording. If the alteration or replat is approved, the revised plat must be recorded by the platting board and is thereafter the lawful plat.

[AS 29.33.240]

**Sec. 29.42.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.**

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for

another public purpose does not vest as provided in (a) of this section but remains in the city.

[AS 29.33.240]

Sec. 29.42.170. Remedies. (a) It shall be unlawful for the owner or agent of the owner of land located within a subdivision to transfer, sell, offer to sell, or to enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with applicable municipal subdivision regulations enacted under this chapter. It shall be unlawful for any person to file or record a subdivision plat or other instrument depicting subdivided land in any public recorder's office unless that plat or document bears the approval of the municipal platting authority. Every act prohibited by this chapter or the maintenance of any condition prohibited by municipal subdivision regulations adopted in accordance with this chapter is unlawful and the willful commission of such act or maintenance of such condition is a misdemeanor. Every person convicted of a violation of any provision of this title or any municipal subdivision regulation adopted under this title or the terms, conditions, or limitations imposed by a municipal platting authority in the exercise of its powers under this title is guilty of a misdemeanor and may be punished by a fine not to exceed $500.

(b) If there is a violation of the terms of this chapter, municipal subidivision regulations adopted under this chapter, or any terms, conditions, or limitations imposed by a platting authority in the exercise of its powers under this chapter, the Borough or any aggrieved citizen may institute or cause to be instituted any appropriate civil action to prevent, abate, enjoin, estop, remove or punish such violation and to

**obtain monetary damages suffered by that party. In addition to injunctive and compensatory relief each violation shall be subject to a civil penalty not to exceed $1,000. An action to enjoin any violation to this title may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of an existing or threatened violation, the Superior Court shall grant injunctive relief to restrain that violation.**

(c) Every day upon which an unlawful act or condition shall occur shall constitute a separate violation.

(d) The platting authority may enjoin any partition, lease, transfer, or sale of land which would result in an unlawful subdivision. Following an unlawful petition, transfer, lease or sale, the platting authority may enjoin any further transfer, sale of all unlawfully subdivided parcels until such time as the parcels are dully subdivided or returned to common ownership.

[new]

# Chapter 23. Municipal Officers and Employees.

Article
1. Municipal legislative bodies
2. Municipal executive.
3. Chief administrative officers.
4. Municipal departments and employees.
5. Municipal boards and commissions.
6. Miscellaneous provisions.

## Article 1. Municipal Legislative Bodies

Section
10. General legislative power
15. Assembly composition and apportionment
20. Composition and form of representation
25. Assembly recomposition and reapportionment
30. Apportionment appeals
35. Judicial review and relief
40. Effective date of apportionment
45. Applicability of apportionment provisions
50. City councils - composition and form of representation
55. Qualifications
60. Term of office
65. Procedures of municipal legislative bodies
70. Vacancies
75. Filling a vacancy

Sec. 29.23.010. General legislative power. The legislative power of a Borough is vested in the assembly, and of a city, in the council.

[AS 29.23.021]

Sec. 29.23.015. Assembly composition and apportionment. (a) Assembly composition and apportionment shall be consistent with the equal representation standards of the Constitution of the United States.

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

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

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

**[AS 29.23.015]**

Sec. 29.23.020. Composition and form of representation. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be

submitted to the voters of the borough with a plan of apportionment as required by AS 29.23.025(a).

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which receives the most votes at the elction.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.68.240 - 29.68.440;

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation. [AS 29.23.021]

Sec. 29.23.025. Assembly recomposition and reapportionment. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.23.015. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.23.020(b)(2) or (b)(3), the assembly shall submit with the proposition a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.23.015, the

assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The Borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.23.015. At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registered voters who are residents of the borough requests the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.23.015, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.23.015, the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.23.015 by preparing an order of reapportionment and delivering the order to the borough mayor. [AS 29.23.025]

Sec. 29.23.030. Apportionment appeals. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.23.015 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of the Department of Community and Regional Affairs requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 2.23.015, or whether a decision of the borough assembly that the standards of AS 29.23.015 do not require a change of apportionment is correct. If the petition asks the commissioner of the Department of Community and Regional Affairs to review an ordinance approved by the voters under AS 29.23.025(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of the Department of Community and Regional Affairs to review a decision of the borough assembly under AS 29.23.025(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of the Department of Community and Regional Affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.23.015, or if he determines that the decision of the borough assembly that the standards of AS 29.23.015 do not require a change of reapportionment is not correct, the

commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.23.021 and submit the ordinance to the voters.

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

(e) If at the end of the time period provided under (d) of this section an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.23.015 by preparing an order of reapportionment and delivering the order to the borough mayor.
[AS 29.23.027]

Sec. 29.23.035. Judicial review and relief. (a) The commissioner of the Department of Community and Regional Affairs may request the superior court to enforce a reapportionment order issued under AS 29.23.030(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.23.025(a);

(2) a determination by the borough assembly under AS 29.23.025(c) that the standards of AS 29.23.015 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.23.025(d);

(4) a reapportionment order of the commissioner of the Department of Community and Regional Affairs made under AS 29.23.030(c);

(5) a reapportionment ordinance approved by the voters under AS 29.23.030(d); and

(b) a reapportionment order of the commissioner of the Department of Community and Regional Affairs made under AS 29.23.030(e).

[AS 29.23.029]

Sec. 29.23.040. Effective date of apportionment. (a) A change in assembly apportionment or composition under AS 29.23.025 or 29.23.030 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.23.025(a), 29.23.025(e), or 29.23.050(d); or

(2) the delivery to the mayor of a reapportionment order of the commission of the Department of Community and Regional Affairs under AS 29.23.027(e).

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

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

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

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

[AS 29.23.031]

Sec. 29.33.045. Applicability of apportionment provisions. The provisions of S 29.23.025 - 29.33.035 do not apply;

(1) to a unified municipality incorporated under AS 29.68.240 - 29.68.440;

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

[AS 29.23.033]

Sec. 29.23.050. City councils--composition and form of representation. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other thatn on an at-large basis for all members.

[AS 29.23.200]

Sec. 29.23.055. Qualifications. (a) A ~~person registered to vote within the borough is~~ borough voter is eligible to be an assemblyman and a ~~person registered to vote within a city is~~ city voter is eligible to be a member of the council. An assemblyman or council member who ceases to be a ~~qualified~~ borough or city voter respectively forfeits that office.

(b) The assembly and council by ordinance may establish durational residency requirements for their members not to exceed one year.

(c) An assemblyman or council member elected from or selected to represent an area less than the borough or city area at large and who becomes a resident of another area within the municipality, may continue to serve until the next regular election unless the assembly or council by ordinance provides otherwise.

[AS 29.23.050, 29.23.200(b) and ~~(c)~~]

Sec. 29.23.060. Term of office. (a) Assemblymen and members of the council are selected for three year terms and until their successors have qualified, unless different terms are prescribed by ~~charter or~~ ordinance.

(b) Except when otherwise required by a change in composition or reapportionment, if the term of an assemblyman or member of a council is changed by ~~charter or~~ ordinance, the term of that official holding office at the time such change becomes effective is not affected by that change.

(c) The regular term of office begins on the first monday following certification, unless a different date is prescribed by ~~charter~~ or ordinance.

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

[AS 29.23.040, 29.23.200(b)]

Sec. 29.23.065. Procedures of municipal legislative bodies. (a) The borough assembly and city council shall elect from among their members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.23.115 - .155, the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) Municipal legislative bodies shall hold at least one regular meeting every month, unless otherwise provided by ordinance. Special meetings may be held at the call of the presiding officer or at least one third of the members provided at least a majority of the members are given at least 24 hours oral or written notice, and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. The waiver shall be made a part of the journal for each meeting.

(c) Meetings of all municipal legislative bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

(d) A majority of the total membership authorized by law shall constitute a quorum. Members disqualified by law from voting on particular questions may nevertheless be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(e) Actions of the body are adopted by a majority of votes authorized on the question. All members present shall vote on every question unless

by law or charter they are required to abstain from voting on any particular question. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous, it is necessary only to so state.

(f) Municipal legislative bodies shall maintain a journal of their official proceedings which, as a public record shall be available to the public.

(g) Municipal legislative bodies may, ~~consistent with law or charter,~~ determine by ordinance their own rules of procedure and order of business. [AS 29.23.060, 29.23.210, 29.23.580]

Sec. 29.23.070. Vacancies. (a) ~~An elected municipal office is vacated under the following conditions and upon the declaration of vacancy by the assembly or council.~~ Unless otherwise provided by ordinance, the assembly or council ~~shall~~ may declare an elective office vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) is physically absent from the municipality for a 90-day period, unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

~~(5) is removed from office;~~

(6) misses three consecutive regular meetings unless excused; a member of council or boro assy.

(7) is convicted of a felony or of an offense involving a violation of his oath of office; or

(8) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice and two thirds of the members concur in explusion of the member for commission of a corrupt practice.

(b) Upon occurrance of any of the grounds stated in (a) of this section for expulsion of a member, the assembly or council shall take action authorized in this section at its next regular meeting or as soon thereafter as practical.

[AS 29.23.570, 29.23.060, 29.23.130, 29.23.210]

Sec. 29.23.075. Filling a vacancy. ~~(a) Unless otherwise provided by ordinance, a vacancy on the assembly or council shall be filled as provided in (b) of this section.~~

(b) If a vacancy occurs on the assembly or council, the remaining members shall appoint a qualified person to fill the vacancy within 30 days. The person appointed shall serve until the next regular election, at which time a successor shall be elected to serve the balance of the term. If less than 30 days remain in a term when a vacancy occurs, the vacancy shall not be filled. If, however, at any time the membership is reduced to fewer than a quorum, the remaining members shall, within 7 days appoint a number of qualified persons to constitute a quorum.

[AS 29.23.080, 29.23.220]

## Article 2. Municipal Executive

Section
80. Executive power
85. Election and term of the mayor
90. Qualifications for the office of mayor
95. Duties and responsibilities of the mayor
100. Veto
105. Executive absence
110. Vacancy in the office of mayor

Sec. 29.23.080. Executive power. (a) The executive power within a borough or city is vested in a mayor elected by the voters or the governing body as provided in this article.

(b) The mayor, ~~as executive shall act as ceremonial head of government,~~ ~~execute official documents upon authorization from the governing body and~~ is responsible for those additional duties and functions prescribed by ~~law~~ ordinance ~~or charter~~.

[AS 29.23.130, 29.23.140]

Sec. 29.23.085. Election and term of the mayor. (a) The mayor of a ~~home rule municipality~~, borough of any class, and first class city is elected at large by the voters. The mayor of a second class city is elected by and from the council.

(b) A mayor shall serve a term of 3 years unless by ordinance a different term not to exceed 4 years is provided, except that the current term of an incumbent mayor may not be altered. The mayor's regular term commences on the first Monday following certification of his election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately.

[AS 29.23.130, 29.23.250]

Sec. 29.23.090. Qualifications for office of mayor. (a) A voter of a ~~home rule municipality~~, borough of any class, or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor for that city.

(b) Residency requirements for the office of mayor ~~not exceeding~~ three one year may be prescribed by ordinance.

[AS 29.23.130, 29.23.250]

Sec. 29.23.095. Duties and responsibilities of the mayor. (a) If a city or borough has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same functions as those of manager under Sec. .155 of this chapter.

(b) The mayor shall preside over meetings of the council or assembly of a municipality which has adopted the manager form of government.

(c) The mayor may take part in the discussion of all matters before the assembly or council.

(b) The mayor may not vote in any matter before the Assembly or council, except that the mayor of a first class city may vote in the case of a tie, and the mayor of a second class city, as a council member, may vote on all matters.

[AS 29.23.130, 29.23.260, 29.23.160]

Sec. 29.23.100. Veto. (a) Except as provided by (b) and (c) below, the mayor may veto any ordinance, resolution, motion, or other action of the governing body of the borough or city, and reduce appropriation items.

(b) The mayor of a second class city has no veto power.

(c) The veto does not extend to:

(1) appropriation items in school budget ordinances;

(2) actions of the Board of Equalization and the Board of Adjustment;

(3) adoption or repeal of the manager form of government under Sec. 29.23.115 - .150 of this chapter; or

(4) motions relating solely to the internal legislative functions of the assembly or council.

(d) The veto must be submitted to the assembly or council ~~before~~ not later than its next regular meeting and must be accompanied by a written explanation of

the reasons for that action. A veto may be overridden only by vote of two thirds of the authorized membership of the assembly or council, taken within 21 days following exercise of the veto.
[AS 29.23.170, 29.23.260, 29.23.270]

Sec. 29.23.105. Executive absence. In the temporary absence or disability of the mayor, the governing body of a borough or city shall by resolution designate a person to serve as acting mayor.
[AS 29.23.150]

Sec. 29.23.110. Vacancy in the office of mayor. (a) The office of mayor may become vacant as provided in .070 of this chapter.

(b) Except as provided in (c) below, a vacancy in the office of mayor occurring within six months of a regular election shall be filled by the assembly or council. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the assembly or council is chosen, he shall resign his seat. If a vacancy occurs more than six months before a regular election, the assembly shall call a special election to fill the expired term.

(c) In a second class city, the office of mayor is filled by and from the council.

[AS 29.23.180, 29.23.280]

## Article 3. Chief Administrative Officers

Section
115. Application
120. Petition
125. Election
130. Adoption
135. Appointment
140. Term
145. Appointment of temporary or new manager
150. Repeal
155. Powers and duties of the manager
160. Intergovernmental appointments

Sec. 29.23.115. Application. A municipality may adopt a manager plan of government.

[AS 29.23.410]

Sec. 29.23.120. Petition. Adoption of a manager plan may be initiated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council. The petition must be signed by a number of municipal voters equal to the following per cent of the votes cast at the preceding regular municipal election:

(1) 25 per cent when the municipality has fewer than 7,500 persons;

(2) 15 per cent when the municipality has 7,500 persons or more.

[AS 29.23.420]

Sec. 29.23.125. Election. Upon receipt of the petition or upon its motion, the assembly or council shall provide by ordinance or resolution for a vote on the question at the next regular or special election. Notice of the election shall be published at least 30 days before the election.

[AS 29.23.430]

**Sec. 29.23.130. Adoption. (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.**

**(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.**

[AS 29.23.440]

Sec. 29.23.135. Appointment. The assembly or council shall appoint a manager by a majority vote of its membership. He is chosen solely on the basis of his executive and administrative qualifications and receives the compensation set by the assembly or council. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the assembly or council may at any time appoint one of its members or other elected municipal officials as manager.

[AS 29.23.450]

Sec. 29.23.140. Term. Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council.

[AS 29.23.460]

Sec. 29.23.145. Appointment of temporary or new manager. In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office become vacant, the assembly or council shall appoint a new manager.

[AS 29.23.470]

**Sec. 29.23.150. Repeal. A municipality may repeal the manager plan in the same manner used for its adoption. At its first meeting after repeal, the assembly or council shall enact provisions for the reorganization of the municipal executive and chief administrator.**

[AS 29.23.480]

Sec. 29.23.155. Powers and duties of the manager. As chief administrative officer the manager shall:

(1) appoint, supervise, and discipline all municipal employees except those who are appointed and supervised directly by the governing body;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program as adopted;

(4) make such monthly financial reports and such other periodic reports on municipal finances and operations as the governing body may direct;

(5) exercise care and custody over all real and personal property of the borough except as provided otherwise in AS 29.33.050; and

(6) perform other powers and duties provided by law or by action of the governing body.

[AS 29.23.140, 29.23.290]

Sec. 29.23.160. Intergovernment appointments. A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough

within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in §§ 115-155 of this chapter. Nothing in this subsection affects the authority of the assembly or council to provide for other dual office-holding if the dual offices held are compatible or otherwise to appoint officers and employees in accordance with law.

[AS 29.23.130(e)]

## Article 4. Municipal Departments and Employees

Section
165. Appointment of Officers
170. Municipal Attorney
175. Municipal Clerk
180. Municipal Treasurer
185. Departments
190. Personnel system

Sec. 29.33.165. Appointment of Officers. The municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative officer unless otherwise provided by ordinance. Officers described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative officer must be confirmed by the governing body.

[AS 29.23.360]

Sec. 29.23.170. Municipal attorney. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

[AS 29.23.370]

Sec. 29.23.175. Municipal clerk. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

[AS 29.23.380]

Sec. 29.23.180. Municipal treasurer. (a) The treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the assembly or council directs.

[AS 29.23.390]

Sec. 29.23.185. Departments. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

[AS 29.23.070]

Sec. 29.23.190. Personnel system. (a) Except as provided by (b) below, all appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system.

(b) By ordinance the governing body may designate executive positions filled by persons who serve at the pleasure of their appointing authority and which are wholly or partially exempt from the classified service.

[AS 29.23.550]

## Article 5. Municipal Boards and Commissions

Section
195. School Boards
200. Other Boards and Commissions

Sec. 29.23.195. School boards. Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished as provided by § 100 of this chapter.

[AS 29.23.310]

**Sec. 29.23.200. Other boards and commissions. (a) The assembly or council of a municipality may, by ordinance, establish such advisory, administrative, technical, or quasi judicial boards and commissions it deems necessary.**

**(b) Members of boards and commissions, except for the Board of Adjustment and assembly members serving on the Board of Equalization are appointed by the mayor and confirmed by the assembly or council.**

[new]

Article 6. Miscellaneous Provisions

Section
205. Salaries of elected officials
210. Prohibitions
215. Conflict of Interest
220. Reports

Sec. 29.23.205. Salaries of elected officers. The assembly or council shall fix by ordinance the salaries of elected officers. The salary of the mayor may not be reduced during his term of office. An elected officer may not receive any other compensation for service to the municipality. Per diem payments or reibursements for expenses are not compensation under this section.

[AS 29.23.530]

Sec. 29.23.210. Prohibitions. (a) No person may be appointed to or removed from municipal office or in any way favored or discriminated against with respect to a municipal position because of his race, color, sex, creed, national origin or, unless otherwise contrary to law, because of his political opinions or affiliations.

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

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed. Provisions of this section do not apply to term of office in effect on August 24, 1976.

(d) For purposes of this section a school district employee is not a municipal employee.

[AS 29.23.540]

Sec. 29.23.215. Conflict of interests. Eaxh home rule and general law municipality shall adopt a conflict-of-interests ordinance which, other provisions of this chapter notwithstanding, includes provison that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest. If a home rule or general law municipality fails to adopt such a conflict-of-interests ordinance within 90 days from September 10, 1972, the conflict-of-interests provision of this section is automatically applicable to and binding upon that municipality.

[AS 29.23.555]

Sec. 29.23.220. Reports. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) reports relating to long-term debt as provided in AS 44.19 .205.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, together with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.88 and state aid for miscellaneous municipal services under AS 29.89 The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

[AS 29.23.555]

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

# A G E N D A

## TITLE 29 - TECHNICAL REVIEW GROUP

**December 4-5, 1980**

I. Report on November Policy Committee Meeting - Tam Cook

II. Review of Proposed Title 29 Amendments

A. Municipal officers and employees - Allan Tesche

Later B. Planning and Zoning - Allan Tesche
JoAnn Hanley

C. Municipal Assessment and Taxation - Russ Walker
John Messenger

D. Municipal Debt/Special Assessments - John Messenger

E. Local Government Powers - Jim Nordale
Russ Walker

III. Discussion of other proposed amendments and policy recommendations concerning Title 29.

A. Classification of Municipalities

B. Recognition of Traditional Native Governments

C. Other issues

IV. Unfinished business/Adjournment

Working Group meeting
19 Sep 80

Messenger: Suggy break up into "parts".
not agreed to.

Identify policy questions -
have Sue

Valleri - why unorg boro - legal reasoning for
treating diff. as a borough. Sees reluctance
on part of the legislature to serve as
assembly for. Treat as municipality

Land selection to back - leave cross
reference in 18.

Expand recall to include filling the
vacancy

Mail to working people

Make it clear that a home rule

Issue

Percentage requirements for petitions (elections) % of number of persons voting in last election.

Issue

29.13.050 Procedures. Bound by provisions of other title re: Initiative referendum.

29.13.100 HR mun gov. by provisions of other statutes. SB cross-referenced?

Can we make more precise the inconsistencies between HR & state

SB clarified

Issue

Development cities - SB scrapped?

Issue Article New (Chap 23)

Public records of municipalities

- can make ordinances for confidential records.

plural majority

29.23.010 - Apportionment

Issue (Residency) Requirements for voting should mun. be allowed to set res req. for elected officials? Vinto court case - Homer ? ✓

Issue Majority requirements for votes of mun. assemblies. Votes = less than a quorum? Leave alone but provide for alternate methods.

29.23.021 Delineation between composition & reapportionment

Issue Provisions for emergency situations regarding lack of a quorum.

29.48.130(5) Ordinance vs resolution for budget trans. or supplemental Appropriations

Issue Mayoral veto - encompass what?

29.48.180(5) Burden to smaller comm.
5 yr review Required? Codify?
OR if yes ↑ assistance by C&RA?
remove ref to legal advisor

.160 GLM ex em powers

Satisfied w org
break into sub-comm
Clean up language
propose substantive changes.

Planning & Zoning
Boro OR city Areawide powers
definitions

Taxation, Assesment & Debt
Messenger
Walker

28, 23
Shanley Elections
Tesche

Powers - Boro & Intergov Powers, Service
Areas Vordale
pg10, chap48 Walker

Planning, platting & zoning
Shanley
Nordale
Tasche

Home Rule Introduction Pg 1-5
Berns
Sharp
Land selection.
Agenda

Messenger
Nordale
Shanley
Tesche
Sharp
Garnett
Walker

Chitwood
Poland
Sturgulewski
Forise

Wkg Grp Mtg 20 Oct 80

Burns & Sharp

CH3 NOCHG

29.06.010 29.08.010 - Add ref to new municipalities

29.18.180

Costs of forming new boroughs - toss out per voter amount because of small [illegible]

Reccommend to Policy Grp $150,000

12.260
29.68.310 Charter Comm:

Note to Policy Group w alternatives on [illegible]

1. City, Borough ~~Area~~ wide, appt. their own. (5 votes)
2. [illegible] (5 votes)

Issue: Draft of each alternative

WRITE In considerations

Garnett
Move to reconsider vote - passed

New VOTE 2 12
1. 1

~~Re~~ Reccommend allowing second class [illegible]

Reconsider utilities deletion

Suggest [illegible]

148 & 149 ✓ for missing section pg 50 Line 6

Eve of
07 Nov 80

53.415 Limitation ON? Sales Tax

Land selection statutes - Berns

Sharp moved to ~~drop ten days~~ extra (29.30.290). Discussion

- Petition sigs. have to [illegible] to get extra 10 days - motion (Gardner)

- Keep grounds for recall?
Include affidavit in petition?
Standards? 1 No Standards 12

Person being recalled can challenge [illegible] ~~to assembly~~ ~~on court~~

[illegible]

29.30.250

Tesche motion regular 35% of voters voting last municipal in which votes were cast in the election ~~[illegible]~~ for that office ~~[illegible]~~ 1 opposed

6 mon. on each end.
1 yr term exempt [illegible]

- list of those elected off subject to recall
school bds etc.

Gerald Sharp 7:10 am 5.in

Initiative & Referendum:
Shanley & Sharp.
Filing time

29.30.160 (b) –

More to ADD Sec allowing mun. to exempt

Working Group Mtg Notes 08Sept80

Mtg called to order:
Present Tom Cook
(Rick Garnett, III)

Summ Ag opinion
Index

Ted Berns recap: policy grp consensus -
disorganization &
reorganization
also too much, gov need for more autonomy at local
level
Level of Applicability (Categories, functional
areas)
1, 2, 3
4th cat: gen misc.
TC - Not to be held to this

Sample ordinances - C&RA interested
not necessarily to be included.

Rick Walker to help serve as liason w Ted
Berns.

Tesche - suggestions
packet?

Walker

Issue: Notations/Footnotes/cross reference to other statutes in Title 29 (ie. bonding stat: T.t 37)

Teshe: Computer search of all statutes to c/r to Title 29?
Enumeration of 2nd c.B. Powers needs cites to other powers

Nordale: ?

T. Leave other statutes alone. Should only c/r to policy matters.

Not to far from orig, but how far to go?

Sharp: Need to cut a lot of restrictions if dividing applicability.
What about repetition. - will apply to more than one section. So will end up w/ more actual paper.

Tesche Worked on sorting into 4 cat. Doesn't see any real problem.

Sharp: Sees a disparity. Additional restrictions can be added to one sector: OR OTHER.

Single out "Home Rule" OR "Gen Law" one particular kind.

Berns — Reorganization will only work if code simplified.

Stanley — Confusion - A pyramid or 3 sep sections

Walker — (Specific, umbrella & directory (optional)

Berns — List or index broken down by specific + boroughs, municipalities etc. or cross reference.

Nordale — List of sections and discuss by ~~section~~ category.

Messenger — Bonding provisions in 1st category

Berns — 1st cat - land selection,

Sharp — Debt provisions? 1st & Also Berns: directory prov.

Tesche — Utilities (be junked?) - 1st categories.

Walker — Don't worry about content til after reorganization

Sharp. — Application of functional areas decisions

Teschc: Put together breakdown for policy group, showing current status and also recommendations.

Beens Cat II. organized by type of mun. Chap. 23 - pitched? made into directory prov.

Teschc. Justification after sorting.
Beens Misc section in 1st cat

Nordale Reorg not as important as clarification in wording

Wkg grp went item by item on Allan Teschc's list & index

03.020 II CAT.

IV 16.1 • Development cities SB in 1st cat because everything is organizational/transitional. Eliminate statutes and have case by case legislation
or in IV - Misc. will look there because so specific.
Also capitol cities - SB in same area -

5 cat.

I Gen provisions
II All municipalities
III General Law
IV Directory provisions
V Misc.

23.010 ~~[illegible]~~ Category III.
Not general provisions describing creation etc....

23.033
23.040 recc IV Nuts & Bolts procedural statutes CAT III directory but also GEN LAW - MANDATORY.
050* Recc. cat IV - not mandatory. give options to municipalities. Referendum & initiative on local level.
060
070 recc IV
080
250A 290

NOTE

Currently in Cat III

NOTE: 040 Also applies to home rule municipalities.
* Divide
Note: Tent IV w qual than sections will be extracted and put in category III to be mandatory ie.

OTHER - cat III.

040
050 } cat II
250 a

23.310 AB in I

| # | Now | Recc. | Justification & Notes |
|---|---|---|---|
| 23.310 | I | | * Rewrite to give more Flexibility |
| 340 | IV | IV | |
| 360 | III | III ? | Provides sep. of powers Mand to III, opt to IV |
| 390 | III | III | (360) |
| 380 | III | III | |
| 370 | III | III | |
| 395 | IV | Elim | Cumbersome & unnecessary |
| 401 | IV | Elim | " " |
| 410 | III | III | |
| ↓ | | | |
| 480 | | | |
| 500 | III | IV/II | |
| 510 | III | IV | Cat IV will need intro. to explain how to do own provisions |
| 520. | | IV | [redacted] Clarify |
| 530. | III | | |
| 540. | | II. | |
| 550. | | [redacted] III. | or eliminate/rewrite |

| II | Now | Recc. | NOTE: |
|---|---|---|---|
| 23.555. | II | | |
| 560. | II | | |
| 570. | III | IV | Review |
| 580. | II | Elim. | |
| 28. 010 | III | III | |
| ↓ | | | |
| 050 | | | |
| 060 | III | ~~IV~~ | Should ARTICLES 2 & 3 be unified? |
| ↓ | | | |
| 110 | II | ~~III~~ | |
| ↓ | | | |
| 250 | | | |
| 33. 010 a. b. | | I | Chap 1 have added sections |
| 030 | | II | Pt of 2.53 Chap 53 |
| .050 | | ~~III~~ II | |
| 070 | | | |
| 080 | | III | Planning & Zoning sect. |
| ↓ | | | |
| 245 | | | Shanley - all or nothing for planning & zoning powers. |

33.250 I
260 I
270 I
280 I
290 I

38.010 ALL I
020 38

41. 010 I

020 I

43. 010. I
020 I
030 I
100 ~~III~~ V 105 I
110 V

48. III except .037(b)-I
~~4~~ 020 "
~~58~~. 020 "
033

Title 42.? Garbage.

035 - III
037 I
040

NOTE:
Fed money - need specific statutory powers ✓

040
↓
100 - Title 42
or sec. 1 - powers (issue franchises)

48.108 -

48. 130 III
200
210 II
220

180 II
185 III
Referenced in both II & III.

~~250~~

210 - II
220 - II

250 - IV
260 - III
270 - III

310
320 II
330

53.010 ) II
390 ~~400~~

Intro Cat II. These apply unless specified otherwise

400 II
405 II
410 II
415 III
(d) 9 Maybe in II - rewritten
420. ↑
460 III

9 Service Areas with

Cities SB allowed to start service areas?

58. III
.180 (b). ) 9 II
315

63. III
subject to rewrite

68. I

73. II
.020 II SB separated into two sections

78. IV

88. IV
89 IV
90 IV

Meet again w/ lists of sugg for rewording changes.

Break into subcomm. to look at text
to Ad. Grp.
Text prop. wording
and noted changes

Agenda for policy grp A list of policy decisions

Agenda next tech mtg. identify & mk list.

Tentative mtg 19 Sept 80 in Anchorage Friday.

Madge has conf. ROOM

SCOMM

#23:18

# Policy Grp Mtg 29 & 30 Sept

| | |
|---|---|
| Sheldon | $528.00 |
| Sheeby | 306.68 |
| Kohler | 356.50 |
| Solomon | 510.55 |
| Berns | 100.00 |
| Folise | 466.00 |
| Dimmick | 219.50 |
| Larson | 115.00 |
| Walker | 582.79 |
| Parr | 129.00 |
| Sturgulewski | 90.00 |
| | 3446.00 |

Beanson - not attending
Moore - not attending

# TECH-GRP Mtg 20 OCT

| | |
|---|---|
| NORDALE: | $272.00 |
| TESCHE: | 85.00 |
| Shanley: | 183.00 |
| WALKER: | 467.50 |
| BERNS: | 60.00 |
| SHARP | 390.45 |
| FOLISE: | 302.00 |
| | ~~1758.00~~ |
| Messenger | 1759.95 |

Policy Grp 10 & 11 NOV

| | |
|---|---|
| Walker | 645.75 |
| Sharp | 120.00 |
| Sherby | 426.00 |
| Branson | 394.50 |
| Moore | 781.72 |
| Cook | 632.00 |
| Berns | 120.00 |
| Kohler | 390.00 |
| Fouse | 240 + 190.95 + AF (212.00) + FBX ✓ON |
| Sturgulewski | 240.00 |
| Mulcahy | 450.00 |
| | ~~4843~~ |
| | 4842.92 |

~~Branson~~ USA

USA { Solomon
Dimmick } SUB

4,5&6

Tech Grp 3&4 Dec

Sharp 464.00

Fouse 330.00 + AF (212.00)

C

| | | |
|---|---|---|
| Orig BAL | 53785. | + |
| PG #1 | 3910.25 | - |
| TG #2 | 160.25 | - |
| TG #3 | 1787.75 | - |
| PG #2 | 3446. | - |
| TG #4 | 1759.95 | - |
| PG #3 | 4842.92 | - |
| | 36436.88 | ◇ |
| Res Svcs | 11400. | - |
| | 25036.88 | ◇ |
| TG #6 | 1800. | - |
| | 23236.88 | ◇ |
| PG #4 | 3500. | - |
| | 19736.88 | ◇ |

**Title 29 Commission**
**Actual and Projected Expenditures**
**As of 06 October 1980**

SCHEDULED MEETINGS:

| | |
|---|---|
| Balance as of 1 August 1980 | $53,785.00 |
| Policy Group Meeting<br>27 & 28 August 1980 | 3,910.25 |
| Technical Group Meeting<br>08 September 1980 | 1,601.25 |
| Technical Group Meeting<br>19 September 1980 | 1,787.75 |
| Estimated Cost:<br>Policy Group Meeting<br>29 & 30 September 1980 | ~~3446.00~~<br>3,500.00 |
| Estimated Cost:<br>Technical Group Meeting<br>20 Oct 1980 | 1769.95<br>~~2,000.00~~ |
| Estimated Cost:<br>Policy Group Meeting<br>11 & 12 November 1980 | 4842.92<br>~~6,000.00~~ Less (2) |
| Personal Services to 15 January 1981 | 11,400.00 |

UNSCHEDULED MEETINGS:

| | |
|---|---|
| Policy Group Meeting:<br>Late November 1980<br>Mid-December 1980 15 Dec | ~~3,500.00~~<br>~~2,500.00~~ |
| Technical Group Meetings:<br>~~November 1980~~<br>~~November 1980~~ | ~~2,000.00~~<br>~~2,000.00~~ |
| Technical Group Meetings:<br>December 1980 3 & 4 & 5 Dec<br>~~December 1980~~ | 1800.00<br>~~2,000.00~~<br>~~2,000.00~~ |
| Projected Total Cost: | ~~45,199.25~~ |
| Balance: | ~~8,585.75~~ |

The hotel Captain Cook
travelers inns of alaska
CREDIT DEPARTMENT
P O BOX 602 • ANCHORAGE ALASKA 99510
(907) 276-7400

December 1, 1980

Legislative Affairs Agency
Pouch Y
Juneau, AK. 99811

Attn: Melissa Souse

Dear Ms. Souse:

It has been brought to my attention that your Agency may be interested in setting up an account with The Hotel Captain Cook and The Travelers Inns of Anchorage and Fairbanks.

Enclosed is a form to be filled out and returned to us for processing. If you wish a master account for a seminar or "one time only" function, please check the "temporary account" box. If your company uses any of our hotels fairly regularly, please check the "permanent account" box.

This account will guarantee all reservations made by your reservationist. It will also allow you to receive a regular monthly itemized statement. This account will be good at any of our three hotels for banquet charges or rooms, and meals charged to rooms. This account cannot be used for occasional meals by persons not staying in the hotel. There are credit card accounts available for this type of charge.

You will be contacted within two weeks of receipt of the application in writing by myself, advising you of the status of the account.

Sincerely,

Susan Cline

Susan Cline
Credit Manager

SC:jlb
Enclosure: Credit Application

RECEIVED
DEC 1980
LEGISLATIVE AFFAIRS

The hotel Captain Cook
travelers inns of alaska
CREDIT DEPARTMENT
P O BOX 602 • ANCHORAGE ALASKA 99510
(907) 276-7400

PERMANENT ACCOUNT ☐ TEMPORARY ACCOUNT ☐

Type of charges that will be paid for by company? GUARANTEE ROOM ONLY ☐

Room ☐ Liquor ☐ Laundry ☐ Long Distance
Tax ☐ (gov't. exempt) Meals ☐ Garage ☐ Telephone Calls ☐

References -- Preferably (5) suppliers. (List on back of application)

Names of indiviudals authorized to sign on the account:

_____ _____ _____
_____ _____ _____
_____ _____ _____

Names of individuals authorized to make reservations:

_____ _____ _____

Telephone number to call back and verify reservations:

_____ _____ _____

Billing address for charges to this account:

_____
_____
_____
_____

I understand that the terms of this account are payment net 30 days.

Signature of a principal of the company; or person responsible for payment of temporary account.

_____ _____ _____
Company Name Signature Title

_____ _____
Typed Signature Date

Any Special instructions?

The Hotel
Captain Cook

WALTER J. HICKEL, JR.
MANAGING DIRECTOR

P.O. BOX 2280, ANCHORAGE, ALASKA 99501
PHONE (907) 276-6000

November 20, 1980

Ms. Melissa Souse
Legislative Affairs Agency
Pouch Y
Juneau, AK 99811

Re: Title 29 Revision Commission Policy Meetings

Dear Ms. Souse:

This is to confirm that you have selected the Hotel Captain Cook to host your Meetings on Monday December 15th through Wednesday December 17th, 1980. We are pleased to reserve the Adventure Room for your group each day from 8:00am to 4:30pm. The room will be arranged with the following:

Conference table for 25
Theatre Style for 15

Your Room rental charge for the above times will be $175.00 per day. Coffee will be served in the morning and afternoon, at a cost of $25.00 per 70 cup urn.

Our, accounting office is sending you a Credit form, so that you may set up an account with the Hotel, and this can be billed to the Legislative Affairs Agency at the end of the event.

If for any reason you must cancel, we must have no less than 48 hours notice to avoid a room rental charge.

If the above meets with your approval, please sign and return one (1) of these copies to this office.

Please be assured that we here at the Hotel Captain Cook understand the importance of these meetings, and will do everything possible to insure there complete success and your satisfaction.

Sincerely,

Jena Windels

Jena Windels
Catering Director

JW/wmm

(Signed) MAF _____ (Date) 26 Nov 80

M E M O R A N D U M

22 December 1980

TO: Sharon Sturrock
Accounting

FROM: Melissa Aber Fouse
Secretary, Title 29 Revision Commission

SUBJECT: Policy Advisory Group Meeting

There was a meeting of the Policy Advisory Group of the Title 29 Revision Commission 15, 16, and 17 December 1980 in Anchorage, Alaska. Attending were:

Senator Arliss Sturgulewski
Senator-elect Charles Parr (2 days)
Representative Margaret Branson
Ted Berns
Russell Walker
Marilyn Dimmick
Gene Moore
Terry Cook
James Kohler (1 day)
Ronald Larson
Jonathan Solomon*

*Mr. Solomon told me on 17 December that there had been no planes in or out of Fort Yukon for 5 days and that there was the possiblity that he may be stranded in Anchorage for several days.

maf

M E M O R A N D U M 09 December 1980

TO: Sharon Sturrock
Accounting

FROM: Melissa Aber Fouse
Title 29 Revision Commission

SUBJECT: Title 29 Technical Group Meeting

This is to let you know there was a meeting of the Title 29 Revision Commission Technical Group on 4, 5, and 6 December, 1980. Attending were:

Ted Berns
Russell Walker
John Messenger
Jim Nordale
Gerald Lee Sharp
Allan E. Tesche
Richard Garnett, III
Tamara Brandt Cook
Melissa Aber Fouse

maf

# STATE OF ALASKA
# THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M October 7, 1980

SUBJECT: Progress report - Title 29 Revision Committee

TO: Senator Bill Ray, Chairman
Interim Projects Oversight Committee

FROM: Tamara Brandt Cook TBC
Legislative Counsel

CSSCR 66, Legislative Resolve 39 of the last regular legislative session directed the Alaska Legislative Council to revise AS 29 (the municipal government code). A Policy Advisory Group was authorized to assist in the revision and I was assigned to the project from the Legal Services Division. Members of the Policy Group were appointed in August, and the first meeting was held in Anchorage on August 27 and 28, 1980. Minutes of that meeting are attached.

During the first meeting the Policy Group appointed a Technical Revision Committee, composed primarily of attorneys with expertise in municipal law to perform actual drafting. The committee was directed to reorganize Title 29 as a first step in the revision. The Policy Group went on to consider various issues including: greater self-determination and latitude for local governments; whether the provisions relating to development cities should be restructured or eliminated; whether changes should be made in the present categories of municipal government; and the possibility of the state recognizing traditional village governments as municipal governments.

The Technical Committee met in Anchorage on September 8, 1980 and worked out a proposed reorganization format for Title 29. Staff was directed to prepare an index of Title 29 according to the proposed reorganization scheme. The Technical Committee met again in Anchorage on September 19, 1980 to consider the proposed reorganization. The proposed reorganization scheme was rejected as too complicated and

unworkable. An alternative reorganization of Title 29 was worked out and adopted by the committee for presentation to the Policy Advisory Group.

The Policy Advisory Group met in Anchorage on September 29 and 30, 1980. Minutes of that meeting are attached. The morning of the first day was devoted to presentations by members of the public. In the afternoon the Technical Committee presented its reorganization of Title 29. Staff was directed to prepare a complete text of Title 29 according to the proposed reorganization scheme and to mail it to members of the Policy Advisory Group as soon as possible. The rest of the meeting was devoted to discussion of policy issues and proposed changes to Title 29, with the Technical Committee directed to make several drafts incorporating specific changes to be presented for review by the Policy Group at its next meeting.

The next meeting of the Technical Committee is scheduled to take place in Anchorage on October 20, 1980. The committee will attempt to produce a complete technical revision of Title 29, as well as incorporating the specific changes requested by the Policy Group into drafts. The Technical Committee may require three or four additional meetings in order to complete their revision of the municipal code. The Policy Group is scheduled to meet again in Fairbanks on November 10 and 11, 1980. The meeting is planned to coincide with a meeting of the Municipal League to provide maximum opportunity for interested persons to address the Policy Group. After receiving public comments, the group will make a final decision on the reorganization of Title 29, and consider all drafts submitted by the Technical Committee. It is possible that the Policy Group may request one or two additional meetings for the purpose of considering the final revision of the municipal code before presenting it to the legislature. A statement of actual and projected expenditures is attached.

If you have further questions concerning the Title 29 Revision project, please contact me.

TBC:ljb

Enclosures

cc: Senator Arliss Sturgulewski
Billy G. Berrier

**Title 29 Commission**
**Actual and Projected Expenditures**
**As of 06 October 1980**

| | |
|---|---|
| SCHEDULED MEETINGS: | |
| Balance as of 1 August 1980 | $53,785.00 |
| Policy Group Meeting<br>27 & 28 August 1980 | 3,910.25 |
| Technical Group Meeting<br>08 September 1980 | 1,601.25 |
| Technical Group Meeting<br>19 September 1980 | 1,787.75 |
| Estimated Cost:<br>Policy Group Meeting<br>29 & 30 September 1980 | 3,500.00 |
| Estimated Cost:<br>Technical Group Meeting<br>20 Oct 1980 | 2,000.00 |
| Estimated Cost:<br>Policy Group Meeting<br>11 & 12 November 1980 | 6,000.00 |
| Personal Services to 15 January 1981 | 11,400.00 |
| UNSCHEDULED MEETINGS: | |
| Policy Group Meeting:<br>Late November 1980<br>Mid-December 1980 | <br>3,500.00<br>3,500.00 |
| Technical Group Meetings:<br>November 1980<br>November 1980 | <br>2,000.00<br>2,000.00 |
| Technical Group Meetings:<br>December 1980<br>December 1980 | <br>2,000.00<br>2,000.00 |
| Projected Total Cost: | 45,199.25 |
| Balance: | 8,585.75 |

Committee Chairman: Legal Services

Committee Authorization: 07/03/80 Council Chairman Memo

TOTAL: $ 53,800

OCT 31 1980

| Item | Budget | Expenditures | Adjustments & Encumbrances | Balance Available | % |
|---|---|---|---|---|---|
| Personal Services | | 3,022 | | | |
| Travel & Per Diem | | 9,685 | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Unallocated | 53,800 | | | | |
| TOTAL | 53,800 | 12,707 | -0- | 41,093 | 76 |

Billy Bruce

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| [illegible] | | | 362 | 31921624 | 185 | | | 31 | | [illegible] |
| PR100280 | | | 360 | 31921624 | 181 | | | 03 | | 47.69 |
| PR101080 | | | 360 | 31921624 | 181 | | | 14 | | 5.28 |
| PR101680 | | | 360 | 31921624 | 181 | | | 20 | | 38.89 |
| PR100280 | | | 360 | 31921624 | 182 | | | 03 | | 188.27 |
| PR101080 | | | 360 | 31921624 | 182 | | | 14 | | 11.60 |
| PR101680 | | | 360 | 31921624 | 182 | | | 20 | | 117.87 |
| PR100280 | | | 360 | 31921624 | 184 | | | 03 | | 7.70 |
| PR101080 | | | 360 | 31921624 | 184 | | | 14 | | 85 |
| PR101680 | | | 360 | 31921624 | 184 | | | 20 | | 8.63 |
| PR100280 | | | 360 | 31921624 | 186 | | | 03 | | 4.20 |
| PR101080 | | | 360 | 31921624 | 186 | | | 14 | | 46 |
| PR101680 | | | 360 | 31921624 | 186 | | | 20 | | 4.66 |
| FW001876 | 091280 | MELISSA ABER FOUSE | 362 | 31921624 | 211 | | | 06 | | 16.00 |
| FW002058 | 092380 | MELISSA FOUSE | 362 | 31921624 | 211 | | | 08 | | 8.00 |
| FW015965 | 100280 | MELISSA FOUSE | 362 | 31921624 | 211 | | | 31 | | 20.00 |
| FW015965 | 100280 | TAMARA BRANDT COOK | 362 | 31921624 | 211 | | | 21 | | 6.00 |
| FW016028 | 100980 | DONNA SHERBY | 362 | 31921624 | 211 | | | 31 | | 96.38 |
| V3101375 | 091780 | AK TRAVEL SERVICE | 361 | 31921624 | 211 | | 576882 | 06 | | 262.00 |
| V3101409 | 092580 | AK TRAVEL SERVICE | 361 | 31921624 | 211 | | 582353 | 15 | | 164.00 |
| FW001876 | 091280 | MELISSA ABER FOUSE | 362 | 31921624 | 212 | | | 06 | | 15.00 |
| FW001950 | 091680 | MELISSA FOUSE | 362 | 31921624 | 212 | | | 07 | | 120.00 |
| FW015807 | 092480 | MELISSA ABER FOUSE | 362 | 31921624 | 212 | | | 14 | | 150.00 |
| FW015808 | 092480 | TAMARA BRANDT COOK | 362 | 31921624 | 212 | | | 10 | | 150.00 |
| FW016028 | 100980 | DONNA SHERBY | 362 | 31921624 | 212 | | | 31 | | 240.00 |
| FW016092 | 101480 | MELISSA FOUSE | 362 | 31921624 | 212 | | | 31 | | 90.00 |
| FW001872 | 091280 | JOANNE SHANLEY | 362 | 31921624 | 241 | | | 02 | | 46.25 |
| FW001874 | 091280 | ALLAN E TESCHE | 362 | 31921624 | 241 | | | 02 | | 10.00 |
| FW002057 | 092380 | JIM NORDALE | 362 | 31921624 | 241 | | | 10 | | 152.00 |
| FW002060 | 092380 | JOANNE SHANLEY | 362 | 31921624 | 241 | | | 14 | | 31.50 |
| FW002061 | 092380 | ALLEN E TESCHE | 362 | 31921624 | 241 | | | 31 | | 25.00 |
| FW015810 | 092480 | RUSSELL WALKER | 362 | 31921624 | 241 | | | 20 | | 339.00 |
| FW015812 | 092480 | GERALD L SHARP | 362 | 31921624 | 241 | | | 09 | | 223.25 |
| FW015937 | 092980 | J D NORDALE | 362 | 31921624 | 241 | | | 31 | | 137.00 |
| FW015956 | 100280 | RUSSELL W WLAKER | 362 | 31921624 | 241 | | | 31 | | 342.79 |
| FW015961 | 100280 | MARILYN DIMMICK | 362 | 31921624 | 241 | | | 31 | | 99.50 |
| FW015977 | 100380 | RUSSELL W WALKER | 362 | 31921624 | 241 | | | 31 | | 339.00 |
| FW001871 | 091280 | TED BERNS | 362 | 31921624 | 242 | | | 06 | | 50.00 |
| FW002057 | 092380 | JIM NORDALE | 362 | 31921624 | 242 | | | 10 | | 120.00 |
| FW002059 | 092380 | THEODORE BERNS | 362 | 31921624 | 242 | | | 20 | | 50.00 |
| FW002060 | 092380 | JOANNE SHANLEY | 362 | 31921624 | 242 | | | 14 | | 180.00 |
| FW002061 | 092380 | ALLEN E TESCHE | 362 | 31921624 | 242 | | | 31 | | 60.00 |
| FW015810 | 092480 | RUSSELL WALKER | 362 | 31921624 | 242 | | | 20 | | 90.00 |
| FW015812 | 092480 | GERALD L SHARP | 362 | 31921624 | 242 | | | 09 | | 120.00 |
| FW015958 | 100280 | THEODORE BERNS | 362 | 31921624 | 242 | | | 20 | | 100.00 |
| FW015961 | 100280 | MARILYN DIMMICK | 362 | 31921624 | 242 | | | 31 | | 120.00 |

DEPARTMENT LEGISLATIVE AFFAIRS — PROGRAM LEGIS & ELECT OPERAT — PAGE 2579

DIVISION OPERATIONS — MONTHLY EXPENDITURE JOURNAL R03-02B-2100 — 10/31/80

| DOCUMENT | DESCRIPTION | REFERENCE | TXN | COLLOC | OBJ REC ACT PROJ | WARRANT | DAY | AUTHORIZATION | ENCUMBRANCES | EXPENDITURE |
|---|---|---|---|---|---|---|---|---|---|---|
| FW015976 | 100380 | RUSSELL W WALKER | 362 | 31921624 | 242 | | 31 | | | 180.00 |
| FW015978 | 100380 | RUSSELL W WALKER | 362 | 31921624 | 242 | | 31 | | | 240.00 |
| FW001754 | 090480 | BOB MULCAHY | 362 | 31921624 | 247 | | 06 | | | 146.00 |
| FW001769 | 090480 | CHARLES PARR | 362 | 31921624 | 247 | | 06 | | | 9.00 |
| FW015994 | 100880 | CHARLES H PARR | 362 | 31921624 | 247 | | 31 | | | 9.00 |
| FW001744 | 090380 | SEN BILL RAY | 362 | 31921624 | 248 | | 20 | | | 50.00 |
| FW001754 | 090480 | BOB MULCAHY | 362 | 31921624 | 248 | | 06 | | | 240.00 |
| FW001769 | 090480 | CHARLES PARR | 362 | 31921624 | 248 | | 06 | | | 120.00 |
| FW015994 | 100880 | CHARLES H PARR | 362 | 31921624 | 248 | | 31 | | | 120.00 |
| FW001759 | 090480 | TERRY COOK | 362 | 31921624 | 291 | | 06 | | | 350.00 |
| FW001763 | 090480 | JONATHAN SOLOMON | 362 | 31921624 | 291 | | 06 | | | 254.75 |
| FW001764 | 090480 | DONNA SHERBY | 362 | 31921624 | 291 | | 06 | | | 96.00 |
| FW001766 | 090480 | RONALD LARSEN | 362 | 31921624 | 291 | | 06 | | | 25.00 |
| FW001758 | 090480 | TERRY COOK | 362 | 31921624 | 292 | | 14 | | | 180.00 |
| FW001761 | 090480 | RUSSELL WALKER | 362 | 31921624 | 292 | | 06 | | | 240.00 |
| FW001762 | 090480 | RUSSELL WALKER | 362 | 31921624 | 292 | | 02 | | | 330.00 |
| FW001763 | 090480 | JONATHAN SOLOMON | 362 | 31921624 | 292 | | 06 | | | 240.00 |
| FW001764 | 090480 | DONNA SHERBY | 362 | 31921624 | 292 | | 06 | | | 120.00 |
| FW001766 | 090480 | RONALD LARSEN | 362 | 31921624 | 292 | | 06 | | | 60.00 |
| [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] | | [illegible] | | | [illegible] |

**M E M O R A N D U M** 12 December 1980

TO: Sharon Sturrock
Accounting

FROM: Melissa Aber Fouse
Title 29 Revision Commission

SUBJECT: Room Rental for Policy Group Meeting

The Policy Group of the Title 29 Revision Commission will be meeting 15, 16, and 17 December 1980 in Anchorage at the Captain Cook Hotel. The rate for the rental of the room is $175.00 per day and coffee is $25.00 extra per pot. I need a field warrant of $650.00 to prepay the three day's rent and six pots of coffee. The Captain Cook will bill us for the balance if we incurr any other charges.

Thank you.

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| [illegible] | | [illegible] | [illegible] | [illegible] | | | [illegible] | | [illegible] |
| PR110380 | | 360 | 31921624 | 181 | | | 05 | | [illegible] |
| PR111880 | | 360 | 31921624 | 181 | | | 19 | | 54.20 |
| PR110380 | | 360 | 31921624 | 182 | | | 05 | | 124.64 |
| PR111880 | | 360 | 31921624 | 182 | | | 19 | | 120.77 |
| PR110380 | | 360 | 31921624 | 184 | | | 05 | | 9.12 |
| PR111880 | | 360 | 31921624 | 184 | | | 19 | | 8.84 |
| PR110380 | | 360 | 31921624 | 186 | | | 05 | | 4.93 |
| PR111880 | | 360 | 31921624 | 186 | | | 19 | | 4.77 |
| FW016006 | 100880JOHN B CHENOWETH | 362 | 31921624 | 211 | | | 08 | | 8.00 |
| FW038696 | 111780AK TRAVEL SVC | 362 | 31921624 | 211 | | | 26 | | 262.00 |
| V3101514 | 101580AK TRAVEL SERVICE | 361 | 31921624 | 211 | | 597214 | 07 | | 212.00 |
| V3101532 | 100580AK AIRLINES INC | 361 | 31921624 | 211 | | 598540 | 10 | | 42.00 |
| FW016006 | 100880JOHN B CHENOWETH | 362 | 31921624 | 212 | | | 08 | | 300.00 |
| FW038553 | 110480MELISSA ABER FOUSE | 362 | 31921624 | 212 | | | 14 | | 210.00 |
| FW015949 | 100280JONATHON SOLOMON | 362 | 31921624 | 241 | | | 25 | | 270.55 |
| FW038475 | 102880GERALD SHARP | 362 | 31921624 | 241 | | | 10 | | 270.45 |
| FW038558 | 110480JOANNE E SHANLEY | 362 | 31921624 | 241 | | | 20 | | 63.00 |
| FW038626 | 110680ALLAN E TESCHE | 362 | 31921624 | 241 | | | 20 | | 25.00 |
| FW038760 | 111880GENE MOORE | 362 | 31921624 | 241 | | | 28 | | 481.72 |
| FW015979 | 100380RONALD LARSON | 362 | 31921624 | 242 | | | 13 | | 115.00 |

To: Melissa Fouse 6th floor Ct.

DEPARTMENT LEGISLATIVE AFFAIRS PROGRAM LEGIS & ELECT OPERAT PAGE 2259

DIVISION OPERATIONS MONTHLY EXPENDITURE JOURNAL R03-02B-2100 11/30/80

| DOCUMENT | DESCRIPTION | REFERENCE | TXN | COLLOC | OBJ REC | ACT | PROJ | WARRANT | DAY | AUTHORIZATION | ENCUMBRANCES | EXPENDITURE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| FW015995 | 100880JONATHON SOLOMON | | 362 | 31921624 | 242 | | | | 20 | | | 240.00 |
| FW016046 | 101080JAMES KOHLER | | 362 | 31921624 | 242 | | | | 05 | | | 180.00 |
| FW016046 | 101080JAMES KOHLER | | 362 | 31921624 | 242 | | | | 05 | | | 176.50 |
| FW038475 | 102880GERALD SHARP | | 362 | 31921624 | 242 | | | | 10 | | | 120.00 |
| FW038558 | 110480JOANNE E SHANLEY | | 362 | 31921624 | 242 | | | | 20 | | | 120.00 |
| FW038587 | 110580THEODORE BERNS | | 362 | 31921624 | 242 | | | | 25 | | | 60.00 |
| FW038626 | 110680ALLAN E TESCHE | | 362 | 31921624 | 242 | | | | 20 | | | 60.00 |
| FW038759 | 111880GENE MOORE | | 362 | 31921624 | 242 | | | | 28 | | | 300.00 |
| FW015975 | 100380SENATOR STURGULEWS | | 362 | 31921624 | 248 | | | | 03 | | | 90.00 |
| FW038677 | 111480MELISSA A FOUSE | | 362 | 31921624 | 322 | | | | 25 | | | 78.95 |

M E M O R A N D U M

08 January 1980

TO: Sharon Sturrock
Accounting

FROM: Melissa Aber Fouse
Title 29 Revision Commission

MAF

SUBJECT: Technical Group Meeting

This is to certify that the Title 29 Revision Commission held a meeting on the 5th and 6th of January, 1981. The meeting was held in Anchorage. Attending were:

Ted Berns
Gerald Lee Sharp
Alan Tesche
Jim Nordale
John Messenger
Richard Garnett III (1 day)
Tamara Brandt Cook
Melissa Aber Fouse

MEMORANDUM November 17, 1980

SUBJECT: Title 29 Policy Group Meeting

TO: Accounting

FROM: Melissa Aber Fouse, Secretary
Title 29 Revision Commission

The Title 29 Revision Commission held a meeting 10 and 11 November, 1980. The meeting was held in Fairbanks. Attending were:

Ted Berns
Margaret Branson
Terry Cook
Marilyn Dimmick
James Kohler
Ronald Larson
Gene Moore
Bob Mulcahy
Charles Parr
Donna Sherby
Arliss Sturgulewski
Jonathan Solomon
Russell Walker
Billy G. Berrier
Tamara Brandt Cook
Melissa Aber Fouse
Allan Tesche
Gerald Lee Sharp
Richard Garnett, III

Committee: [redacted]

Committee Chairman: Legal Services Melissa Foure

Committee Authorization: 07/03/80 Council Chairman Memo

TOTAL: $ 53,800

| Item | Budget | Expenditures | Adjustments & Encumbrances | Balance Available | % |
|---|---|---|---|---|---|
| Personal Services | | 5,219 | | | |
| Travel & Per Diem | | 13,291 | | | |
| Contractual | | 79 | | | |
| Commodities | | | | | |
| Unallocated | 53,800 | | | | |
| TOTAL | 53,800 | 18,589 | -0- | 35,211 | 65 |

Committee Chairman: Legal Services Helen Fowler

Committee Authorization: 07/03/80 Council Chairman Memo

TOTAL: $ 53,800

| Item | Budget | Expenditures | Adjustments & Encumbrances | Balance Available | % |
|---|---|---|---|---|---|
| Personal Services | | 910 | | | |
| Travel & Per Diem | | 2,628 | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Unallocated | 53,800 | | | | |
| TOTAL | 53,800 | 3,538 | -0- | 50,262 | 93 |

| | | | | | | |
|---|---|---|---|---|---|---|
| [illegible] | | [illegible] | [illegible] | [illegible] | [illegible] | [illegible] |
| V3101307 | 090480AK TRAVEL SERVICE | 361 | 31921624 | 211 | 362861 22 | [illegible] |
| FW001628 | 082680TAMARA COOK | 362 | 31921624 | 212 | 03 | 210.00 |
| FW001802 | 090480MELISSA FOUSE | 362 | 31921624 | 212 | 12 | 75.00 |
| FW001803 | 090480TAMARA COOK | 362 | 31921624 | 212 | 15 | 75.00 |
| FW001873 | 091280GERALD L SHARP | 362 | 31921624 | 241 | 23 | 247.50 |
| FW001729 | 090380SUNSHINE TRAVEL - PARR | 362 | 31921624 | 247 | 15 | 152.00 |
| FW001753 | 090480MARGARET BRANSON | 362 | 31921624 | 247 | 15 | 50.00 |
| FW001753 | 090480MARGARET BRANSON | 362 | 31921624 | 248 | 15 | 120.00 |
| FW001755 | 090480ARLISS STURGULEWSK | 362 | 31921624 | 248 | 22 | 90.00 |
| FW001757 | 090480GENE MOORE | 362 | 31921624 | 291 | 19 | 290.00 |
| FW001760 | 090480MARILYN DIMMICK | 362 | 31921624 | 291 | 15 | 99.50 |
| FW001765 | 090480JAMES KOHLER | 362 | 31921624 | 291 | 19 | 178.00 |
| FW001756 | 090480THEODORE BERNS | 362 | 31921624 | 292 | 17 | 90.00 |
| FW001757 | 090480GENE MOORE | 362 | 31921624 | 292 | 19 | 180.00 |
| FW001760 | 090480MARILYN DIMMICK | 362 | 31921624 | 292 | 15 | 120.00 |
| FW001765 | 090480JAMES KOHLER | 362 | 31921624 | 292 | 19 | 120.00 |
| FW001770 | 090480JOANNE SHANLEY | 362 | 31921624 | 292 | 16 | 75.00 |
| FW001771 | 090480JIM NORDALE | 362 | 31921624 | 292 | 19 | 75.00 |
| FW001800 | 090480GERALD SHARP | 362 | 31921624 | 292 | 12 | 75.00 |
| FW001801 | 090480ALLAN [illegible] | 362 | 31921624 | 292 | 15 | 75.00 |

Committee: [illegible] 29 (624) Funding Source/Amount: [illegible] $ 53,800 Lapsing Date: [illegible]

Committee Chairman: Legal Services

Committee Authorization: 07/03/80 Council Chairman Memo

Melissa Fouse

TOTAL: $ 53,800

| Item | Budget | Expenditures | Adjustments & Encumbrances | Balance Available | % |
|---|---|---|---|---|---|
| FW484504 088680TAMARA COOK | 362 31921624 211 | | 14 | 15.00 | |
| Personal Services | | | | | |
| Travel & Per Diem | | 15 | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Unallocated | 53,800 | | | | |
| TOTAL | 53,800 | 15 | -0- | 53,785 | 99 |

Committee: [illegible] 29 (624) [illegible]/Amount: Ch 120 $ 53,[illegible] Lapsing Date: [illegible]

Legal

Committee Chairman: Legal Services

Committee Authorization: 07/03/80 Council Chairman memo

TOTAL: $53,800

| Item | Budget | Expenditures | Adjustments & Encumbrances | Balance Available | % |
|---|---|---|---|---|---|
| Personal Services | | | | | |
| Travel & Per Diem | | | | | |
| Contractual | | | | | |
| Commodities | | | | | |
| Unallocated | 53,800 | | | | |
| TOTAL | 53,800 | -0- | -0- | 53,800 | 100 |

9/8/80 Mtg

NOTE: Cook, Berrier } leg. svcs.

TESCHE 85.00
Sharp 322.50
Shanley 121.25
Berns 50.00
Fouse 106.00
Messenger (50.00) 684.75
Walker - (450.00) APPROX
Nordale - (250.00) APPROX
700.00

684.75
700.00
1384.75

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Mtg 27 Aug 80

LARSON 85.00
Solomon 494.75
MOORE 470.00
Dimmick 219.50
Berns 90.00
COOK 540.00
Walker 570.00
Sherby 216.00
KOHLER 298.00

Mulcahy 386.00
Sturgulewski 90.00
BRANSON 170.00
Parr 152.00 + 129.00

3910.25

TO 15 JAN 81
$12825.00

Fouse salary & benefits per mo
$2850.00
less 15.00 AS OF 1 Aug 80

M E M O R A N D U M

September 15,1980

SUBJECT: Budget Expenditures - Title 29 Commission

TO: Billy G. Berrier, Director
Legal Services Division

FROM: Melissa Aber Fouse, Secretary
Title 29 Commission

As of 1 August 1980 only $15.00 had been spent of a total budget allocation of $53,800.00 for the Title 29 Commission. The Policy Meeting held on 27 and 28 August cost $3910.25 in travel and per diem for the policy group members.

The estimated cost of the 08 September 80 Technical Committee meeting (not all claims have been submitted) is $1400.00.

To date, personal services have cost $1425.00.

This leaves a balance of $47,049.75.

Attached are my estimates of the costs of the scheduled meetings of both the Policy and Technical committees plus the cost of my personal services to 15 January 1981.

maf

Attachment

M E M O R A N D U M

24 September 1980

TO: Sharon Sturrock, Accounting
Legislative Affairs

FROM: Melissa Aber Fouse, Secretary
Title 29 Commission

We will need a check for $38.00 to give to the Alaska Court System to pay for security charges incurred when our Title 29 Commission Policy Group meeting goes past 4:30 p.m. on both the 29th and 30th of September 1980.

M E M O R A N D U M

October 1, 1980

SUBJECT: Title 29 Working Group Meeting

TO: Accounting

FROM: Melissa Fouse, Secretary
Title 29 Revision Commission

The Policy Group of the Title 29 Revision Commission held a meeting on 29 and 30 September 1980. The meeting was held in Anchorage. Attending were:

Ted Berns
Russell W. Walker
Tamara Brandt Cook
Melissa Aber Fouse
Marilyn Dimmick
James Kohler
Donna Sherby
Jonathan Solomon
Representative Charles H. Parr
Senator Arliss Sturgulewski
Ronald Larson
Dennis Sheldon (as an alternate for Terry Cook)

maf

ACTUAL COST:

Tech Mtg:
19 Sep 80

| | |
|---|---|
| Burns | 50.00 |
| Sharp | 343.25 |
| Stanley | 211.50 |
| Teoche | 85.00 |
| Walker | 519.00 |
| McCarker ) | |
| Fouse | 382.00 |
| Nordale | 137.00 + 60.00 |
| | 1787.75 |
| Missenger ) ) NO REQUEST | |
| Chitwood - ) | |
| Cook - exp. | |

---

Tech Mtg
08 Sep

| | |
|---|---|
| Nordale | 272.00 |
| Walker | 429.00 |
| Teoche | 85.00 |
| Sharp | 322.50 |
| Stanley | 121.25 |
| Burns | 50.00 |
| Fouse | 321.50 |
| | 1601.25 |

COOK? EXP?

ACTUAL COST:
Policy Mtg
29 & 30
Sep.

| | |
|---|---|
| Sturgulewski | 90.00 |
| Burns | 100.00 |
| Fouse | 170.00 + T 42.16 4.00 |
| Dinnnicio | 219.00 |
| Larson | 115.00 582.79 |
| Walker | ~~570.29~~ 393.29 |
| ✓ Sheldon | 500.00 |
| ✓ Sherby | 300.00 |
| ✓ Kohler | 500.00 |
| ✓ Solomon | 500.00 |

1393.29
1800.00
3193.29

SCOMM

#23:19

TITLE 29 INDEX - DRAFT ORGANIZATION REVISION - SUBMITTED TO POLICY COMMITTEE BY TECHNICAL COMMITTEE 29 SEPTEMBER 1990

| New Sec. # | Old Sec. # | Heading |
|---|---|---|
| 29.03.000 | | CHAPTER 03. THE UNORGANIZED BOROUGH |
| 29.03.010 | 29.03.010 | ESTABLISHMENT |
| 29.03.020 | 29.03.020 | SERVICE AREAS |
| 29.06.000 | | CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES ← Article 1. Classes of municipalities |
| 29.06.010 | 29.08.010 | HOME RULE (80) |
| 29.06.020 | 29.08.020 | GENERAL LAW |
| 29.06.030 | 29.08.030 | CLASSES OF GENERAL LAW |
| 29.06.040 | 29.08.040 | RECLASSIFICATION ← Article 2. Reclassification of a second class city, a second class borough, a third class borough |
| 29.06.050 | 29.08.050 | TRANSITION |
| 29.09.000 | | CHAPTER 09. INCORPORATION |
| 29.09.005 | | ARTICLE 1. REQUIREMENTS |
| 29.09.010 | 29.18.011 | INCORPORATION OF CITIES |
| 29.09.020 | 29.18.021 | LIMITATIONS ON INCORPORATION OF CITIES |
| 29.09.030 | 29.18.030 | ORGANIZED BOROUGHS |
| 29.09.035 | | ARTICLE 2. PROCEDURES |
| 29.09.060 | 29.18.050 | PETITION (80S) |
| 29.09.070 | 29.18.060 | REVIEW |
| 29.09.080 | 29.18.070 | INVESTIGATION |
| 29.09.090 | 29.18.080 | REPORT AND HEARING |
| 29.09.100 | 29.18.090 | DECISION ON MUNICIPAL INCORPORATION |
| 29.09.110 | 29.18.110 | INCORPORATION ELECTION |
| 29.09.120 | 29.18.120 | ELECTION OF INITIAL OFFICERS |
| 29.09.130 | 29.18.130 | INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS |
| 29.09.140 | 29.18.140 | TRANSITION |
| 29.09.150 | 29.18.150 | CHALLENGE OF LEGALITY |
| 29.09.155 | | ARTICLE 3. TRANSITIONAL ASSISTANCE |

| | | |
|---|---|---|
| 29.09.180 | 29.18.180 | ORGANIZATION GRANTS |
| 29.12.000 | | CHAPTER 12. ALTERATION OF MUNICIPALITIES |
| 29.12.005 | | ARTICLE NEW. CHANGE OF MUNICIPAL NAME |
| 29.12.010 | 29.73.050 | CHANGE OF MUNICIPAL NAME |
| 29.12.015 | | ARTICLE 2. ANNEXATION AND EXCLUSION |
| 29.12.040 | 29.68.010 | LOCAL BOUNDARY COMMISSION |
| 29.12.050 | 29.68.020 | ANNEXATION OF MILITARY RESERVATIONS |
| 29.12.055 | | ARTICLE 3. MERGER AND CONSOLDIATION |
| 29.12.080 | 29.68.030 | METHODS OF MERGER OR CONSOLDIATION - repeal |
| 29.12.090 | 29.68.040 | PETITION |
| 29.12.100 | 29.68.050 | REVIEW |
| 29.12.110 | 29.68.060 | INVESTIGATION |
| 29.12.120 | 29.68.070 | REPORT AND HEARING |
| 29.12.130 | 29.68.080 | DECISION |
| 29.12.140 | 29.68.090 | ELECTION |
| 29.12.150 | 29.68.100 | ASSETS AND LIABILITIES |
| 29.12.160 | 29.68.110 | ORDINANCES |
| 29.12.165 | | ARTICLE 4. UNIFICATION OF LOCAL GOVERNMENTS |
| 29.12.190 | 29.68.240 | UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED |
| 29.12.200 | 29.68.250 | UNIFICATION TO BE PROPOSED BY PETITION |
| 29.12.210 | 29.68.260 | PETITION REQUIREMENTS |
| 29.12.220 | 29.68.270 | REVIEW OF PETITION |
| 29.12.230 | 29.68.280 | CALL FOR CHARTER COMMISSSION NOMINATIONS |
| 29.12.240 | 29.68.290 | NOMINATION OF CHARTER COMMISSION CANDIDATES |
| 29.12.250 | 29.68.300 | QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES |
| 29.12.260 | 29.68.310 | COMPOSITION OF CHARTER COMMISSION |

| | | |
|---|---|---|
| 29.12.270 | 29.68.320 | ELECTION |
| 29.12.280 | 29.68.330 | REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION |
| 29.12.290 | 29.68.340 | CHARTER COMMISSION ORGANIZATION AND PROCEDURE |
| 29.12.300 | 29.68.350 | CHARTER PREPARATION (80) |
| 29.12.310 | 29.68.360 | PUBLIC HEARINGS |
| 29.12.320 | 29.68.370 | FILING OF PROPOSED CHARTER |
| 29.12.330 | 29.68.380 | PUBLICATION AND POSTING OF PROPOSED CHARTER |
| 29.12.340 | 29.68.390 | ELECTION ON CHARTER |
| 29.12.350 | 29.68.400 | EFFECT OF THE CHARTER AFTER RATIFICATION |
| 29.12.360 | 29.68.410 | ASSETS AND LIABILITIES |
| 29.12.370 | 29.68.420 | ORDINANCES |
| 29.12.380 | 29.68.430 | RIGHT TO STATE AND FEDERAL FUNDS PRESERVED |
| 29.12.390 | 29.68.440 | POWERS OF A UNIFIED MUNICIPALITY |
| 29.12.395 | | ARTICLE 4. DISSOLUTION |
| 29.12.420 | 29.68.500 | METHODS OF DISSOLUTION |
| 29.12.430 | 29.68.510 | PETITION |
| 29.12.440 | 29.68.520 | STANDARDS |
| 29.12.450 | 29.68.540 | REVIEW |
| 29.12.460 | 29.68.540 | INVESTIGATION |
| 29.12.470 | 29.68.550 | REPORT AND HEARING |
| 29.12.480 | 29.68.560 | DECISION |
| 29.12.490 | 29.68.570 | ELECTION |
| 29.12.500 | 29.68.580 | SUCCESSION |
| 29.15.000 | | CHAPTER 15. HOME RULE MUNICIPALITIES |
| 29.15.005 | | ARTICLE 1. CHARTERS |
| 29.15.010 | 29.13.010 | MUNICIPAL CHARTER ADOPTION (80) |

| | | |
|---|---|---|
| 29.15.020 | 29.13.020 | NOMINATION |
| 29.15.030 | 29.13.030 | ELECTION |
| 29.15.040 | 29.13.040 | PREPARATION OF CHARTER |
| 29.15.050 | 29.13.050 | INITIATIVE AND REFERENDUM |
| 29.15.060 | 29.13.060 | CHARTER ELECTION |
| 29.15.070 | 29.13.070 | CHARTER ADOPTION |
| 29.15.080 | 29.13.080 | CHARTER AMENDMENT |
| 29.15.085 | | ARTICLE 2. HOME RULE LIMITATIONS |
| 29.15.110 | 29.13.100 | LIMITATION OF HOME RULE POWERS |
| 29.18.000 | | CHAPTER 18. DEVELOPMENT CITIES |
| 29.18.010 | 29.18.220 | LEGISLATIVE FINDINGS |
| 29.18.020 | 29.18.230 | DEVELOPMENT CITIES |
| 29.18.030 | 29.18.240 | INCORPORATION |
| 29.18.040 | 29.18.250 | PETITION FOR INCORPORATION |
| 29.18.050 | 29.18.260 | REVIEW |
| 29.18.060 | 29.18.270 | INVESTIGATION |
| 29.18.070 | 29.18.280 | REPORT |
| 29.18.080 | 29.18.290 | DECISION ON DEVELOPMENT CITY INCORPORATION |
| 29.18.090 | 29.18.300 | PRELIMINARY PLANNING |
| 29.18.100 | 29.18.310 | REVIEW AND REPORT |
| 29.18.110 | 29.18.320 | LIMITATION |
| 29.18.120 | 29.18.330 | LOCAL HIRE |
| 29.18.130 | 29.18.340 | DEVELOPMENT CITY COUNCIL |
| 29.18.140 | 29.18.350 | FILLING A VACANCY |
| 29.18.150 | 29.18.360 | POWERS AND DUTIES OF COUNCIL |
| 29.18.160 | 29.18.370 | POWERS AND DUTIES OF A DEVELOPMENT CITY EXECUTIVE DIRECTOR |

| | | |
|---|---|---|
| 29.18.170 | 29.18.380 | PROCEDURES |
| 29.18.180 | 29.18.390 | DEVELOPMENT CITY CAPITAL IMPROVEMENT FUNDS |
| 29.18.190 | 29.18.400 | TRANSITION |
| 29.18.200 | 29.18.410 | HOUSING POWERS |
| 29.18.210 | 29.18.430 | REVENUE BONDS |
| 29.18.220 | 29.18.440 | SHARED REVENUE |
| 29.18.230 | 29.18.450 | APPLICABILITY OF OTHER PROVISIONS OF THIS TITLE |
| 29.18.240 | 29.18.460 | DEFINITION |
| 29.21.000 | | CHAPTER 21. CAPITAL CITY |
| 29.21.010 | 29.18.510 | INCORPORATION |
| 29.21.020 | 29.18.520 | BOUNDARIES |
| 29.21.030 | 29.18.530 | CITY COUNCIL |
| 29.21.040 | 29.18.540 | FILLING A VACANCY |
| 29.21.050 | 29.18.550 | APPOINTMENT OF CITY OFFICIALS |
| 29.21.060 | 29.18.570 | TRANSITION |
| 29.21.070 | 29.18.580 | PLANNING AND ZONING AUTHORITY |
| 29.21.080 | 29.18.590 | TRANSFER OF UTILITIES TO CAPITAL CITY |
| 29.21.090 | 29.18.600 | DEFINITIONS |
| 29.21.100 | 29.18.610 | SHORT TITLE |
| 29.23.120 | 29.48.060 | PUBLIC UTILITIES RATES (80) |
| 29.24.000 | | CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES |
| 29.24.005 | | ARTICLE 1. CONFILICTS OF INTEREST, PUBLIC MEETINGS |
| 29.24.010 | 29.23.555 | CONFLICTS OF INTEREST |
| 29.24.020 | 29.23.580 | MEETINGS PUBLIC |
| 29.24.025 | | ARTICLE 2. BOROUGH ASSEMBLY |
| 29.24.050 | 29.23.010 | GENERAL POWER |

| | | |
|---|---|---|
| 29.24.060 | 29.23.021 | ASSEMBLY COMPOSITION AND APPORTIONMENT (80S) |
| 29.24.070 | 29.23.023 | COMPOSITION AND FORM OF REPRESENTATION (80) |
| 29.24.080 | 29.23.025 | ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT (80S) |
| 29.24.090 | 29.23.027 | APPORTIONMENT APPEALS (80) |
| 29.24.100 | 29.23.029 | APPORTIONMENT APPEALS (80) |
| 29.24.110 | 29.23.031 | EFFECTIVE DATE OF APPORTIONMENT (80) |
| 29.24.120 | 29.23.033 | APPLICABILITY OF APPORTIONMENT PROVISIONS (80) |
| 29.24.130 | 29.23.040 | REGULAR TERM OF OFFICE |
| 29.24.140 | 29.23.050 | QUALIFICATIONS |
| 29.24.150 | 29.24.060 | PROCEDURE (80) |
| 29.24.160 | 29.23.70 | DEPARTMENTS |
| 29.24.170 | 29.23.080 | ASSEMBLY VACANCIES |
| 29.24.175 | | ARTICLE 3. BOROUGH EXECUTIVE AND ADMINISTRATOR |
| 29.24.200 | 29.23.130 | POWER GENERALLY (80S) |
| 29.24.210 | 29.23.140 | POWERS AND DUTIES OF BOROUGH ADMINISTRATOR |
| 29.24.220 | 29.23.150 | EXECUTIVE ABSENCE |
| 29.24.230 | 29.23.160 | ASSEMBLY PARTICIPATION |
| 29.24.240 | 29.23.170 | VETO |
| 29.24.250 | 29.23.180 | FILLING A VACANCY |
| 29.24.255 | | ARTICLE 4. CITY COUNCIL |
| 29.24.280 | 29.23.200 | COMPOSITION, ELIGIBILITY, ELECTION & TERM |
| 29.24.290 | 29.23.210 | PROCEDURE (80S) |
| 29.24.300 | 29.23.220 | FILLING A VACANCY |
| 29.24.305 | | ARTICLE 5. CITY EXECUTIVE AND ADMINISTRATOR |
| 29.24.330 | 29.23.240 | MAYOR |
| 29.24.340 | 29.23.250 | ELECTION AND TERM OF MAYOR |

| | | |
|---|---|---|
| 29.24.350 | 29.23.255 | REMOVAL FROM OFFICE (80) |
| 29.24.360 | 29.23.260 | MAYOR'S VOTE |
| 29.24.370 | 29.23.270 | VETO |
| 29.24.380 | 29.23.280 | FILLING A VACANCY |
| 29.24.390 | 29.23.290 | POWERS AND DUTIES OF CITY MANAGER |
| 29.24.395 | | ARTICLE 6. SCHOOL BOARDS |
| 29.24.420 | 29.23.310 | ELECTION |
| 29.24.425 | | ARTICLE 7. UTILITY BOARDS |
| 29.24.450 | 29.23.340 | UTILITY BOARDS |
| 29.24.455 | | ARTICLE 8. OTHER OFFICERS AND EMPLOYEES |
| 29.24.480 | 29.23.360 | APPOINTMENT OF OFFICERS |
| 29.24.490 | 29.23.370 | MUNICIPAL ATTORNEY |
| 29.24.500 | 29.23.380 | MUNICIPAL CLERK |
| 29.24.510 | 29.23.390 | MUNICIPAL TREASURER |
| 29.24.520 | 29.23.401 | APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS |
| 29.24.525 | | ARTICLE 9. ADOPTION OR REPEAL OF MANAGER PLAN |
| 29.24.550 | 29.23.410 | APPLICATION |
| 29.24.560 | 29.24.420 | PETITION |
| 29.24.570 | 29.23.430 | ELECTION |
| 29.24.580 | 29.23.440 | ADOPTION |
| 29.24.590 | 29.23.450 | APPOINTMENT |
| 29.24.600 | 29.23.460 | TERM |
| 29.24.610 | 29.23.470 | APPOINTMENT OF TEMPORARY OR NEW MANAGER |
| 29.24.620 | 29.23.480 | REPEAL |
| 29.24.625 | | ARTICLE 10. MISCELLANEOUS PROVISIONS |
| 29.24.650 | 29.23.500 | OATHS OF OFFICE |

| | | |
|---|---|---|
| 29.24.660 | 29.23.520 | BONDING |
| 29.24.670 | 29.23.530 | SALARIES OF ELECTED OFFICERS |
| 29.24.680 | 29.23.540 | PROHIBITIONS |
| 29.24.690 | 29.23.550 | PERSONNEL SYSTEM |
| 29.24.700 | 29.23.560 | REPORTS (80S) |
| 29.24.710 | 29.23.570 | VACANCIES |
| 29.27.000 | | CHAPTER 27. MUNICIPAL ENACTMENTS |
| 29.27.010 | 29.48.130 | ACTS REQUIRED TO BE BY ORDINANCE |
| 29.27.020 | 29.48.140 | FORM OF ORDINANCES |
| 29.27.030 | 29.48.150 | ORDINANCE PROCEDURE |
| 29.27.040 | 29.48.160 | EMERGENCY ORDINANCES |
| 29.27.050 | 29.48.170 | CODES OF REGULATION |
| 29.27.060 | 29.48.180 | CODIFICATION |
| 29.27.070 | 29.48.185 | RESOLUTIONS |
| 29.27.080 | 29.48.200 | PENALTIES |
| 29.30.000 | | CHAPTER 30. ELECTIONS |
| 29.30.005 | | ARTICLE 1. REGULAR AND SPECIAL ELECTIONS |
| 29.30.010 | 29.28.010 | ADMINISTRATION |
| 29.30.020 | 29.28.015 | NOMINATIONS |
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| 29.18.280 | 29.18.070 | REPORT |
| 29.18.290 | 29.18.080 | DECISION ON DEVELOPMENT CITY INCORPORATION |
| 29.18.300 | 29.18.090 | PRELIMINARY PLANNING |
| 29.18.310 | 29.18.100 | REVIEW AND REPORT |
| 29.18.320 | 29.18.110 | LIMITATION |
| 29.18.330 | 29.18.120 | LOCAL HIRE |
| 29.18.340 | 29.18.130 | DEVELOPMENT CITY COUNCIL |
| 29.18.350 | 29.18.140 | FILLING A VACANCY |
| 29.18.360 | 29.18.150 | POWERS AND DUTIES OF COUNCIL |
| 29.18.370 | 29.18.160 | POWERS AND DUTIES OF A DEVELOPMENT CITY EXECUTIVE DIRECTOR |

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| 29.18.380 | 29.18.170 | PROCEDURES |
| 29.18.390 | 29.18.180 | DEVELOPMENT CITY CAPITAL IMPROVEMENT FUNDS |
| 29.18.400 | 29.18.190 | TRANSITION |
| 29.18.410 | 29.18.200 | HOUSING POWERS |
| 29.18.430 | 29.18.210 | REVENUE BONDS |
| 29.18.440 | 29.18.220 | SHARED REVENUE |
| 29.18.450 | 29.18.230 | APPLICABILITY OF OTHER PROVISIONS OF THIS TITLE |
| 29.18.460 | 29.18.240 | DEFINITION |
| 29.18.510 | 29.21.010 | INCORPORATION |
| 29.18.520 | 29.21.020 | BOUNDARIES |
| 29.18.530 | 29.21.030 | CITY COUNCIL |
| 29.18.540 | 29.21.040 | FILLING A VACANCY |
| 29.18.550 | 29.21.050 | APPOINTMENT OF CITY OFFICIALS |
| 29.18.570 | 29.21.060 | TRANSITION |
| 29.18.580 | 29.21.070 | PLANNING AND ZONING AUTHORITY |
| 29.18.590 | 29.21.080 | TRANSFER OF UTILITIES TO CAPITAL CITY |
| 29.18.600 | 29.21.090 | DEFINITIONS |
| 29.18.610 | 29.21.100 | SHORT TITLE |
| 29.23.010 | 29.24.050 | GENERAL POWER |
| 29.23.021 | 29.24.060 | ASSEMBLY COMPOSITION AND APPORTIONMENT (80S) |
| 29.23.023 | 29.24.070 | COMPOSITION AND FORM OF REPRESENTATION (80) |
| 29.23.025 | 29.24.080 | ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT (80S) |
| 29.23.027 | 29.24.090 | APPORTIONMENT APPEALS (80) |
| 29.23.029 | 29.24.100 | APPORTIONMENT APPEALS (80) |
| 29.23.031 | 29.24.110 | EFFECTIVE DATE OF APPORTIONMENT (80) |
| 29.23.033 | 29.24.120 | APPLICABILITY OF APPORTIONMENT PROVISIONS (80) |
| 29.23.040 | 29.24.130 | REGULAR TERM OF OFFICE |
| 29.23.050 | 29.24.140 | QUALIFICATIONS |
| 29.23.080 | 29.24.170 | ASSEMBLY VACANCIES |
| 29.23.130 | 29.24.200 | POWER GENERALLY (80S) |
| 29.23.140 | 29.24.210 | POWERS AND DUTIES OF BOROUGH ADMINISTRATOR |
| 29.23.150 | 29.24.220 | EXECUTIVE ABSENCE |
| 29.23.160 | 29.24.230 | ASSEMBLY PARTICIPATION |
| 29.23.170 | 29.24.240 | VETO |
| 29.23.180 | 29.24.250 | FILLING A VACANCY |
| 29.23.200 | 29.24.280 | COMPOSITION, ELIGIBILITY, ELECTION & TERM |
| 29.23.210 | 29.24.290 | PROCEDURE (80S) |
| 29.23.220 | 29.24.300 | FILLING A VACANCY |
| 29.23.240 | 29.24.330 | MAYOR |
| 29.23.250 | 29.24.340 | ELECTION AND TERM OF MAYOR |
| 29.23.255 | 29.24.350 | REMOVAL FROM OFFICE (80) |
| 29.23.260 | 29.24.360 | MAYOR'S VOTE |
| 29.23.270 | 29.24.370 | VETO |
| 29.23.280 | 29.24.380 | FILLING A VACANCY |
| 29.23.290 | 29.24.390 | POWERS AND DUTIES OF CITY MANAGER |
| 29.23.310 | 29.24.420 | ELECTION |
| 29.23.340 | 29.24.450 | UTILITY BOARDS |
| 29.23.360 | 29.24.480 | APPOINTMENT OF OFFICERS |
| 29.23.370 | 29.24.490 | MUNICIPAL ATTORNEY |
| 29.23.380 | 29.24.500 | MUNICIPAL CLERK |
| 29.23.390 | 29.24.510 | MUNICIPAL TREASURER |
| 29.23.395 | 29.68.010 | INTENT OF AS 23.397-.401 |
| 29.23.397 | 29.68.020 | COMMISSION |
| 29.23.399 | 29.68.030 | INTERNS |
| 29.23.401 | 29.24.520 | APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS |
| 29.23.410 | 29.24.550 | APPLICATION |
| 29.23.430 | 29.24.570 | ELECTION |
| 29.23.440 | 29.24.580 | ADOPTION |

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| 29.23.450 | 29.24.590 | APPOINTMENT |
| 29.23.460 | 29.24.600 | TERM |
| 29.23.470 | 29.24.610 | APPOINTMENT OF TEMPORARY OR NEW MANAGER |
| 29.23.480 | 29.24.620 | REPEAL |
| 29.23.500 | 29.24.650 | OATHS OF OFFICE |
| 29.23.510 | 29.33.010(1) | COMBINING OFFICES |
| 29.23.520 | 29.24.660 | BONDING |
| 29.23.530 | 29.24.670 | SALARIES OF ELECTED OFFICERS |
| 29.23.540 | 29.24.680 | PROHIBITIONS |
| 29.23.550 | 29.24.690 | PERSONNEL SYSTEM |
| 29.23.555 | 29.24.010 | CONFLICTS OF INTEREST |
| 29.23.560 | 29.24.700 | REPORTS (80S) |
| 29.23.570 | 29.24.710 | VACANCIES |
| 29.23.580 | 29.24.020 | MEETINGS PUBLIC |
| 29.23.70 | 29.24.160 | DEPARTMENTS |
| 29.24.060 | 29.24.150 | PROCEDURE (80) |
| 29.24.420 | 29.24.560 | PETITION |
| 29.28.010 | 29.30.010 | ADMINISTRATION |
| 29.28.015 | 29.30.020 | NOMINATIONS |
| 29.28.020 | 29.30.030 | ELECTION DATES |
| 29.28.030 | 29.30.040 | VOTER QUALIFICATION |
| 29.28.040 | 29.30.050 | MAJORITY ELECTIONS |
| 29.28.050 | 29.30.060 | ELECTION CONTEST AND APPEAL (80) |
| 29.28.060 | 29.30.090 | RESERVATION OF POWERS |
| 29.28.062 | 29.30.100 | PETITION |
| 29.28.065 | 29.30.110 | CONTENTS OF PETITION |
| 29.28.070 | 29.30.120 | REQUIRED SIGNATURES |
| 29.28.073 | 29.30.130 | SUFFICIENCY OF PETITION |
| 29.28.075 | 29.30.140 | PROTEST |
| 29.28.077 | 29.30.150 | NEW PETITION |
| 29.28.080 | 29.30.160 | PRESENTATION OF INITIATIVE |
| 29.28.090 | 29.30.170 | PRESENTATION OF REFERENDUM |
| 29.28.110 | 29.30.180 | EFFECT |
| 29.28.130 | 29.30.210 | RECALL |
| 29.28.140 | 29.30.220 | GROUNDS |
| 29.28.150 | 29.30.230 | PETITION |
| 29.28.160 | 29.30.240 | EXAMINATION FOR SUFFICIENCY |
| 29.28.170 | 29.30.250 | SUPPLEMENTAL PETITION |
| 29.28.180 | 29.30.260 | NEW PETITION |
| 29.28.190 | 29.30.270 | SUBMISSION |
| 29.28.200 | 29.30.280 | ELECTION |
| 29.28.210 | 29.30.290 | FORM OF RECALL BALLOTS |
| 29.28.220 | 29.30.300 | ELECTION PROCEDURE |
| 29.28.230 | 29.30.310 | MAJORITY REQUIRED |
| 29.28.240 | 29.30.320 | EFFECT |
| 29.28.250 | 29.30.330 | ELECTION OF SUCCESSOR |
| 29.33.010 | 29.36.010 | SCOPE OF AREAWIDE POWERS |
| 29.33.030 | 29.36.050 | ASSESSMENT AND COLLECTION OF TAXES |
| 29.33.050 | 29.36.040 | EDUCATION |
| 29.33.070 | 29.42.010 | PLANNING, PLATTING, AND ZONING |
| 29.33.080 | 29.42.020 | PLANNING COMMISSION (80) |
| 29.33.085 | 29.42.030 | COMPREHENSIVE PLAN |
| 29.33.090 | 29.42.040 | ZONING (80S) |
| 29.33.110 | 29.42.050 | BOARD OF ADJUSTMENT |
| 29.33.120 | 29.42.060 | ADJUSTMENT PROCEDURE |
| 29.33.130 | 29.42.070 | JUDICIAL REVIEW |
| 29.33.150 | 29.42.080 | PLATTING JURISDICTION AND POWER |
| 29.33.160 | 29.42.090 | PROCEDURE |

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| 29.33.170 | 29.42.100 | WAIVER IN CERTAIN CASES |
| 29.33.180 | 29.42.110 | INFORMATION REQUIRED |
| 29.33.190 | 29.42.120 | PENALTIES |
| 29.33.200 | 29.42.130 | ALTERATION OF REPLAT PETITION |
| 29.33.200 | 29.42.140 | NOTICE OF HEARING |
| 29.33.220 | 29.42.150 | HEARING AND DETERMINATION |
| 29.33.230 | 29.42.160 | RECORDING |
| 29.33.240 | 29.42.170 | TITLE TO VACATED AREA |
| 29.33.245 | 29.42.180 | DELEGATIONS |
| 29.33.250 | 29.36.090 | ADDITIONAL AREAWIDE POWERS |
| 29.33.260 | 29.36.100 | TRANSFER BY CITY |
| 29.33.270 | 29.36.110 | PETITION FOR POWER |
| 29.33.280 | 29.33.120 | INVESTIGATION |
| 29.33.290 | 29.36.130 | ELECTION |
| 29.36.010 | 29.36.160 | FIRST CLASS BOROUGH |
| 29.36.020 | 29.36.170 | SECOND CLASS BOROUGH |
| 29.36.030 | 29.36.180 | ADDITIONAL POWERS |
| 29.36.040 | 29.36.190 | INVESTIGATION |
| 29.36.050 | 29.36.200 | ELECTION |
| 29.41.010 | 29.36.230 | POWERS OF THIRD CLASS BOROUGHS |
| 29.41.020 | 29.36.240 | ASSEMBLY TO SERVE AS SCHOOL BOARD (80) |
| 29.43.010 | 29.39.010 | ADDITIONAL POWERS |
| 29.43.020 | 29.39.020 | ASSESSMENT AND TAX COLLECTION |
| 29.43.030 | 29.39.040 | EDUCATION |
| 29.43.040 | 29.39.050 | PLANNING AND ZONING |
| 29.43.100 | 29.39.060 | EXTENSION OF CURFEWS OUTSIDE CITIES |
| 29.43.105 | 29.39.070 | ENFORCEMENT OF CURFEWS |
| 29.43.110 | 29.39.080 | PENALTY FOR VIOLATION OF CURFEW |
| 29.45.340 | 29.45.430 | POSSESSION DURING REDEMPTION PERIOD |
| 29.45.460 | 29.45.630 | COMBINING SALES TAX WITH INCORPORATION |
| 29.48.010 | 29.33.010 | GENERAL POWERS |
| 29.48.020 | 29.36.170 | SECOND CLASS BOROUGH POWERS OUTSIDE CITIES |
| 29.48.030 | 29.33.070 | MUNICIPAL FACILITIES AND SERVICES |
| 29.48.033 | 29.33.080 | GARBAGE AND SOLID WASTE SERVICES |
| 29.48.035 | 29.33.090 | REGULATORY POWERS |
| 29.48.037 | 29.33.020 | EXTRATERRITORIAL JURISDICTION |
| 29.48.040 | 29.33.100 | MUNICIPALLY-OWNED UTILTIES |
| 29.48.050 | 29.33.110 | FRANCHISES AND PERMITS |
| 29.48.060 | 29.33.120 | PUBLIC UTILITIES RATES (80) |
| 29.48.070 | 29.33.130 | HEARING FOR REGULATION OF UTILITIES RATES |
| 29.48.080 | 29.33.140 | RIGHT TO PARTICIPATE AND COMPEL TESTIMONY |
| 29.48.090 | 29.33.150 | FURTHER PROCEEDINGS |
| 29.48.100 | 29.33.160 | APPLICATION |
| 29.48.108 | 29.68.060 | CREATION OF HISTORICAL DISTRICT COMMISSIONS |
| 29.48.110 | 29.68.070 | ESTABLISHMENT OF HISTORICAL DISTRICTS |
| 29.48.130 | 29.27.010 | ACTS REQUIRED TO BE BY ORDINANCE |
| 29.48.140 | 29.27.020 | FORM OF ORDINANCES |
| 29.48.150 | 29.27.030 | ORDINANCE PROCEDURE |
| 29.48.160 | 29.27.040 | EMERGENCY ORDINANCES |
| 29.48.170 | 29.27.050 | CODES OF REGULATION |
| 29.48.180 | 29.27.060 | CODIFICATION |
| 29.48.185 | 29.27.070 | RESOLUTIONS |
| 29.48.190 | 29.33.210 | BUDGET AND CAPITAL PROGRAM |
| 29.48.200 | 29.27.080 | PENALTIES |
| 29.48.210 | 29.33.220 | EXPENDITURE OF BOROUGH REVENUE |
| 29.48.220 | 29.33.230 | POST AUDIT |
| 29.48.250 | 29.33.190 | CENTRALIZED PURCHASING |
| 29.48.260 | 29.33.200 | MUNICIPAL PROPERTIES |

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| 29.48.270 | 29.33.040 | EMERGENCY DISASTER POWERS |
| 29.48.310 | 29.33.260 | GENERAL CONSTRUCTION |
| 29.48.320 | 29.33.270 | EXTENT OF POWERS |
| 29.48.330 | 29.33.280 | ENUMERATION OF POWERS |
| 29.53.010 | 29.45.010 | GENERAL PROPERTY TAX |
| 29.53.020 | 29.45.030 | REQUIRED EXEMPTIONS (80S) |
| 29.53.025 | 29.45.050 | OPTIONAL EXEMPTIONS AND EXCLUSIONS |
| 29.53.030 | 29.45.060 | MINING CLAIMS |
| 29.53.035 | 29.45.070 | FARM OR AGRICULTURAL LANDS |
| 29.53.040 | 29.45.080 | MOBILE HOMES |
| 29.53.045 | 29.45.090 | TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY |
| 29.53.050 | 29.45.100 | TAX LIMITATION |
| 29.53.055 | 29.45.110 | NO LIMITATION ON TAXES TO PAY BONDS |
| 29.53.060 | 29.45.120 | FULL AND TRUE VALUE |
| 29.53.070 | 29.45.130 | RETURNS |
| 29.53.080 | 29.45.140 | INDEPENDENT INVESTIGATION |
| 29.53.090 | 29.45.150 | STATEMENT |
| 29.53.095 | 29.45.160 | REEVALUATION |
| 29.53.100 | 29.45.170 | ASSESSMENT ROLL |
| 29.53.110 | 29.45.180 | ASSESSMENT NOTICE |
| 29.53.120 | 29.45.190 | CORRECTIONS |
| 29.53.130 | 29.45.200 | APPEAL |
| 29.53.135 | 29.45.210 | BOARD OF EQUALIZATION |
| 29.53.140 | 29.45.220 | HEARING |
| 29.53.150 | 29.45.230 | SUPPLEMENTARY ASSESSMENT ROLLS |
| 29.53.160 | 29.45.240 | TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER |
| 29.53.170 | 29.45.250 | TAX LEVY AND RATE |
| 29.53.180 | 29.45.260 | RATES OF PENALTY AND INTEREST |
| 29.53.200 | 29.45.290 | VALIDITY |
| 29.53.210 | 29.45.300 | TAX LIABILITY |
| 29.53.220 | 29.45.310 | ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE |
| 29.53.230 | 29.45.320 | REAL PROPERTY TAX COLLECTION |
| 29.53.240 | 29.45.330 | FORECLOSURE LIST |
| 29.53.250 | 29.45.340 | CLEARING DELINQUENCIES |
| 29.53.260 | 29.45.350 | LIST TO LIENHOLDER |
| 29.53.270 | 29.45.360 | GENERAL FORECLOSURE |
| 29.53.280 | 29.45.370 | ANSWER AND OBJECTION |
| 29.53.290 | 29.45.380 | JUDGMENT |
| 29.53.300 | 29.45.390 | TRANSFER AND APPEAL |
| 29.53.310 | 29.45.400 | REDEMPTION PERIOD |
| 29.53.320 | 29.45.410 | EFFECT |
| 29.53.330 | 29.45.420 | ADDITIONAL LIENS |
| 29.53.340 | 29.45.430 | POSSESSION DURING REDEMPTION PERIOD |
| 29.53.350 | 29.45.440 | EXPIRATION |
| 29.53.360 | 29.45.450 | DEED TO BOROUGH OR CITY |
| 29.53.370 | 29.45.460 | DISPOSITION AND SALE OF FORECLOSED PROPERTIES |
| 29.53.375 | 29.45.470 | REPURCHASE BY RECORD OWNER |
| 29.53.380 | 29.45.480 | PROCEEDS OF TAX SALE |
| 29.53.385 | 29.45.490 | PAYMENT OF TAXES UPON PUBLIC UTILIZATION |
| 29.53.390 | 29.45.500 | REFUND OF TAXES |
| 29.53.400 | 29.45.530 | POWER OF LEVY |
| 29.53.405 | 29.39.030 | DIFFERENTIAL TAX ZONES |
| 29.53.410 | 29.45.540 | LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES |
| 29.53.415 | 29.45.570 | SALES AND USE TAX |
| 29.53.420 | 29.45.580 | REFERENDUM, ADOPTION, AND MODIFICATION |
| 29.53.440 | 29.45.610 | POWER OF LEVY |
| 29.53.450 | 29.45.620 | POWER OF LEVY AND COLLECTION |
| 29.58.010 | 29.51.010 | BORROWING IN ANTICIPATION OF REVENUE |

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| 29.58.020 | 29.51.020 | ISSUANCE NOTES |
| 29.58.040 | 29.51.030 | ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS |
| 29.58.050 | 29.51.040 | PRIORITY OF REPAYMENT |
| 29.58.060 | 29.51.050 | SALE OF NOTES |
| 29.58.070 | 29.51.080 | BOND ANTICIPATION BORROWING |
| 29.58.080 | 29.51.090 | ISSUANCE OF NOTES |
| 29.58.090 | 29.51.100 | ISSUANCE OF NEW NOTES |
| 29.58.100 | 29.51.110 | REPAYMENT OF NOTES |
| 29.58.110 | 29.51.120 | SECURITY |
| 29.58.120 | 29.51.130 | LIMITATION |
| 29.58.130 | 29.51.140 | USE OF PROCEEDS |
| 29.58.140 | 29.51.150 | SALE OF NOTES |
| 29.58.150 | 29.51.180 | GENERAL OBLIGATION BONDS |
| 29.58.160 | 29.51.190 | VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED |
| 29.58.170 | 29.51.200 | FORM AND TERMS OF SALE |
| 29.58.180 | 29.51.210 | PAYMENT |
| 29.58.200 | 29.51.240 | REVENUE BONDS |
| 29.58.205 | 29.51.250 | NO ELECTION REQUIRED |
| 29.58.210 | 29.51.260 | FORMS AND TERMS |
| 29.58.220 | 29.51.270 | PAYMENT |
| 29.58.240 | 29.51.300 | AUTHORIZATION |
| 29.58.250 | 29.51.310 | EFFECT OF BONDS |
| 29.58.260 | 29.51.320 | NO ELECTION REQUIRED |
| 29.58.270 | 29.51.330 | PAYMENT OF REFUNDING BONDS |
| 29.58.280 | 29.51.340 | SALE |
| 29.58.300 | 29.51.370 | PUBLIC SALE |
| 29.58.310 | 29.51.380 | INTEREST RATE |
| 29.58.315 | 29.51.390 | BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS |
| 29.58.320 | 29.51.400 | REDEMPTION BEFORE MATURITY |
| 29.58.340 | 29.51.410 | BOROUGH INDEBTEDNESS |
| 29.58.345 | 29.51.420 | BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION |
| 29.58.350 | 29.51.430 | BOND GUARANTEE FUND |
| 29.63.010 | 29.48.010 | ASSESSMENT AND PROPOSAL |
| 29.63.015 | 29.48.020 | PROCEDURE |
| 29.63.020 | 29.48.030 | DECISION AND NOTICE |
| 29.63.025 | 29.48.040 | RECORD OWNER |
| 29.63.030 | 29.48.050 | OBJECTIONS AND REVISION |
| 29.63.040 | 29.48.060 | ASSESSMENT ROLL |
| 29.63.050 | 29.48.070 | HEARING AND SETTLEMENT |
| 29.63.060 | 29.48.080 | PAYMENT |
| 29.63.065 | 29.48.090 | EXEMPTION |
| 29.63.070 | 29.45.100 | REASSESSMENT |
| 29.63.080 | 29.48.110 | OBJECTION AND APPEAL |
| 29.63.085 | 29.48.120 | SPECIAL ASSESSMENT BONDS |
| 29.63.090 | 29.36.270 | SERVICE AREAS |
| 29.68.010 | 29.12.040 | LOCAL BOUNDARY COMMISSION |
| 29.68.020 | 29.12.050 | ANNEXATION OF MILITARY RESERVATIONS |
| 29.68.030 | 29.12.080 | METHODS OF MERGER OR CONSOLDIATION |
| 29.68.040 | 29.12.090 | PETITION |
| 29.68.050 | 29.12.100 | REVIEW |
| 29.68.060 | 29.12.110 | INVESTIGATION |
| 29.68.070 | 29.12.120 | REPORT AND HEARING |
| 29.68.080 | 29.12.130 | DECISION |
| 29.68.090 | 29.12.140 | ELECTION |
| 29.68.100 | 29.12.150 | ASSETS AND LIABILITIES |
| 29.68.110 | 29.12.160 | ORDINANCES |
| 29.68.240 | 29.12.190 | UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED |
| 29.68.250 | 29.12.200 | UNIFICATION TO BE PROPOSED BY PETITION |

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| 29.68.260 | 29.12.210 | PETITION REQUIREMENTS |
| 29.68.270 | 29.12.220 | REVIEW OF PETITION |
| 29.68.280 | 29.12.230 | CALL FOR CHARTER COMMISSSION NOMINATIONS |
| 29.68.290 | 29.12.240 | NOMINATION OF CHARTER COMMISSION CANDIDATES |
| 29.68.300 | 29.12.250 | QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES |
| 29.68.310 | 29.12.260 | COMPOSITION OF CHARTER COMMISSION |
| 29.68.320 | 29.12.270 | ELECTION |
| 29.68.330 | 29.12.280 | REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION |
| 29.68.340 | 29.12.290 | CHARTER COMMISSION ORGANIZATION AND PROCEDURE |
| 29.68.350 | 29.12.300 | CHARTER PREPARATION (80) |
| 29.68.360 | 29.12.310 | PUBLIC HEARINGS |
| 29.68.370 | 29.12.320 | FILING OF PROPOSED CHARTER |
| 29.68.380 | 29.12.330 | PUBLICATION AND POSTING OF PROPOSED CHARTER |
| 29.68.390 | 29.12.340 | ELECTION ON CHARTER |
| 29.68.400 | 29.12.350 | EFFECT OF THE CHARTER AFTER RATIFICATION |
| 29.68.410 | 29.12.360 | ASSETS AND LIABILITIES |
| 29.68.420 | 29.12.370 | ORDINANCES |
| 29.68.430 | 29.12.380 | RIGHT TO STATE AND FEDERAL FUNDS PRESERVED |
| 29.68.440 | 29.12.390 | POWERS OF A UNIFIED MUNICIPALITY |
| 29.68.500 | 29.12.420 | METHODS OF DISSOLUTION |
| 29.68.510 | 29.12.430 | PETITION |
| 29.68.520 | 29.12.440 | STANDARDS |
| 29.68.540 | 29.12.450 | REVIEW |
| 29.68.540 | 29.12.460 | INVESTIGATION |
| 29.68.550 | 29.12.470 | REPORT AND HEARING |
| 29.68.560 | 29.12.480 | DECISION |
| 29.68.570 | 29.12.490 | ELECTION |
| 29.68.580 | 29.12.500 | SUCCESSION |
| 29.73.020 | 29.33.030 | EMINENT DOMAIN |
| 29.73.030 | 29.71.010 | ADVERSE POSSESSION |
| 29.73.040 | 29.71.020 | TAXATION OF MUNICIPALITIES |
| 29.73.050 | 29.12.010 | CHANGE OF MUNICIPAL NAME |
| 29.73.060 | 29.45.040 | PROPERTY TAX EQUIVALENCY PAYMENTS (80S) |
| 29.73.070 | 29.45.020 | TAXPAYER NOTICE (80) |
| 29.78.010 | 29.71.030 | DEFINITIONS |
| 29.88.010 | 29.62.010 | STATE EQUALIZATION OF TAX RESOURCES FOR LOCAL GOVERNMENT SERVICES (80) |
| 29.88.015 | 29.62.020 | DETERMINATION OF POPULATION (80) |
| 29.88.020 | 29.62.030 | DETERMINATION OF MILLAGE RATE EQUIVALENT (80) |
| 29.88.025 | 29.62.040 | REPORTS (80) |
| 29.88.030 | 29.62.050 | LIMITATION ON COMPUTATION AND USE OF PAYMENTS (80) |
| 29.88.035 | 29.62.060 | TAX EQUALIZATION ACCOUNT(80) |
| 29.88.040 | 29.62.070 | ADMINISTRATION (80) |
| 29.88.045 | 29.62.080 | DEFINITIONS |
| 29.89.010 | 29.62.110 | REVENUE SHARING PAYABLE (80) |
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## CHAPTER 03. THE UNORGANIZED BOROUGH

(CHAPTER 03. THE UNORGANIZED BOROUGH)

Sec. 29.03.010. (Sec. 29.03.010.) ESTABLISHMENT. Areas of the state which are not within the boundaries of an organized borough constitute a single unorganized borough.

Sec. 29.03.020. (Sec. 29.03.020.) SERVICE AREAS. Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to schools, utilities, land use regulations and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

Draft - with changes as noted

## CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES

(CHAPTER 08. CLASSIFICATION OF MUNICIPALITIES)

Sec. 29.06.010. (Sec. 29.08.010.) HOME RULE. A home rule municipality is a municipal corporation and political subdivision and is a city of the first class ~~or~~ an organized borough which has adopted a home rule charter, or a municipality unified under [illegible]. It has all legislative powers not prohibited by law or charter.

Sec. 29.06.020. (Sec. 29.08.020.) GENERAL LAW. A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.

Sec 29.06.030. (Sec. 29.08.030.) CLASSES OF GENERAL LAW. General law municipalities are of five classes:

(1) first class boroughs;

(2) second class boroughs;

(3) third class boroughs;

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. (Sec. 29.08.040.) RECLASSIFICATION. (a) A second class city may be reclassified as a first class city by holding an election on the question [as provided in this subsection], if the Department of Community and Regional Affairs determines from the best figures available that the population of the city has reached 400 permanent residents.

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

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

(2) the council may propose reclassification.

(c) The council shall hold at least one public hearing within the

city on the question. The council shall then evaluate the ability of the city to assume first class status and make its findings public.

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

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

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

(g) A second class borough may reclassify as a first class or third class borough, and a third class borough may reclassify as a first class or second class borough, in the manner provided by AS 29.36.110 -29.36.130 (AS 29.33.270-29.33.290) for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers.

(h) At the time of voting on reclassification of a second class borough to third class status, borough voters in conformity with AS 29.36. (AS 29.41) shall elect an assembly to serve as the combined assembly and school board of the third class borough if reclassification is approved.

(i) At the time of voting on reclassification of a third class borough to second class or first class status, borough voters shall vote also on the question whether the borough shall upon reclassification retain a combined assembly and school board or a separate assembly and board as otherwise provided for first and second class boroughs. If the majority of votes cast on the question favors retention of the combined assembly and board, the assembly serving at the time of the relassification election

continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board.

(j) The effective date of reclassification of a borough for which reclassification is approved under (h) of this section is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification proposition has been approved by the voters.

Sec. 29.06.050. (Sec.29.08.050.) TRANSITION. (a) On September 10, 1972, the current classification of existing home rule cities and of first class cities having 400 or more permanent residents is not affected by this Act. Second and third class cities incorporated before September 10, 1972 and having 400 or more permanent residents are reclassified as first class cities. The city council shall certify by resolution the number of permanent residents within the city. Upon the failure to certify, the Local Boundary Commission shall hold a public hearing and make a determination as to classification as provided in (c) of this section.

(b) On September 10, 1972, fourth class cities incorporated before that date are reclassified as second class cities subject to reclassification under Sec. 40 of this chapter

(c) The Local Boundary Commission shall, within two years of September 10, 1972, hold a public hearing in each city which was first, second, or third class before that date and whose population is under 400

permanent residents. The commission shall determine in each case whether the city should be classified as first or second class under the new classification. The commission's decision must be published at least once. Unless objections are filed with the Local Boundary Commission by at least five percent of the permanent residents of the city within 60 days, the classification recommended by the commission becomes effective on the 61st day. If objections are filed by at least five percent of the permanent residents of the city, the commission shall submit its recommendation to the legislature in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

# CHAPTER 09. INCORPORATION

(CHAPTER 18. INCORPORATION)

## Article 1. REQUIREMENTS

(Article 1. REQUIREMENTS)

Sec. 29.09.010. (Sec. 29.18.011.) INCORPORATION OF CITIES. (a) A community which meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide [local] services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community which meets all the standards established in (a) of this section except (a)(1) may incorporate as a second class city.

Sec. 29.09.020. (Sec. 29.18.021.) LIMITATIONS ON INCORPORATION OF CITIES. (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.

(b) A community within an organized borough may not incorporate as a city if the services could be provided on an areawide or nonareawide basis by the borough in which it is located or by annexation to an existing city.

Sec. 29.09.030. (Sec. 29.18.030.) ORGANIZED BOROUGHS. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

Article 2. PROCEDURES

(Article 2. PROCEDURES)

Sec. 29.09.060. (Sec. 29.18.050.) PETITION. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs. The petition shall include the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

(4) [Effective until January 1, 1981] composition and apportionment of the assembly or council; [Effective January 1, 1981] composition and apportionment of the assembly or council;

(5) for a first class borough, a designation of areawide powers to be exercised;

(6) for a second class borough, a designation of areawide and nonareawide powers to be exercised;

(7) maps, documents, and other information required by the Department of Community and Regional Affairs;

(8) for first class city incorporation, the signatures and resident address of 50 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(9) for second class city incorporation, the signature and resident address of 25 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(10) for borough incorporation, the signature and resident address of 15 percent of the permanent resident voters in each first class city and 15 percent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;

(11) for a city, a designation of the powers proposed by the petitioners to be exercised;

(12) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation.

Sec. 29.09.070. (Sec. 29.18.060.) REVIEW. The Department of Community and Regional Affairs shall review petitions for content and signatures and shall return deficient petitions for correction and completion.

Sec. 29.09.080. (Sec. 29.18.070.) INVESTIGATION. (a) If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

(b) The department may combine petitions for incorporation from the same general area.

(c) The department shall hold at least one public hearing in the area proposed for incorporation.

Sec. 29.09.090. (Sec. 29.18.080.) REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal.

Sec. 29.09.100. (Sec. 29.18.090.) DECISION ON BOROUGH INCORPORATION. (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110. (Sec. 29.18.110.) INCORPORATION ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition. Within 30 days after notification, the lieutenant governor shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial officers in the same election. If

incorporation is rejected, no officers are elected. The election is held not less than 30 nor more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in the incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each power to be exercised outside cities only is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing outside cities.

(d) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs under this section.

Sec.29.09.120. (Sec. 29.18.120.) ELECTION OF INITIAL OFFICERS (a) Repealed by Sec. 4 ch 23 SLA 1976.

(b) Nominations for initial officers are made by petition. The petition is in the form prescribed by the lieutenant governor and includes the name and address of the nominee and a statement of the nominee that he is qualified under the provisions of this title for the office that he seeks. A person may file for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a home rule or first class city. Petitions to nominate officers of a second class city must include the signature and resident address of 10 voters in the area of the proposed city. Petitions to nominate elected municipal officers must include the signature and resident address of 50 voters in the area of the

proposed municipality, or that area of the proposed municipality from which the officers are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under (a) - (c) of this section.

(d) The initial elected municipal officials take office on the first Monday following certification of their election.

(e) The initial elected borough assembly and city council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130. (Sec. 29.18.130.) INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. Service areas in a newly incorporated borough or city shall be integrated into the borough or city within two years after the date of incorporation. On integration the borough or city succeeds to all the rights, powers, duties, assets and liabilities of the service areas. After integration, the borough assembly or city council may exercise within a former service area all of the rights and powers exercised by the service area at the time of integration, and may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a borough or city as successor to the service area. Upon integration no less than all property in the service area at the time of integration remains subject to taxation to pay the principal of and interest on the bonds. The provisions of this section apply to all organized boroughs whether incorporated or organized before or after September 10, 1972.

Sec. 29.09.140. (Sec. 29.18.140.) TRANSITION. (a) The powers and functions exercised by home rule or general law cities and service areas

which are succeeded to by a newly incorporated borough or city are exercised by them until the new borough or city assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new borough or city.

(b) The borough or city shall give written notice of its assumption of the powers, duties and other items enumerated in Secs. 130-140 of this chapter, to the city, and service area concerned before the assumption. Borough or city officials shall consult with the officials of the city and service area concerned, and arrange an orderly transfer.

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

Sec. 29.09.150. (Sec. 29.18.150.) CHALLENGE OF LEGALITY. No person may challenge the formation of a municipality except within six months of the date of its incorporation.

Article 03. TRANSITIONAL ASSISTANCE

(Article 03. TRANSITIONAL ASSISTANCE)

Sec. 29.09.180. (Sec. 29.18.180.) ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to borough or city government and in order to provide for development and interim governmental operations, each borough and city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, other than a unified municipality incorporated under the provisions of (AS 29.85), or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to $10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough and each first class city incorporated or established by reclassification outside an organized borough is entitled to at least $25,000.

(b) Within 30 days after the date of incorporation of a borough or city after September 10, 1972, the Department of Community and Regional Affairs shall determine the number of voters in the borough or city who voted in the incorporation election.

(c) Within 30 days after the completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough or city the total amount of money to which the borough or city is entitled.

## CHAPTER 12. ALTERATION OF MUNICIPALITIES

## (CHAPTER 68. ALTERATION OF BOUNDARIES)

### Article New. CHANGE OF NAME

Sec. 29.12.010. (Sec. 29.73.050.) CHANGE OF MUNICIPAL NAME. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Department of Community and Regional Affairs.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order.

### Article 02. ANNEXATION AND EXCLUSION

### (Article 1. ANNEXATION AND EXCLUSION)

Sec. 29.12.040. (Sec. 29.68.010.) LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission may consider any proposed local government

boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.

Sec. 29.12.050. (Sec. 29.68.020.) ANNEXATION OF MILITARY RESERVATIONS. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under Sec. 040 (Sec. 10) of this chapter. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part.

Article 03. MERGER AND CONSOLDIATION

(Article 3. MERGER AND CONSOLIDATION)

Sec. 29.12.080. (Sec. 29.68.030.) METHODS OF MERGER AND CONSOLIDATION. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission, or

(2) the local option method specified in Secs. 090-160 (Secs. 40-110) of this chapter .

Sec. 29.12.090. (Sec. 29.68.040.) PETITION. (a) Residents of two or more municipalities may file a merger or consolidation petition with the Department of Community and Regional Affairs. The petition must be signed by a number of municipal voters of each municipality equal to at least 25 percent of the number of votes cast in its last regular election.

(b) The petition includes

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information which show that the proposed municipality meets the standards for municipal incorporation .

Sec. 29.12.100. (Sec. 29.68.050.) REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.110. (Sec. 29.68.060.) INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.120. (Sec. 29.68.070.) REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local

Boundary Commission with its recommendations regarding the merger or consolidation.

(b) The Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the merger or consolidation petition, unless officials of the municipalities agree to a single hearing.

Sec. 29.12.130. (Sec. 29.68.080.) DECISION. If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets these standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition. The decision may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140. (Sec. 29.68.090.) ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition. Within 30 days after notification, the lieutenant governor shall order an election within the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election is held not less than 30 nor more than 90 days after the election order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 -15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within 10 days, set a date

for election of officers of the new municipality under AS 29.09.120 (AS 29.18.120). The election date is not less than 60 nor more than 90 days after the election order. This date is the effective date for the merger or consolidation.

Sec. 29.12.150. (Sec. 29.68.100.) ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the others.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160. (Sec. 29.68.110.) ORDINANCES. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality.

Article 04. UNIFICATION OF LOCAL GOVERNMENTS

(Article 3. UNIFICATION OF LOCAL GOVERNMENTS)

Sec. 29.12.190. (Sec. 29.68.240.) UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.12.200. (Sec. 29.68.250.) UNIFICATION TO BE PROPOSED BY PETITION. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition.

Sec. 29.12.210. (Sec. 29.68.260.) PETITION REQUIREMENTS. (a) The petition shall read: "PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE

UNIFICATION CHARTER We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law: 'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law? Yes [] No []'

| Signature | Address | Inside First Class or Home Rule City | Outside First Class or Home Rule City |
|---|---|---|---|

(b) The petition shall be signed by at least

(1) that number of qualified voters of the borough living outside all first class and home rule cities in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election; and

(2) that number of qualified voters residing in each first class and home rule city located in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election in each city.

Sec. 29.12.220. (Sec. 29.68.270.) REVIEW OF PETITION. Upon receipt of a petition, the borough assembly shall review the petition within 15 days after its receipt to determine whether it complies with Sec. 200 (Sec. 260) of this chapter. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

Sec. 29.12.230. (Sec. 29.68.280.) CALL FOR CHARTER COMMISSION NOMINATIONS. Once it is determined by the borough assembly that a petition meets the requirements of Sec. 260 of this chapter, or the assembly by its

resolution proposes an election on formation of a charter commission to propose a unification charter, the assembly shall issue a call for the nomination of charter commission candidates, specifying the filing deadline and outlining the procedure described for making nominations under Sec. 240 (Sec. 290) of this chapter.

Sec. 29.12.240. (Sec. 29.68.290.)NOMINATION OF CHARTER COMMISSION CANDIDATES. (a) Charter commission candidates shall be nominated by petition signed by at least 50 qualified voters of the area from which the candidate seeks election or by a number of qualified voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough.

Sec. 29.12.250. (Sec. 29.68.300.) QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least one year immediately preceding the date his nomination petition is filed with the borough clerk.

Sec. 29.12.260. (Sec. 29.68.310.) COMPOSITION OF CHARTER COMMISSION. The charter commission members shall be qualified voters and shall consist of 11 members, three of whom shall be residents elected at large from the area of the borough and eight of whom shall be (1) residents of and elected from the area outside home rule or first class cities in the borough or (2) residents of and elected from a city or cities in the borough. The number representing each of these areas shall be proportionate to the respective populations as determined by the Department of Community and Regional Affairs.

Sec. 29.12.270. (Sec. 29.68.320.) ELECTION. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution.

(b) The ballot on the question of unification shall be worded exactly as in Sec. 210(a) [Sec. 260(a)] of this chapter.

(c) The election of charter commission members shall take place at the same time as the election on the question of unification.

(d) All costs incurred in conducting an election under this chapter shall be paid by the borough.

Sec. 29.12.280. (Sec. 29.68.330.) REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION. (a) The votes on unification shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities of the borough. The other classification shall consist of all votes cast in the remaining areas of the borough. In order for unification to be approved, it is necessary that a majority of the votes in each classification favor unification.

(b) If unification is approved, those charter commission candidates who received the highest number of votes from their respective areas shall serve as members of the commission.

Sec. 29.12.290. (Sec. 29.68.340.) CHARTER COMMISSION ORGANIZATION AND PROCEDURE. (a) The charter commission authorized by this chapter shall hold its first meeting within 30 days of the date of certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. No decision of the commission is valid or binding unless approved by that number of members necessary to constitute a quorum.

(c) The charter commission may elect other officers from among its membership, adopt rules governing its procedures and hire and discharge commission employees. Rules adopted must conform with the provisions of this chapter.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and shall be available for public inspection at the borough office.

(e) Except as provided in Sec. 340(e) [Sec. 390(e)] of this chapter, vacancies on the charter commission shall be filled by a majority vote of the commission . The person appointed to fill a vacancy must be a qualified voter of the same area as the person whom he succeeds and must have been a qualified voter of that area for at least one year immediately preceding the date of his appointment.

(f) The borough assembly may grant a per diem allowance to the commission members and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by this chapter.

(g) Costs, fees, and other expenses incurred by the charter commission are a debt of the borough and shall be paid upon proper verification.

Sec. 29.12.300. (Sec. 29.68.350.) CHARTER PREPARATION. (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in Sec. 380 of this chapter. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to Sec. 360 (Sec. 410) of this chapter;

(2) provisions for

(A) the establishment of service areas; and

(B) the establishment of districts or sections for the election of members of the legislative body of the unified municipality, if election of members of the legislative body is not areawide, and procedures by which to reapportion the election districts or sections;

(C) reapportionment of the sections, if established;

(3) provision for nonpartisan government and provision for the selection, organization, authority and responsibilities of the governing body and its executive and administrator;

(4) the transfer or other disposition of property and other rights, claims, assets and franchises of the local government to be unified under the charter;

(5) provision for exercise of the rights of initiative and referendum as required by AS 29.15.050 (AS 29.13.050);

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by Sec. 340 (Sec. 390) of this chapter, is effective;

(8) designation of the new municipality's official name, subject to the provisions of (b) of this section;

(9) other charter provisions which the charter commission elects to include and which may be included in a home rule charter under this chapter and the state constitution.

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law.

Sec. 29.12.310. (Sec. 29.68.360.) PUBLIC HEARINGS. Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter commission whenever and wherever it believes necessary and appropriate.

Sec. 29.12.320. (Sec. 29.68.370.) FILING OF PROPOSED CHARTER. Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy with signatures affixed shall also be filed with the clerk of each city within the borough.

Sec. 29.12.330. (Sec. 29.68.380.) PUBLICATION AND POSTING OF PROPOSED CHARTER. Within 10 days after filing the proposed charter, the borough clerk shall have it published once in at least one newspaper having general circulation distributed within the borough, if there is a newspaper having general circulation distributed within the borough. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places within each city of the borough and each area outside cities. Copies of the proposed charter shall be made available by the borough assembly to the public at both the office of the borough clerk and the office of the clerk of each city within the borough. The clerk shall publish notice by radio and television of the publication, posting, and availability of the proposed charter in a manner intended to apprise the entire borough population of the existence of the proposed charter.

Sec. 29.12.340. (Sec. 29.68.390.) ELECTION ON CHARTER. (a) The proposed charter adopted by the charter commission shall be submitted to the voters for ratification or rejection at the borough election specified in

Sec. 300 (Sec. 350) of this chapter. The borough clerk shall prepare the ballots for use in the election and shall give published notice of and otherwise conduct the election in the manner in which regular municipal elections are conducted. In addition, the clerk shall publish notice of the election by radio and television in a manner intended to apprise the entire borough population of the election.

(b) A person who is a qualified voter of the borough may vote in the election on the proposed charter.

(c) If a majority of the votes cast in the area of the borough outside all first class and home rule cities and a majority of the votes cast in the remaining area of the borough, composed of all first class and home rule cities, are cast in favor of the proposed charter, the charter is ratified. If the charter is ratified, two copies of the charter shall be filed with each of the following authorities:

(1) lieutenant governor;

(2) commissioner of the Department of Community and Regional Affairs;

(3) district recorder for the area of the borough;

(4) clerk of the borough;

(5) clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a proposed charter to the voters at a general or special borough election called by the borough and held within one year of the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved.

(e) If after the rejection of the first proposed charter, more than one-half of the charter commission members resign from the commission, the borough assembly shall appoint new members to fill the vacancies in accordance with Sec. 160(e) [Sec. 110(e)] of this chapter.

Sec. 29.12.350. (Sec. 29.68.400.) EFFECT OF THE CHARTER AFTER RATIFICATION. Upon ratification, the charter of a unified municipality organized under Secs. 190-390 (Secs. 240-440) of this chapter operates to dissolve all local governments within the area of unification in accordance with the charter.

Sec. 29.12.360. (Sec. 29.68.410.) ASSETS AND LIABILITIES. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness or other debt incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by ordinance if the governing body determines that the asset for which the bonded indebtedness or other debt was incurred was used for the benefit of the larger area before unification, or is so used after unification. However, preunification bonded indebtedness or other debt for sewage collection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt.

Sec. 29.12.370. (Sec. 29.68.420.) ORDINANCES. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body.

Sec. 29.12.380. (Sec. 29.68.430.) RIGHT TO STATE AND FEDERAL FUNDS PRESERVED. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under Secs. 190-390 (Secs. 240-440) of this chapter.

Sec. 29.12.390. (Sec. 29.68.440.) POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under Secs. 190-390 (Secs. 240-440) of this chapter shall have all powers

(1) not prohibited it by law or charter;

(2) granted to organized boroughs and first class cities.

Article 05. DISSOLUTION

(Article 5. DISSOLUTION)

Sec. 29.12.420. (Sec. 29.68.500.) METHODS OF DISSOLUTION. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in Secs. 430-500 (Secs. 510-580)

of this chapter.

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

Sec. 29.12.430. (Sec. 29.68.510.) PETITION. (a) Municipal residents may file a dissolution petition with the Department of Community and Regional Affairs in the form prescribed by the department. The petition must be signed by a number of municipal voters equal to at least 25 percent of the number of votes cast in the last regular municipal election.

(b) The petition includes

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution.

Sec. 29.12.450. (Sec. 29.68.520.) STANDARDS. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

(1) it is free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by ch. 09 (ch. 18) of this title, or it ceases to use each and every one of its mandatory powers.

(b) A home rule or general law city in a borough may petition for dissolution if the borough consents to assume the city's rights, powers, duties, assets and liabilities. The consent must be ratified by a majority of borough voters voting on the question.

Sec. 29.12.450. (Sec. 29.68.530.) REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.460. (Sec. 29.68.540.) INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.470. (Sec. 29.68.550.) REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be dissolved.

Sec. 29.12.480. (Sec. 29.68.560.) DECISION. If the Local Boundary Commission determines that the municipality fails to meet the standards for

dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

Sec. 29.12.490. (Sec. 29.68.570.) ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a dissolution petition. Within 30 days after notification, the lieutenant governor shall order an election within the municipality to determine whether the voters desire dissolution. The election is at least 30 and not more than 90 days after the election order.

(b) A person who is a qualified voter of the municipality may vote in the dissolution election.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If dissolution is approved, he shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.12.500. (Sec. 29.68.580.) SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities as provided in AS 29.09.130-29.09.140 (AS 29.18.130-29.18.140).

## CHAPTER 15. HOME RULE MUNICIPALITIES

## (CHAPTER 13. HOME RULE MUNICIPALITIES)

### Article 1. CHARTERS

Sec. 29.15.010. (Sec. 29.13.010.) MUNICIPAL CHARTER ADOPTION. A first class municipality or second class borough may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec 29.15.020. (Sec. 29.13.020.) NOMINATION. Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

Sec. 29.15.030. (Sec. 29.13.030.) ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission

Sec. 29.15.040. (Sec. 29.13.040.) PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough

assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter.

Sec. 29.15.050. (Sec. 29.13.050.) INITIATIVE AND REFERENDUM. (a) Municipal charters shall provide the procedures for the initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 percent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by Sec. 7, art. XI of the state constitution.

Sec. 29.15.060. (Sec. 29.13.060.) CHARTER ELECTION. The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter.

Sec. 29.15.070. (Sec. 29.13.070.) CHARTER ADOPTION. (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

(1) lieutenant governor - two copies;

(2) Department of Community and Regional Affairs - two copies;

(3) district recorder - one copy;

(4) municipal clerk - one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

Sec. 29.15.080. (Sec. 29.13.080.) CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter or by initiative referendum as provided in AS 29.30.090-29.30.180 (AS 29.28.060-29.28.110), except that no amendment shall be effective unless ratified by the voters.

Article 2. HOME RULE LIMITATIONS

Sec. 29.15.110. (Sec. 29.13.100.) LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 (29.18.140) Borough Transition

(2) AS 29.12.010 (29.73.050) Municipal Name Change

(3) AS 29.12.040 (29.68.010) Annexation and Exclusion

(4) AS 29.12.080-160 (29.68.030-29.68.110) Merger and Consolidation

(5) AS 29.12.420-29.12.500 (29.68.500-29.68.580) Dissolution

(6) AS 29.15.080 (29.13.080) Charter Amendment

(7) AS 29.24.010 (29.23.555) Conflict of Interest

(8) AS 29.24.020 (29.23.580) Meetings Public

(9) [Effective until January 1, 1981] AS 29.23.020-29.23.050 Borough Assembly Representation

[Effective January 1, 1981 AS 29.24.060; 29.24.080-29.24.140 (29.23.021; 29.23.025-29.23.050) Borough assembly composition and Apportionment; Borough Assembly Members

(10) AS 29.24.150 [29.23.060(c)] Explusion of Borough Assemblymen

(11) AS 29.24.200 [29.23.130(f)] Removal of Borough Mayor from Office

(12) AS 29.24.290 [29.23.210(b)] Explulsion of City Councilman from Office

(13) AS 29.24.340[a] (29.23.250[a]) Election and Term of Mayor

(14) AS 29.24.350 (29.23.255) Removal of Mayor from Office

(15) AS 29.24.680 (29.23.540) Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 (29.23.560) Municipal Reports

(17) AS 29.27.010[a][12] (29.48.130[a][12]) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 (29.48.180) Codification

(19) AS 29.30.010, 29.30.030[b]-29.30.040 (29.28.010, 29.28.020[b]-29.28.030 Municipal Elections

(20) AS 29.30.060(f) [29.28.050(f)] Expulsion, Removal from Offic

(21) AS 29.30.210-29.30.330 (29.28.130-29.28.250) Recall

(22) AS 29.33.020 (29.48.037) Extraterritorial jurisdiction

(23) AS 29.33.030 (29.73.020) Eminent Domain

(24) AS 29.33.080 (29.48.033) Garbage and Solid Waste Services

(25) AS 29.33.090[b] (29.48.035[b]) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090[c] (29.48.035[c]) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100-29.33.160 (29.48.040-29.48.100) Utilities

(28) AS 29.33.220 (29.48.210) Expenditure of Borough Revenue

(29) AS 29.33.230 (29.48.220) Post Audit

(30) AS 29.36.010[b] (29.33.010[b]) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020[a] (29.33.050, 29.41.010[d], 14.12.020[a]) Responsibility for education on Military Reservations

(32) AS 29.36.130[c] (29.33.290[c]) Acquisition of Additional Areawide Powers

(33) AS 29.39.020-29.39.060 (29.43.020-29.43.040) Powers of Cities Outside Boroughs

(34) AS 29.42.040[d] (29.33.090[d]) Zoning of State Land for Homesite Entry

(35) AS 29.42.080[b] (29.33.150[b]) Applicability of Local Platting Regulations to State Land in a Municipality

(36) AS 29.45.010-29.45.530 (29.53.010-53.400) Borough and City Property Taxes

(37) AS 29.45.020 [AS 29.73.060(070)] Taxpayer Notice

(38) AS 29.45.580[d] (29.53.415[d]) Interest on Sales Tax

(39) AS 29.48.090 (29.63.065) Exemption from Special Assessment

(40) AS 29.51.420-29.51.430 (29.58.345-29.58.350) Bonded Debt for School Construction

(41) AS 29.51.210[b] (29.58.180[b]) Security for Bonds

(42) AS 29.51.390 (29.58.315) Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. (29.88) Municipal Tax Resource Equalization

(44) AS 29.62. (29.89) State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 (29.73.030) Adverse Possession

(46) AS 29.71.020 (29.73.040) Taxation of Municipalities

CHAPTER 18. DEVELOPMENT CITIES

(Article 4. DEVELOPMENT CITIES)

Sec. 29.18.010. (Sec. 29.18.220.) LEGISLATIVE FINDINGS.The legislature finds that the development of natural resources in isolated and relatively unpopulated areas requires a policy and procedure which will provide planning, financial and other assistance necessary for encouraging orderly development of well-planned, diversified and economically sound new cities necessary to support the sound development of the state's resources by both the private and public sector. It is the purpose of Secs. 220-460 of this chapter to set out the mutual responsibilities of the private and public sectors to achieve these objectives with a view to securing information valuable to future legislatures so that general legislation applicable to the establishment of development cities may be perfected.

Sec. 29.18.020. (Sec. 29.18.230.) DEVELOPMENT CITIES. Subject to reclassification under Sec. 200(c) [Sec. 400(c)] of this chapter, a development city is a city of the class designated by the Department of Community and Regional Affairs.

Sec. 29.18.030. (Sec. 29.18.240.) INCORPORATION. An area not served by an existing municipality which is not reasonably practicable to be served by an existing municipality may be incorporated as a development city by

(1) petition of the industrial developer to the Department of Community and Regional Affairs to be acted on by the Local Boundary Commission; or

(2) act of the legislature.

Sec. 29.18.040. (Sec. 29.18.250.) PETITION FOR INCORPORATION. A development city incorporation petition proposed by an industrial developer shall include the following information about the proposed city:

(1) class,

(2) name,

(3) boundaries,

(4) composition of the council,

(5) maps, documents, preliminary economic development projections, preliminary population projections, outline of the industrial developer's investigative and development expenditures and its proposed capital program, and other information required by the Department of Community and Regional Affairs to show that the proposed city meets the standards for incorporation,

(6) the proposed agreement required under Sec. 120 (Sec. 330) of this chapter .

Sec. 29.18.050. (Sec. 29.18.260.) REVIEW. The Department of Community and Regional Affairs shall review the petition for content and shall return deficient petitions for correction and completion.

Sec. 29.18.060. (Sec. 29.18.270.) INVESTIGATION. If the petition contains the required information, the Department of Community and Regional Affairs shall investigate the proposal to determine whether the development expenditures and proposed capital program by the developer serve the public interest and demonstrate a probability of being carried forward to a successful conclusion.

Sec. 29.18.070. (Sec. 29.18.280.) REPORT. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation within 60 days of receipt of the petition for incorporation.

(b) The Local Boundary Commission shall review the petition and the findings and recommendations of the Department of Community and Regional Affairs within 60 days of receving them.

Sec. 29.18.080. (Sec. 29.18.290.) DECISION ON DEVELOPMENT CITY INCORPORATION. (a) The Local Boundary Commission may reject a petition for

incorporation if it finds that

(1) the area proposed for incorporation is served by an existing municipality or could be served by an existing municipality;

(2) it is improbable that the proposed development will take place;

(3) the program and activities contemplated by this chapter may be undertaken through expansion of the corporate limits of an existing city and then declares that city to be a development city for the purpose of preferential designation under Secs. 10 and 130-460 (Secs. 10 and 340 460) of this chapter;

(4) the program and activities contemplated by this chapter may be undertaken by establishing a service area within an existing organized borough for a development project, and declares the service area to be eligible for preferential designation under Secs. 200 and 230 (Secs. 410 and 450) of this chapter;

(5) the proposed development does not serve the public interest.

(b) If the Local Boundary Commission finds that a service area within an organized borough is to be designated for preferential treatment under (a)(4) of this section, the assembly may undertake the project in the manner of a development city and shall present to the Local Boundary Commission a contractual agreement outlining responsibilities assumed by the borough and the industrial developer to implement the proposed development program.

(c) The assembly may decline findings under (b) of this section to establish a service area and in the alternative request the Local Boundary Commission to approve incorporation of a development city.

(d) The Local Boundary Commission may dissolve a development city established under Sec. 20 of this chapter if subsequent to its incorporation

(1) the major economic development projected does not occur within a period of five years; and

(2) if the development project had been reviewed as a new project the Local Boundary Commission determines it would have rejected the petition on the basis that it is improbable the proposed development would have taken place.

(e) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.18.090. (Sec. 29.18.300.) PRELIMINARY PLANNING. The city shall prepare and submit to the state preliminary plans in advance of completion of the final basic comprehensive plan for the city. The preliminary plans shall include

(1) maps, documents, preliminary economic development projections, preliminary population projections, outline of the industrial developer's investigative and development expenditures and its proposed capital program, and other information required by reviewing agencies of the state;

(2) a report on the physical and biological character of the proposed city's site and a land and water use plan and the design and siting of the community to be developed based upon these natural factors.

Sec. 29.18.100. (Sec. 29.18.310.) REVIEW AND REPORT. (a) The division of planning and research, in conjunction with the Departments of Community and Regional Affairs, Natural Resources, and Environmental Conservation and other departments as determined appropriate by the division of planning and research, shall review the preliminary planning and additional data may be requested.

(b) The division of planning and research shall coordinate the preparation of a report and recommendations, if any, which shall be submitted to the governor within 60 days of receipt by the state of the preliminary plans from the city. The city may proceed to the completion of

the final basic comprehensive plan upon satisfying any specific recommendations contained in the report.

(c) During the course of planning toward completion of the basic comprehensive development plan the division of planning and research and the Department of Community and Regional Affairs shall be kept currently informed and the final plan shall be subject to review and recommendation by the division of planning and research, which shall act in its coordinating capacity to secure review by the Department of Environmental Conservation and other state agencies as appropriate.

Sec. 29.18.110. (Sec. 29.18.320.) LIMITATION. The city may not proceed with commitment of funds or formal undertakings for physical development until it has a signed contract or contracts for sale of the company's products in quantities shown in the economic data and submitted by the company to be adequate to sustain an economically viable operation. The company may submit alternative valid evidence that the projected operation will proceed. The company shall notify the Department of Community and Regional Affairs of the meeting of this requirement. Unless the Department of Economic Development makes a determination that the data is insufficient, the city may proceed.

Sec. 29.18.120. (Sec. 29.18.330.) LOCAL HIRE. In consideration of the incorporation of a development city under this chapter, the major developer shall enter into an agreement with the appropriate agencies of the state concerning

(1) establishing and maintaining an approved Department of Labor on-the-job training program to qualify Alaska residents lacking in the requisite technical skills of the activities to be undertaken;

(2) establishing resident hire goals in terms of percent of employees at the end of the first year, second year and third year of operatio

(3) establishing the responsibilities of the various state agencies towards providing technical assistance, manpower procurement, relocation assistance, job opportunity services to residents in the area, supplemental vocational training, and the scope of effort each state agency has in this regard with specific commitments in terms of numbers of residents, time schedule and dollar value of training;

(4) establishing the penalties and conditions of noncompliance with the agreement.

Sec. 29.18.130. (Sec. 29.18.340.) DEVELOPMENT CITY COUNCIL. The council of a development city has five members consisting of the commissioner of the Department of Community and Regional Affairs, or his designee, and four public members designated by the governor. The governor shall appoint no fewer than two public members from a list of nominees designated by the major developer providing the industrial base of the city as measured by employment and capital investment. The council shall serve at the pleasure of the governor. The designated councilmen need not be residents of the city during its development stage.

Sec. 29.18.140. (Sec. 29.18.350.) FILLING A VACANCY. If a vacancy occurs in the council as constituted under Sec. 130 (Sec. 340) of this chapter, the applicable appointing authority shall designate the replacement during the development stage of the city.

Sec. 29.18.150. (Sec. 29.18.360.) POWERS AND DUTIES OF THE COUNCIL. During the development stage the council of a development city may

(1) exercise the powers and duties of a school board if the city is located outside an organized borough;

(2)exercise the powers and duties of a planning commission under AS 29.42.020 (AS 29.33.080), except that during the first five years or until the development city has 400 permanent residents, zoning and zoning changes will be reviewed and approved by the division of planning and research and the Department of Environmental Conservation.

Sec. 29.18.160. (Sec. 29.18.370.) POWERS AND DUTIES OF DEVELOPMENT CITY EXECUTIVE DIRECTOR. During the development stage the council shall appoint an executive director of the development city, who may be one of its members, to serve at the pleasure of the council. The executive director shall have the powers and duties of all executive and administrative city officials set out in this title in order to develop the city under a comprehensive community development plan.

Sec. 29.18.170. (Sec. 29.18.380.) PROCEDURES. During the development stage, the council may provide for conference telephone or radiophone meetings at times determined by the council and shall determine its own rules and order of business.

Sec. 29.18.180. (Sec. 29.18.390.) DEVELOPMENT CITY CAPITAL IMPROVEMENT FUNDS. All state agencies shall, where appropriate, adopt procedures to insure that, during the development stage, the needs of a development city are carefully considered in the allocation of funds available for capital improvement projects where those funds have not otherwise been committed by the legislature.

Sec. 29.18.190. (Sec. 29.18.400.) TRANSITION. (a) When a development city has 400 permanent residents elections shall take place according to the following schedule:

(1) in the first year two additional councilmen who shall be city residents elected for three-year terms;

(2) in the second year two councilmen who shall be city residents elected for three-year terms to replace one of the councilmen nominated by the industrial developer and one of the public members designated by the governor;

(3) in the third year two councilmen who shall be city residents elected for three-year terms to replace the commissioner of the Department of Community and Regional Affairs and one of the councilmen nominated by the industrial developer;

(4) in the fourth year a mayor who shall be a city resident elected for a three-year term to replace the remaining councilman nominated by the industrial developer.

(b) At the time of the election under (a)(4) of this section, or any time after it, the electorate may exercise the right to become a home rule city as authorized under this title.

(c) If, within a period of five years from the incorporation of a development city, the number of permanent residents does not reach 400, the Department of Community and Regional Affairs shall order an election for city officials and designate a successor class of city based on population as provided in this title. If the department designates a successor class of city, the provisions of this title relating to that class of city apply, and the city shall be reclassified accordingly.

Sec. 29.18.200. (Sec. 29.18.410.) HOUSING POWERS. From the time of the appointment of the first city council and for a period of 10 years following the first election of councilmen, the council may act as its own housing and urban renewal authority if such powers have been granted to cities under applicable provisions of law.

Sec. 29.18.210. (Sec. 29.18.430.) REVENUE BONDS. Revenue bonds may be issued by a development city under the provisions of AS 29.51.340-29.51.320 (AS 29.58.200-29.58.220). However, no vote of the people is required to issue revenue bonds during the development stage. During the development stage revenue bonds may be issued by a majority vote of the city council.

Sec. 29.18.220. (Sec. 29.18.440.) SHARED REVENUE. A development city is entitled to shared revenue and other state funds on the same basis as a city or organized borough of the first class or, if reclassified under Sec. 200(c) [Sec. 400(c)] of this chapter, on the basis of the reclassification. During the development stage the Department of Community and Regional Affairs may establish an assumed population figure which shall be used to determine shared revenue based on population on per capita grants.

Sec. 29.18.230. (Sec. 29.18.450.) APPLICABILITY OF OTHER PROVISIONS OF THIS TITLE. All applicable provisions of this title consistent with the provisions of this chapter apply to development cities. Provisions of this chapter prevail over other provisions of this title which are inconsistent.

Sec. 29.18.240. (Sec. 29.18.460.) DEFINITION. In this chapter "development stage" means that period of time extending from the date of incorporation of a development city until such time as the city may attain a population of 400 permanent residents, or five years from the date of incorporation, whichever is earlier.

## CHAPTER 21. CAPITAL CITY

### (Article 5. CAPITAL CITY INCORPORATION)

Sec. 29.21.010. (Sec. 29.18.510.) INCORPORATION. There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city.

Sec. 29.21.020. (Sec. 29.18.520.) BOUNDARIES. The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state.

Sec. 29.21.030. (Sec. 29.18.530.) CITY COUNCIL. (a) Until council members elected by the residents of the capital city take office as provided in Sec. 060 (Sec. 570) of this chapter, the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governor. The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in Sec. 060 Sec. 570 of this chapter, the successors of the initial appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance.

Sec. 29.21.040. (Sec. 29.18.540.) FILLING A VACANCY. If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacement who shall serve for the unexpired portion of the term.

Sec. 29.21.050. (Sec. 29.18.550.) APPOINTMENT OF CITY OFFICIALS. Until a mayor is elected in accordance with Sec. 060 (Sec. 570) of this chapter, the council shall appoint a city manager for the capital city to serve at the pleasure of the council. The city manager may not be a council member.

Sec. 29.21.060. (Sec. 29.18.570.) TRANSITION. (a) When the capital city attains a population of 400 permanent residents, as certified by the lieutenant governor based on the best information available, the lieutenant governor shall notify the council of this determination. The lieutenant governor shall specify an election date which shall be the first Tuesday of October following the notification, except that if it is less than six months from the date of the certification to the first Tuesday of October then the election date shall be the first Tuesday of October of the year following. The elected members shall take office on the Monday following the election.

(b) After the lieutenant governor has specified the election date, the council shall make arrangements for an election at which five council members and a mayor shall be elected in the manner prescribed by ordinance and law. The expenses of the election shall be borne by the state. The council of the capital city shall have six members. The governor shall designate

one council member holding office on the date of the election to remain a member of the council for a single three-year term commencing on the date the elected council members take office. The successors to the appointed council members shall be elected by the residents, except that if the

appointed council member leaves office during the three years, the governor may appoint a successor. The terms of all other appointed or designated council members expire when the elected council members take office. The term of elected council members is as provided in AS 29.24.280 [AS 29.23.200(c)] except that three of the members are elected for an initial term of one year.

Sec. 29.21.070. (Sec. 29.18.580.) PLANNING AND ZONING AUTHORITY. The general development plan and specific development plans constitute the land use plan for the capital city area. When a parcel of land has been developed in accordance with the applicable specific development plan, that parcel becomes subject to all planning, zoning, subdivision, building code or other similar ordinances of the Matanuska-Susitna Borough.

Sec. 29.21.080. (Sec. 29.18.590.) TRANSFER OF UTILITIES TO THE CAPITAL CITY. The development corporation, in cooperation with the capital city, shall arrange for and agree to an orderly schedule for transferring to the capital city ownership of, and financial and operational responsibility for utilities and any other facilities which the development corporation considers to be integral parts of the capital city infrastructure. Before January 1, 1985, the development corporation and the council of the capital city shall jointly retain independent consultants to study and determine an orderly schedule for transfer of these utilities and facilities to the capital city. The study shall consider the capabilities of the capital city and its existing and anticipated residents to finance the cost of these utilities and other facilities and their operating expenses. The consultants shall propose a recommended schedule for and terms of transfer which are commensurate with the capital city's existing and anticipated population, tax base and any other factors relating to its capability to finance and operate these facilities as they consider appropriate. The development corporation shall, after considering the consultants' report, propose a

schedule of and terms and conditions of the transfer to the capital city, which shall, upon review and approval by the council, be included in an agreement between the development corporation and the capital city. If the development corporation and the capital city are unable to agree within six months after the development corporation submits its proposal, the development corporation shall submit the proposal to the Legislative Budget and Audit Committee which shall consider the proposal, and if the committee considers it appropriate to do so, shall recommend to the legislature legislation it considers desirable for the disposition of the utilities and other facilities. If the legislature does not enact legislation regarding the disposition within one year after the proposal is submitted to the Legislative Budget and Audit Committee, the development corporation may at any time thereafter sell or dispose of the utilities and facilities or any of them to a private person or entity or government body, or continue to operate them.

Sec. 29.21.090. (Sec. 29.18.600.) DEFINITIONS. In Secs. 010-090 Secs. 510-600 of this chapter, unless the context requires otherwise,

(1) "capital city area" means the area described in Sec. 020 (Sec. 520) of this chapter;

(2) "capital city" means the municipality incorporated by this chapter;

(3) "development corporation" means the Alaska Capital City Development Corporation;

(4) "general development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to the general development plan;

(5) "specific development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to each specific development plan.

Sec. 29.21.100. (Sec. 29.18.610.) SHORT TITLE. Sections 010-100 (Sections 510-610) of this chapter may be cited as the Capital City Incorporation Act.

## CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES

(CHAPTER 23. MUNICIPAL OFFICERS AND EMPLOYEES)

### Article 1. CONFLICT OF INTERESTS, PUBLIC MEETINGS

Sec. 29.24.010. (Sec. 29.23.555.) CONFLICT OF INTERESTS. Each home rule and general law municipality shall adopt a conflict-of-interests ordinance which, other provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest. If a home rule or general law municipality fails to adopt such a conflict-of-interests ordinance within 90 days from September 10, 1972, the conflict-of-interests provision of this section is automatically applicable to and binding upon that municipality.

Sec. 29.24.020. (Sec. 29.23.580.) MEETINGS PUBLIC. Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

### Article 2. BOROUGH ASSEMBLY

(Article 1. BOROUGH ASSEMBLY)

Sec. 29.24.050. (Sec. 29.23.010.) GENERAL POWER. The legislative power of a borough is vested in the assembly.

Sec. 29.24.060. (Sec. 29.23.021.) ASSEMBLY COMPOSITION AND APPORTIONMENT. [Effective January 1, 1981].

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

(b) The assembly of a newly incorporated borough is, after incorporation and until the adoption of an ordinance providing for a change in composition or apportionment, composed of the number of members and apportioned as set out in the incorporation petition approved by the voters.

If the borough is already incorporated, the assembly shall be composed and apportioned in a manner that is consistent with the requirements of this section and prescribed by charter or ordinance.

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

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

Sec.29.24.070. (Sec. 29.23.023.) COMPOSITION AND FORM OF REPRESENTATION. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.24.080 [AS 29.23.025(a)].

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of represntation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190-29.12.390 (AS 29.68.240-29.68.440);

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

Sec. 29.24.080. (Sec. 29.23.025.) ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.24.060 (AS 29.23.021). If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.24.070(b)(2) or (b)(3) [AS 29.23.023(b)(2) or (b)(3)], the assembly shall submit with the proposition of a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly

determines that its existing apportionment meets the standards of AS 29.24.060 (AS 29.23.021), the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060 (AS 29.23.021). At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registerd voters who are residents of the borough request the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.24.060 (AS 29.23.021), and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.24.060 (AS 29.23.021), the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS

29.24.060 (AS 29.23.021) by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.090. (Sec. 29.23.027) APPORTIONMENT APPEALS. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.24.060 (AS 29.23.021) do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of community and regional affairs requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.24.060 (AS 29.23.021), or whether a decision of the borough assembly that the standards of AS 29.24.060 (AS 29.23.021) do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under AS 29.24.080(e) [AS 29.23.025(e)], the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community and regional affairs to review a decision of the borough assembly under AS 29.24.080(c) [AS 29.23.025(c)], the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.24.060 (AS 29.23.021), or if he determines that the decision of the borough assembly that the standards of

AS 29.24.060 (AS 29.23.021) do not require a change of apportionment is not correct, the commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.24.060 (AS 29.23.021) and submit the ordinance to the voters.

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

(e) If at the end of the time period provided under (d) of this seciton an ordinance providing for reapportionment has not been approved by the voters, the commissioner of community and regional affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.24.060 (AS 29.23.021) by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.100. (Sec. 29.23.029) JUDICIAL REVIEW AND RELIEF. (a) The commissioner of community and regional affairs may request the superior court to enforce a reapportiorment order issued under AS 29.24.090(e) [AS 29.23.027(e)].

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

(1) a plan of reapportionment approved by the voters under AS 29.24.080(a) [AS 29.23.025(a)];

(2) a determination by the borough assembly under AS 29.24.080 [AS 29.23.025(c)] that the standards of AS 29.24.060 (AS 29.23.021) do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.24.080(d) [AS 29.23.025(d)];

(4) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(c) [AS 29.23.027(c)];

(5) a reapportionment ordinance approved by the voters under AS 29.24.090(d) [AS 29.23.027(d)]; and

(6) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090 (e) [AS 29.23.027(e)].

Sec. 29.24.110 (Sec. 29.23.031) EFFECTIVE DATE OF APPORTIONMENT. (a) A change in assembly apportionment or composition under AS 29.23.080 (AS 29.23.025) or AS 29.24.090 (AS 29.23.027) is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.24.080(a) [29.23.025(a)], AS 29.24.080(e) [29.23.025(e)], or AS 29.24.090(d) [29.23.027(d)]; or

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(d) [29.23.027(e)].

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

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

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(e) [AS 29.23.027(e)].

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

Sec. 29.24.120. (Sec. 29.23.033) APPLICABLITY OF APPORTIONMENT PROVISIONS. The provisions of AS 29.24.080-29.24.110 (AS 29.23.025 - 29.23.031) do not apply

(1) to a unified municipality incorporated under AS 29.12.190-29.12.390 (AS 29.68.240 - 29.68.440);

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

→ See 125 inserted

→ Sec. 29.24.130. (Sec. 29.23.040.) REGULAR TERM OF OFFICE. (a) Assemblymen are selected for three-year terms and until their successors are selected and have qualified, unless different terms not exceeding four years are prescribed by borough charter or ordinance. Except when otherwise required by a change of composition or apportionment, if the term of an assemblyman is changed by charter or ordinance, the term of an assemblyman holding office at the time the change takes effect is not affected by that change.

(b) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by borough charter or ordinance.

(c) This section applies to home rule and general law boroughs.

Sec. 29.24.140. (Sec. 29.23.050.) QUALIFICATIONS. A resident of the borough is eligible to be an assemblyman if he is a borough voter. An assemblyman who ceases to be a borough voter immediately forfeits his office. An assemblyman elected from or selected to represent a borough area

less than the borough area at large and who becomes a resident of another area may continue to serve only until the next regular election. The assembly may by ordinance establish residence requirements for assemblymen not exceeding three years. This section applies to home rule and general law boroughs.

Sec. 29.24.150. (Sec. 29.23.060.) PROCEDURE. (a) The assembly shall meet at least once every month, unless otherwise provided by ordinance. All meetings shall be public meetings. Special meetings may be held on the call of the chairman, the presiding officer, or one-third of the members, upon not less than 24 hours written or oral notice communicated to each member. In an emergency a special meeting shall be a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at its pleasure, except that in manager plan boroughs the borough mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(c) The assembly shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The assembly is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The assembly shall consider a conviction of a member for a felony or misdemeanor described in AS 15.56 as a corrupt practice at its first meeting following the final determination of the conviction.

(d) A majority of the membership authorized by law constitutes a quorum. In the absence of a quorum, any number less than a quorum may recess or adjourn the meeting to a later date. Actions of the assembly are adopted by a majority of the votes authorized on the question. All assemblymen present shall vote unless the assembly for special reasons permits a member to abstain, except no assemblyman may vote on a question in which he has a substantial direct or indirect financial interest.

(e) The final vote on each ordinance, resolution, or substantive motion is a recorded "yes" or "no", except that if the vote is unanimous it is necessary only so to state.

(f) Repealed by Sec. 16 ch 118 SLA 1972.

(g) Repealed by Sec. 16 ch 118 SLA 1972.

(h) Repealed by Sec. 16 ch 118 SLA 1972.

(j) Repealed by Sec. 16 ch 118 SLA 1972.

Sec. 29.24.160. (Sec. 29.23.070.) DEPARTMENTS. (a) The assembly may establish departments and distribute administrative functions among them.

(b) Each department is administered by a department head. With the consent of the assembly, the borough mayor may serve as the head of one or more departments or may appoint one person as the head of two or more departments.

Sec. 29.24.170. (Sec. 29.23.080.) ASSEMBLY VACANCIES. The assembly shall provide by ordinance the manner in which a vacancy in assembly representation occurs. A vacancy is filled by the majority of the remaining assemblymen, who designate a voter and, if the assembly seat vacated is other than an at-large seat, a resident of the borough area to which the seat was apportioned, to serve until the next regular election. However, if under a borough apportionment city councilmen are appointed as assemblymen or elected to dual assemblycouncil seats, a vacancy in a councilman's seat

on the assembly shall be filled by a councilman designated by a majority of the remaining membership of the council to serve until the next regular election.

Article 3. BOROUGH EXECUTIVE AND ADMINISTRATOR

(Article 2. BOROUGH EXECUTIVE AND ADMINISTRATOR

Sec. 29.24.200. (Sec. 29.23.130.) POWER GENERALLY. (a) If the borough has not adopted a manager plan, the borough executive and administrative power is vested in an elected borough mayor. If the borough has adopted a manager plan, the administrative power is vested in an appointed manager and the executive power in an elected borough mayor who has the same functions as those of the mayor of a manager-plan city under Sec. 330 (Sec. 240) of this chapter.

(b) A borough voter is eligible to be borough mayor. The assembly may by ordinance establish residence requirements for candidates for borough mayor not exceeding three years.

(c) The borough mayor's regular term of office is three years and until a successor is elected and has qualified and begins on the first Monday following certification of the mayor's election. The assembly may provide by ordinance for a different term not to exceed four years, except that the current term of an incumbent borough mayor may not be altered.

(d) A borough may adopt or abandon a manager plan at any time, as provided in Secs. 550-620 (Secs. 410-480) of this chapter. The borough mayor may not veto an ordinance or resolution calling for an election on this question. The manager has all the powers and duties of the borough mayor as chief administrative officer. The borough mayor then serves as borough executive.

(e) A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a

manager plan may, by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in Secs. 200-220 (Secs. 130-150) and Secs. 590-610 (Secs. 450 - 470) of this chapter. Nothing in this subsection affects the authority of the assembly or council to provide for other dual officeholding if the dual offices held are compatible or otherwise to appoint officers and employees in accordance with law.

(f) The assembly, with the concurrence of two-thirds of its members, may remove the borough mayor from office for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The assembly shall consider a conviction of the borough mayor of a felony or misdemeanor described in AS 15.56 as a corrupt practice at its first meeting following the final determination of the conviction.

Sec. 29.24.210. (Sec. 29.23.140.) POWERS AND DUTIES OF BOROUGH ADMINISTRATOR. The borough mayor or manager as the case may be, as the chief administrative officer, is responsible for the proper administration of all borough affairs. The mayor or manager of the borough shall

(1) appoint borough employees and administrative officers, except as provided otherwise in Sec. 480 (Sec. 360) of this chapter and (AS 29.33.050); he may hire necessary administrative assistants and may authorize an appointive administrative officer to appoint, suspend, or remove subordinates in his department;

(2) suspend or remove by written order borough employees and administrative officers, except as provided otherwise in Sec. 480 (Sec. 360) of this chapter and (AS 29.33.050);

(3) supervise enforcement of borough law;

(4) prepare the annual budget and capital improvements program for the assembly;

(5) execute the budget and capital improvement program as adopted;

(6) make monthly reports to the assembly on borough finances and operations;

(7) report to the assembly at the end of each fiscal year on the finances and administrative activities of the borough;

(8) prepare and make available for public distribution an annual report on borough affairs;

(9) serve as borough personnel officer unless the assembly authorizes him to appoint a personnel officer;

(10) direct and supervise the administration of

(A) the functions of all borough officers and employees except as provided otherwise in this title;

(B) the care and custody of all borough buildings and of all real and personal property of the borough, except as provided otherwise by AS (29.33.050);

(C) the construction, maintenance, and operation of all borough roads, bridges, drains, buildings and other public works;

(11) execute other powers or duties specified in this title or lawfully prescribed by the assembly.

No change

Sec. 29.24.220. (Sec. 29.23.150.) EXECUTIVE ABSENCE. The borough mayor, subject to assembly approval, shall designate a person to act as mayor during the mayor's temporary absence or disability. If a manager plan has been adopted, the assembly shall designate by resolution a borough administrative officer to act as manager during his absence or disability.

Sec. 29.24.230. (Sec. 29.23.160.) ASSEMBLY PARTICIPATION. The borough mayor may take part in the discussion of all matters before the assembly but may not vote.

Sec. 29.24.240. (Sec. 29.23.170.) VETO. (a) Except as provided in (b) of this section, the borough mayor may veto any ordinance, resolution,

motion or other action of the assembly and may, by veto, strike or reduce items in appropriation ordinances except for school budget items. He shall submit to the assembly at its next regular meeting a written statement advising of his veto and giving his reasons. His veto may be overridden by two-thirds of all the votes to which the assembly is entitled on the question.

(b) The borough mayor may not veto actions of the assembly taken under Sec. 200(d) [Sec. 130(d)] of this chapter or actions of the board of equalization and the board of adjustment.

Sec. 29.24.250. (Sec. 29.23.180.) FILLING A VACANCY. A vacancy in the office of the borough mayor occurring within six months of a regular election shall be filled by the assembly. The person designated shall serve until the next regular election and until a successor is elected and has qualified. If an assemblyman is chosen, he shall resign his assembly seat. If a vacancy occurs more than six months before a regular election, the assembly shall call a special election to fill the unexpired term.

## Article 4. CITY COUNCIL

(Article 3. CITY COUNCIL)

Sec. 29.24.280. (Sec. 29.23.200.) COMPOSITION, ELIGIBILITY, ELECTION AND TERM. (a) Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

(b) A city voter is eligible to hold office as a member of the council. The council may by ordinance establish residence requirements for council members not exceeding three years. A council member who ceases to be eligible to be a city voter immediately forfeits that office.

Expelling members
conflict of interest

(c) Councilmen are selected for three-year terms and until their successors are elected and have qualified. The regular term of office begins on the first Monday following certification of the election. The council may provide by ordinance for different terms not to exceed four years, except that the current term of incumbent councilmen may not be altered.

Sec. 29.24.290. (Sec. 29.23.210.) PROCEDURE. (a) The council shall meet at least once every month, unless otherwise provided by ordinance. Special meetings may be held on the call of the mayor or two councilmen upon not less than 24 hours written or oral notice communicated to each member. In an emergency, a special meeting called on less than 24 hours notice is a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be made either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The council is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The council shall consider that conviction during its first meeting following final determination of the conviction.

(c) Four councilmen constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

(d) The final vote on each ordinance, resolution, or substantive motion is a recorded roll call vote. All councilmen present shall vote unless the council, for special reasons, permits a member to abstain.

Sec. 29.24.300. (Sec. 29.23.220.) FILLING A VACANCY. If a vacancy occurs in the council, the council by vote of a majority of its remaining members shall designate a person to fill the vacancy until the next regular election, and until a successor is elected and has qualified.

## Article 5. CITY EXECUTIVE AND ADMINISTRATOR

(Article 4. CITY EXECUTIVE AND ADMINISTRATOR)

Sec. 29.24.330. (Sec. 29.23.240.) MAYOR. Each city has a mayor as executive who shall preside at council meetings, IN 29.20.160 act as ceremonial head of the city, and sign documents on the city's behalf upon council authorization. In cities which have not adopted a manager plan, the mayor is responsible for the duties listed in Sec. 390 (Sec. 290) of this chapter.

Sec. 29.24.340. (Sec. 29.23.250.) ELECTION AND TERM OF MAYOR. (a) A voter of a home rule or general law city is eligible to hold the office of mayor, except that a home rule city may prescribe additional residency requirements by charter. The council, for all other cities, may by ordinance establish residence requirements for candidates for mayor not exceeding three years.

(b) The mayor of a first class city is elected at large for a term of three years and until a successor is elected and has qualified. The council may provide by ordinance for a different term not to exceed four years, except that the current term of an incumbent mayor may not be altered.

(c) The mayor of a second class city is elected by and from the council for a term of one year and until a successor is elected and has qualified.

(d) The mayor's regular term begins on the first Monday following certification of the mayor's election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately.

Sec.29.24.350. (Sec. 29.23.255) REMOVAL FROM OFFICE. The council may, with concurrence of two-thirds of its members, remove the mayor from office for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The council shall consider the conviction during its first meeting following final determination of the conviction.

Sec. 29.24.360. (Sec. 29.23.260.) MAYOR'S VOTE. (a) The mayor of a first class city is not a council member and may vote only in the case of a tie.

(b) The mayor of a second class city is a council member and may vote on all matters.

Sec. 29.24.370. (Sec. 29.23.270.) VETO. (a) The mayor of a first class city may veto any ordinance, resolution, motion, or other action of the council and may, by veto, strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items. He shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons. A veto is overridden by the vote of two-thirds of the authorized membership of the council.

(b) The mayor of a second class city has no veto power.

Sec. 29.24.380. (Sec. 29.23.280.) FILLING A VACANCY. (a) In a first class city, a vacancy in the office of mayor occurring within six months of a regular election shall be filled by the council. The person designated shall serve until the next regular election and until a successor is elected and has qualified. If a councilman is chosen, he shall resign his council seat. If a vacancy occurs more than six months before a regular election, the council shall call a special election to fill the unexpired term.

(b) In a second class city, a vacancy in the office of mayor is filled by and from the council.

Sec. 29.24.390. (Sec. 29.23.290.) POWERS AND DUTIES OF A CITY MANAGER. If the city has a manager, he is the chief administrative officer. The manager shall

(1) appoint city employees and administrative officers, except as provided otherwise in Sec. 480 (Sec. 360) of this chapter and AS 14.14.065; he may hire necessary administrative assistants and may authorize an appointive administrative officer to appoint, suspend, or remove subordinates in his department;

LA-L 20

(2) suspend or remove by written order city employees and administrative officers, except as provided otherwise in Sec. 480 (Sec. 360) of this chapter and AS 14.14.065;

(3) supervise enforcement of city law;

(4) prepare the annual budget and capital improvement program for the council;

(5) execute the budget and capital program as adopted;

(6) make monthly financial reports to the council on city finances and operations;

(7) report to the council at the end of each fiscal year on the finances and administrative activities of the city;

(8) prepare and make available for public distribution an annual report on city affairs;

(9) serve as city personnel officer unless the council authorizes him to appoint a personnel officer;

(10) execute other powers and duties specified in this title or lawfully prescribed by the council.

## Article 6. SCHOOL BOARDS

(Article 5. SCHOOL BOARDS)

Sec. 29.24.420. (Sec. 29.23.310.) ELECTION. Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished as provided by (Sec. 100) of this chapter.

## Article 7. UTILITY BOARDS

(Article 6. UTILITY BOARDS)

Sec. 29.24.450. (Sec. 29.23.340.) UTILITY BOARDS. (a) The assembly or council of a municipality operating a public utility may provide by ordinance for a managing board of five members and define the board's powers and duties.

(b) As determined by ordinance, members of the board are appointed by the municipal executive and confirmed by the assembly or council or are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. The term of a utility board member is two years and until a successor is selected and has qualified. However, the assembly or council may by ordinance provide for a different term not to exceed four years and not altering the current term of an elected incumbent.

(c) Vacancies in the board are filled by the municipal executive. Executive appointments shall be confirmed by the assembly or council. A person selected to fill a vacancy on a utility board serves until the expiration of the term and until a successor is elected and has qualified.

(d) Unless otherwise provided by ordinance, the board shall

(1) choose its chairman and secretary;

(2) appoint the manager of the public utility for a term not longer than five years and set his salary;

(3) formulate and enforce the general rules and policies of the utility.

## Article 8. OTHER OFFICERS AND EMPLOYEES

(Article 7. OTHER OFFICERS AND EMPLOYEES)

Sec. 29.24.480. (Sec. 29.23.360.) APPOINTMENT OF OFFICERS. The municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrator or by the assembly or council, as determined by

ordinance. Officers serve at the pleasure of the appointing authority, subject to ordinance Appointments by the chief administrator are subject to confirmation by the governing body.

Sec. 29.24.490. (Sec. 29.23.370.) MUNICIPAL ATTORNEY. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

Sec. 29.24.500. (Sec. 29.23.380.) MUNICIPAL CLERK. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

Sec. 29.24.510. (Sec. 29.23.390.) MUNICIPAL TREASURER. (a) The treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the assembly or council directs.

Sec. 29.24.520. (Sec. 29.23.401.) APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS. (a) Notwithstanding AS 39.05.100 or a provision of law relating to age, the municipal appointing authority for a municipal board or commission may appoint a 17-21 year old municipal resident to the board or commission if recommended by the commission, established in AS 29.68.020 (Sec. 397) of this chapter.

(b) A young person recommended by the commission may be appointed to a municipal board or commission having special qualifications for membership if the proposed nominee, except for his age, meets the required qualifications set by law.

(c) An individual appointed to a municipal board or commission under this section is entitled to the rights, privileges and responsibilities of other members, and his appointment is subject to confirmation by the governing body when required by law.

(d) No additional seat on a municipal board or commission is created by virtue of AS 29.68 (Secs. 395-401) of this chapter.

Article 9. ADOPTION OR REPEAL OF MANAGER PLAN

(Article 8. ADOPTION OR REPEAL OF MANAGER PLAN)

Sec. 29.24.550. (Sec. 29.23.410.) APPLICATION. A municipality may adopt a manager plan of government.

Sec. 29.24.560. (Sec. 29.23.420.) PETITION. Adoption of a manager plan may be initated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council. The petition must be signed by a number of municipal voters equal to the following per cent of the votes cast at the preceding regular election:

(1) 25 percent when the municipality has fewer than 7,500 persons;

(2) 15 percent when the municipality has 7,500 persons or more.

Sec. 29.24.570. (Sec. 29.23.430.) ELECTION. Upon receipt of the petition or upon its motion, the assembly or council shall provide by ordinance or resolution for a vote on the question at the next regular or special election. Notice of the election shall be published at least 30 days before the election.

Sec. 29.24.580. (Sec. 29.23.440.) ADOPTION. (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

Sec. 29.24.590. (Sec. 29.23.450.) APPOINTMENT. The assembly or council shall appoint a manager by a majority vote of its membership. He is chosen solely on the basis of his executive and administrative qualifications and receives the compensation set by the assembly or council. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the assembly or council may at any time appoint one of its members or other elected municipal officials as manager.

Sec. 29.24.600. (Sec. 29.23.460.) TERM. Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council.

Sec. 29.24.610. (Sec. 29.23.470.) APPOINTMENT OF TEMPORARY OR NEW MANAGER. In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office becomes vacant, the assembly or council shall appoint a new manager.

Sec. 29.24.620. (Sec. 29.23.480.) REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. At its first

meeting after repeal, the assembly or council shall enact provisions for the reorganization of the municipal executive and chief administrator.

Article 10. MISCELLANEOUS PROVISIONS

(Article 9. MISCELLANEOUS PROVISIONS)

Sec. 29.24.650. (Sec. 29.23.500.) OATHS OF OFFICE. Municipal officers, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk.

Sec. 29.24.660. (Sec. 29.23.520.) BONDING. The administrator and the other municipal officers or employees which the assembly or council may designate shall give bond in the amount and with the surety prescribed by the assembly or council. Premiums on bonds are paid by the municipality.

Sec. 29.24.670. (Sec. 29.23.530.) SALARIES OF ELECTED OFFICERS. The assembly or council shall fix by ordinance the salaries of elected officers. The salary of the mayor may not be reduced during his term of office. An elected officer may not receive any other compensation for service to the municipality. Per diem payments or reimbursements for expenses are not compensation under this section.

Sec. 29.24.680. (Sec. 29.23.540.) PROHIBITIONS. (a) No person may be appointed to or removed from municipal office or in any way favored or discrimininated against with respect to a municipal position because of his race, color, sex, creed, national origin or, unless otherwise contrary to law, because of his political opinions or affiliations.

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

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general

election. However, no school district employee may serve on a school district board in the school district where he is employed. ~~Provisions of this section do not apply to term of office in effect on August 24, 1976.~~

(d) For purposes of this section a school district employee is not a municipal employee.

Sec. 29.24.690. (Sec. 29.23.550.) PERSONNEL SYSTEM. All appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system.

Sec. 29.24.700. (Sec. 29.23.560) REPORTS. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) repealed.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, toegther with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 (AS 29.88) and state aid for miscellaneous municipal services under AS 29.62 (AS 29.89). The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

Sec. 29.24.710. (Sec.29.23.570.) VACANCIES. An elected municipal office is vacated under the following conditions and upon the declaration of

vacancy by the assembly or council. The assembly or council shall declare an elective office vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) is physically absent from the municipality for a 90-day period unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) is removed from office;

(6) misses three consecutive regular meetings unless excused; or

(7) is convicted of a felony or of an offense involving a violation of his oath of office.

## CHAPTER 27. MUNICIPAL ENACTMENTS

(CHAPTER 48, Article 3. MUNICIPAL ENACTMENTS)

Sec. 29.27.010. (Sec. 29.48.130.) ACTS REQUIRED TO BE BY ORDINANCES. (a) In addition to other actions which this title requires to be by ordinance, the assembly or council of a municipality shall use ordinances to

(1) establish, alter or abolish municipal departments;

(2) fix the compensation of members of the assembly or council;

(3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;

(4) provide for the levying of taxes;

(5) make appropriations ~~and~~ except supplemental appropriations or transfer appropriations;

(6) grant, renew, or extend a franchise;

(7) regulate the rate charged by a public utility;

(8) adopt, modify or repeal the comprehensive plan, ~~zoning~~ land use regulations and subdivision ordinances, building and housing codes, and the official map;

(9) approve the transfer of a power to a borough from a city;

(10) designate the borough seat;

(11) provide for the retention or sale of tax-foreclosed property.

(12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

(b) This section grants no authority but requires the assembly or council to use ordinances in exercising certain of its powers.

Sec. 29.27.020. (Sec. 29.48.140.) FORM OF ORDINANCES. Ordinances are introduced in writing in the form required by the assembly or council.

Sec. 29.27.030. (Sec. 29.48.150 ) ORDINANCE PROCEDURE. (a) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the assembly or council or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance and its amendments is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The assembly or council shall hear all interested persons wishing to be heard. After the hearing, the assembly or council shall consider the ordinance and may adopt it with or without amendment. The assembly or council shall print and make available copies of adopted ordinances.

(b) Ordinances take effect upon adoption or at a later date specified in the ordinance.

Sec. 29.27.040. (Sec. 29.48.160.) EMERGENCY ORDINANCES. (a) To meet a public emergency the assembly or council may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the assembly or council that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The assembly must print and make available copies of adopted emergency ordinances.

(b) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility for its services.

(d) Also this section "emergency" powers

(c) Emergency ordinances are effective for 60 days.

Sec. 29.27.050. (Sec. 29.48.170.) CODES OF REGULATION. The assembly or council may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The assembly or council shall provide for the adopted code to be sold to the public. 1 cr provided at ~~cost~~ no charge. as determined by the assembly or council.

Sec. 29.27.060. (Sec. 29.48.180.) CODIFICATION. (a) Each ordinance after adoption shall be codified.

(b) Within three years after incorporation of the municipality, the municipal ~~executive~~ clerk or designee, ~~with the advice and assistance of a legal advisor~~, shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

(c) In (a) of this section, "codified" means

(1) the ordinance has been given a serial number or other permanent identifying number and, bearing a notation of the date of adoption and the designation of the adopting authority, it has been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision which establishes a rule of conduct or behavior and which is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

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

Sec. 29.27.070. (Sec. 29.48.185.) RESOLUTIONS. The assembly or council shall provide for the maintenance of a permanent file of resolutions that have been adopted.

Sec. 29.27.080. (Sec. 29.48.200.) PENALTIES. For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed a fine of $500 (1000) or imprisonment for 30 days (6 months), or both. However, the punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost.

use keng from zoning material for civil

(5 days) Kodak case - allow for mandatory ~~sentencing~~ jail time not to exceed 5 days by ordinance.

The assembly or council for minimum and non-suspendable )

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# CHAPTER 30. ELECTIONS

(CHAPTER 28. ELECTIONS)

## Article 1. REGULAR AND SPECIAL ELECTIONS

Sec. 29.30.010. (Sec. 29.28.010.) ADMINISTRATION. (a) The borough assembly or city council shall prescribe the general rules for conducting municipal elections and appoint at least three judges for each polling place. The municipality may not alter voter qualification requirements of this title.

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

Sec. 29.30.020. (Sec. 29.28.015.) NOMINATIONS. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Sec. 29.30.030. (Sec. 29.28.020.) ELECTION DATES. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

(b) The assembly or council may call a special election upon at least 20 days notice.

Sec. 29.30.040. (Sec. 29.28.030.) VOTER QUALIFICATION. A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities.

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Sec. 29.30.050. (Sec. 29.28.040.) MAJORITY ELECTIONS. If in a municipal election no candidate receives in excess of 40 per cent of the votes cast for his respective office, the assembly or council shall hold a runoff election within two weeks from the date of certification of the election between the two candidates receiving the greatest number of votes for the office. Notice of a runoff election shall be published at least five days before the election. The assembly or council may by ordinance require a majority vote for election of officials. A runoff election or other means of obtaining a majority may be used.

Sec. 29.30.060. (Sec. 29.28.050.) ELECTION CONTEST AND APPEAL. (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the assembly or council, by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the

superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.24.150 [AS 29.23.060(c)], of a member of a city council under AS 29.24.290(b) [29.23.210(b)], of a borough mayor under AS 29.24.200(f) [29.23.130(f)], or of a city mayor under AS 29.24.350 (29.23.255) is final and is not subject to judicial review.

Article 2. INITIATIVE AND REFERENDUM

Sec. 29.30.090. (Sec. 29.28.060.) RESERVATION OF POWERS. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by Sec. 7, art. XI, of the state constitution.

Sec. 29.30.100. (Sec. 29.28.062.) PETITION. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election.

Sec. 29.30.110. (Sec. 29.28.065.) CONTENTS OF PETITION. A petition for an initiative or referendum shall

(1) embrace only a single comprehensive subject;

(2) set out fully the ordinance or resolution sought by the petition;

(3) state upon the petition, when circulated, the date of first circulation of the petition;

(4) contain the statement, when circulated, that the signatures on the petition must be secured within 90 days from the date of the first circulation;

(5) have the required signatures, dates of signatures and resident addresses of the signers.

Sec. 29.30.120. (Sec. 29.28.070.) REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 90 days from the date of the first circulation of the petition. The petition shall be signed in ink or indelible pencil.

(b) Every petition for either the initiative or referendum in the government of a municipality shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities or to a service area, by a number of qualified voters residing within the area outside cities or within the service area, as the case may be, equal to the following percent of the total number of votes cast at the last general election in the city or borough or borough area concerned, or special election called for the purpose of electing city or borough officers:

(1) 25 percent, when a city or borough has fewer than 7,500 persons, or

(2) 15 percent, when a city or borough has 7,500 persons or more.

(c) When signing a petition each voter shall write or print after his signature the date of signing the petition and his resident address.

(d) Illegible signatures unless accompanied by a legible printed name may be rejected by the municipal clerk.

(e) A petition signer may withdraw his signature upon written application to the clerk within seven days after the petition has been filed with the clerk.

Sec. 29.30.130. (Sec. 29.28.073.) SUFFICIENCY OF PETITION. (a) Within 10 days from the filing date, the municipal clerk shall certify on petition whether or not it is sufficient.

(b) If the petition is insufficient, it may be amended or supplemented within 10 days after the date on which the petition is rejected as insufficient.

(c) Within 10 days after supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

Sec. 29.30.140. (Sec. 29.28.075.) PROTEST. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting to the assembly or council which shall hear and decide the protest.

Sec. 29.30.150. (Sec. 29.28.077.) NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

Sec. 29.30.160. (Sec. 29.28.080.) PRESENTATION OF INITIATIVE. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council and not otherwise restricted by Sec. 60 of this chapter, the clerk shall present it to the assembly or council at its next meeting after certification. The assembly or council may reject the petition if the subject matter of the initiative or referendum is within the restrictions of Sec. 090 (Sec. 60) of this chapter.

(b) Unless the petition is granted within 30 days of its submission to the assembly or council, the clerk shall, with the assistance of the municipal attorney, prepare an ordinance or resolution to implement the petition and shall submit it to the voters at the next regular election. The ordinance or resolution shall be published in full in the notice of election but may be summarized on the ballot to indicate clearly the

LA-Lp20posal submitted.

(c) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared.

(d) The assembly or council may at any time not less than 10 days from the date of election adopt an ordinance or resolution to implement the petition. In that event an election shall not be held.

Sec. 29.30.170. (Sec. 29.28.090.) PRESENTATION OF REFERENDUM. (a) When a petition seeks a referendum vote on an ordinance or resolution, the clerk shall submit the ordinance to the voters of the municipality at the next regular or special election. If no regular or special election occurs within 75 days of the filing of a sufficient petition with the clerk, the assembly or council shall hold a special election within 75 days of filing.

(b) If a sufficient petition for referendum is filed within 30 days after final passage of the ordinance, or before the effective date of the ordinance, the ordinance against which the petition is filed shall be suspended pending the referendum on the ordinance. During the period of suspension the assembly or council may not enact an ordinance substantially similar to the suspended ordinance but may repeal the suspended ordinance.

(c) If a majority of those voting favor the referendum legislation, it remains in effect. If a majority rejects the legislation, it is repealed. A municipal charter may be amended as provided in the charter or by initiative and referendum as provided in Secs. 090-180 (Secs. 60-110) of this chapter.

Sec. 29.30.180. (Sec. 29.28.110.) EFFECT. (a) The assembly or council may not, within two years, act in any way to modify or negate the effect of a successful initiative or referendum. If an ordinance against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum, the council or assembly may not enact substantially similar legislation for a period of one year after repeal.

(b) An unsuccessful initiative or referendum precludes the filing of a new petition for the same purpose sooner than six months after voter disapproval of the initiative or referendum.

Article 3. RECALL

Sec. 29.30.210. (Sec. 29.28.130 ) RECALL. An elected official of a home rule or general law municipality may be recalled by the voters after he has served six months in office.

Sec. 29.30.220. (Sec. 29.28.140.) GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

Sec. 29.30.230. (Sec. 29.28.150.) PETITION. (a) A petition seeking recall of one or more municipal officials is filed with the municipal clerk. The petition shall contain

(1) the signatures and resident addresses of a number of voters as prescribed in Sec. 120(b) [Sec. 70(b)] of this chapter for initiative and referendum;

(2) the date each voter signed the petition; and

(3) a statement of the grounds of the recall stated with particularity as to specific instances.

(b) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition.

Sec. 29.30.240. (Sec. 29.28.160.) EXAMINATION FOR SUFFICIENCY. The municipal clerk shall review the petition for content and signatures and shall certify on the petition within 10 days of the filing date whether it is accepted or rejected. Until the petition is accepted, a petition signer may withdraw his signature upon written application to the clerk.

Sec. 29.30.250. (Sec. 29.28.170.) SUPPLEMENTAL PETITION. (a) If the petition is rejected because of insufficient signatures, it may be supplemented by additional signatures within 10 days after the date of rejection. If the petition is insufficient for any other reason, it shall be rejected and filed as a public record.

(b) Within 10 days after supplementary filing, the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

Sec. 29.30.260. (Sec. 29.28.180.) NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new recall petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

Sec. 29.30.270. (Sec. 29.28.190.) SUBMISSION. If a recall petition is sufficient, the clerk shall immediately submit it to the assembly or council.

Sec. 29.30.280. (Sec. 29.28.200.) ELECTION. (a) If a regular election occurs within 75 days of the submission, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days of submission.

(c) If a vacancy occurs in the office after a recall petition is filed, the petition shall not be submitted to the voters.

Sec. 29.30.290. (Sec. 29.28.210.) FORM OF RECALL BALLOTS. A recall ballot contains:

(1) the grounds as stated in the recall petition;

(2) the officer's statement of 200 words or less, if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? Yes [ ] No [ ]".

Sec. 29.30.300. (Sec. 29.28.220.) ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular election.

Sec. 29.30.310. (Sec. 29.28.230.) MAJORITY REQUIRED. A majority vote on the question is required to recall an officer.

Sec. 29.30.320. (Sec. 29.28.240.) EFFECT. If an incumbent is not recalled at the recall election, a petition to recall the same incumbent may not be filed sooner than six months after the recall election.

Sec. 29.30.330. (Sec. 29.28.250.) ELECTION OF SUCCESSOR. If the voters recall an officer, the clerk shall conduct an election for a successor to fill the unexpired term. The election shall be held at least 10 but not more than 45 days from the date of the recall election. However, if a regular or special election occurs within 75 days of the recall election, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section.

## CHAPTER 33. POWERS AND DUTIES APPLICABLE TO HOME RULE AND GENERAL LAW MUNICIPALITIES

## (CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

### Article 1. GENERAL POWERS

Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments; in impose laws for the enforcement thereof

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property, ~~for a purpose~~ authorized under this title, ~~federal law, or other law, or in accordance with such law;~~ and irrespective of whether or not the property ~~is~~ situated within or outside the municipal boundaries; this power includes the power of a second class borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

Sec. 29.33.010(1) (Sec. 29.23.510.) COMBINING OFFICES. The assembly or council may combine two or more appointive or administrative offices.

Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL JURISIDICTION. (a) A municipality may provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, and airports outside its boundaries, subject to AS 29.36.010 (AS 29.33.010), and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030. (Sec. 29.73.020.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460. In the case of a second class city, before exercising the power, the council shall request or petition the Department of Community and Regional Affairs for permission to exercise the power. The council may not exercise the power of eminent domain or declaration of taking without the formal approval of the Department of Community and Regional Affairs. The exercise of the power of eminent domain or declaration of taking shall be by ordinance which shall be submitted to the qualified voters at the next regularly scheduled general

election or special election called for that purpose. A majority of the qualified voters voting on the question is required for approval of the ordinance.

Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.36.100 (AS 29.33.260).

(c) AS 29.36.170-29.36.200 (AS 29.38.020-29.38.050) are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President, but these powers may be extended for an additional period of not more than three years.

Article 2. FACILITIES, SERVICES AND REGULATION

Sec. 29.33.070. (Sec. 29.48.030.) ~~MUNICIPAL~~ FACILITIES ~~AND~~ SERVICES. (a) A municipality may exercise the powers necessary to provide the following ~~public~~ facilities and services:

(1) streets and sidewalks;

(2) sewers and sewage treatment facilities;

(3) harbors, wharves, and other marine facilities;

(4) watercourse and flood control facilities;

(5) health services and hospital facilities;

(6) cemeteries;

(7) police protection and jail facilities;

(8) cold storage plants;

(9) telephone systems;

(10) light, power and heat;

(11) water;

(12) transportation systems;

(13) community centers;

(14) libraries, visual or performing arts centers, or museums;

(15) recreation facilities;

(16) airport and aviation facilities;

(17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 (Sec. 33) of this chapter;

(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;

(19) parking and parking facilities;

(20) housing and urban renewal, rehabilitation and development;

(21) preservation, maintenance and protection of historic sites, buildings and monuments;

move to regulation → (22) consumer protection;

(23) emergency medical services and facilities.

(24) ~~any program determined to b~~ to perform any public purpose.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-130 (AS 29.33.250-29.33.290) for areawide exercise or in the manner required under AS 29.36.160-29.36.200 (AS 29.38.010-29.38.050) for exercise in the borough area outside cities or are conferred by (Sec.20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17) and (20),

in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.080. (Sec. 29.48.033.) GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance; award contracts for collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political

subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by Sec. 6 ch 76 SLA 1973.

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

re-write - preserve (b) @all with cross-references

Sec. 29.33.090. (Sec. 29.48.035.) REGULATORY POWERS. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

(4) transportation fares;

(5) licensing, impounding and disposition of animals;

(6) selling of goods;

(7) selling of food;

(8) abandoned property;

(9) dangerous and disorderly conduct;

(10) alcoholic beverages as provided by AS 04.15.070;

(11) recreational devices as provided by AS 05.20.100;

(12) control of insects and rodents;

(13) offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(14) building, housing and related codes, which may be provided by cities within cities or, in the manner required in (b) or (c) of this section, by first or second class boroughs in the borough area outside cities or areawide, subject to the following;

(A) exceptions to requirements of the codes may be made in the codes among other reasons, in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments;

(B) codes may not be used to prohibit or restrict the development or use of solar or wind energy unless the assembly or council finds that the development or use of solar or wind energy would endanger the health or safety of the public;

(15) condemnation and abatement of public nuisances and hazards;

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

(17) water pollution control;

(18) air pollution control as provided in AS 46.03.140-46.03.240;

(19) ~~other powers and functions~~ any activity affecting the general health, safety, well-being and welfare of its inhabitants;

(20) licensing of day care facilities.

(21) consumer protection

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-29.36.130 (AS 29.33.250-29.33.290) for areawide exercise or in the manner required under AS 29.36.160-29.36.200 (AS 29.38.010-29.38.050) for exercise in the borough area outside cities

or are conferred by (Sec. 20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (15) (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Add to extraterritorial jurisdiction

Sec. 29.33.100. (Sec. 29.48.040.) MUNICIPALLY-OWNED UTILTIES. A municipality owning or operating utilities may extend service to adjacent areas outside its municipal limits. For that purpose the municipality may acquire, maintain and operate utility facilities together with necessary real property interests in real property outside its limits. This section applies to home rule and general law municipalities.

Add Gen. power plant

Sec. 29.33.110. (Sec. 29.48.050.) FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, ~~for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by~~ ordinance.

Leave in

(b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least ~~55 percent~~ a majority of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The

ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission.

~~Sec.~~ 29.33.120. (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS. 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

Not in House (municipally owned utilities to the extent not prohibited by)

Sec. 29.33.130. (Sec. 29.48.070.) HEARING FOR REGULATION OF UTILITIES RATES. If the assembly or council considers it advisable to regulate, change, or fix the rates to be charged by a public service corporation, association or individual not regulated under AS 42.05, it shall order a hearing to be held before the governing body at a time and place specified. Notice of the hearing shall be given by at least one publication in a newspaper of general circulation distributed within the municipality or, if no newspaper of general circulation is distributed within the municipality,

notice shall be given by posting a notice in three public places within the city or borough area outside cities receiving the utilities services and by serving written notice upon the corporations, associations and individuals whose rates are to be regulated, fixed, or changed in the same manner that summonses are served. The notices shall be published or posted and served at least 15 days before the hearing.

Sec. 29.33.140. (Sec. 29.48.080.) RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. At a hearing held under Sec. 70 of this chapter, all public service corporations, associations, or individuals affected by or interested in the matters to be heard may be present and may be represented by counsel. The municipality and all interested parties may produce witnesses and examine them and introduce evidence to prove or disprove the facts in issue or matters to be established or inquired into at the hearing. All parties may compel the attendance of witnesses, and subpoenas requiring attendance shall be issued by the municipal clerk under his hand and the seal of the municipality. Subpoenas duces tecum requiring the production of books and papers shall be issued in like manner upon request. If a person fails to obey a subpoena, the party at whose request the subpoena issued may petition the superior court for an order compelling the attendance of the disobedient witness or the production of the books or papers referred to in a subpoena duces tecum. The superior court shall order the witness to appear and testify or compel the production of the books or papers. A violation of the order of the court is a contempt of court. If a witness appears and refuses to testify concerning a matter material to the facts inquired about at the hearing and to establish or determine which the hearing was had, an application may be made to the superior court to compel the witness to testify and answer questions put to him concerning the matters inquired about, and the court shall make an order compelling the witness to testify. Violation of the order is contempt of court.

Sec. 29.~~33.090~~. (Sec. 29.48.090.) FURTHER PROCEEDINGS. A hearing under Sec. 70 of this chapter shall begin at the time stated in the notice but may be continued from time to time. At least a quorum of the assembly or council shall be present at the hearing. At the conclusion of the hearing the parties interested may make such arguments before the assembly or council, either in person or by attorney, as they consider proper, touching the matters at issue, and thereafter the assembly or council shall proceed to regulate and fix the rates by ordinance. The date upon which the rates fixed or regulated take effect shall be stated in the ordinance and shall be at least 10 days after passage and approval of the ordinance.

~~Sec. 29.33.100~~. (Sec. 29.48.100.) APPLICATION. (a) In the case of conflict between the provisions of Secs. 110-130 (Secs. 50-70) of this chapter and the provisions of AS 42.05 as to the regulation of rates of a utility, the provisions of AS 42.05 shall prevail.

(b) Sections 110-160 (Sections 50-100) of this chapter apply to home rule and general law municipalities.

Article 3. FISCAL DUTIES

Sec. 29.33.190. (Sec. 29.48.250.) CENTRALIZED PURCHASING. The assembly or council may provide for centralized purchasing, storage and distribution of supplies, material and equipment for the municipality and its departments.

Out Sec. 29.33.200. (Sec. 29.48.260.) MUNICIPAL PROPERTIES. (a) A municipality may acquire and hold real and personal property or interest in property, and may sell, lease or otherwise dispose of property no longer required for municipal purposes.

(b) Notwithstanding the provisions of (c) of this section, a municipality may sell, lease, donate or exchange with the United States, the state, or a political subdivision real estate or other property, or interest in property, when in the judgment of the assembly or council it is advantageous to the municipality to do so.

(c) The assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, or posted within that time in at least three public places in the municipality (3) public auction or opening of sealed bids, if any; and (4) other terms and conditions fixed by the assembly or council. However, no ordinance for the sale, lease, or disposition of real property or interest in real property valued at $25,000 or more is valid unless ratified by a majority of the qualified voters voting at a regular or special election at which the question of the ratification of the ordinance is submitted. Thirty days notice shall be given of the election and during that period the assembly or council shall have published at least once a week in a newspaper of general circulation distributed within the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, and stating the title and date of passage of the ordinance. Notice shall also be given by posting a copy of it in at least three public places in the municipality at least 30 days before the election. If no newspaper of general circulation is distributed within the municipality, the notice given by posting is sufficient for the purposes of this section.

(d) The assembly or council ~~may~~ shall by ordinance establish a formal procedure for acquisition ~~from the state~~ or disposal of land ~~or rights~~ and interests in land, ~~and the disposal of the land or rights in land, in which event the provisions of (c) of this section do not apply.~~ except that if no ~~completing~~ by competitive means process is used must be by ordinance.

(e) A municipality, in order to make sites available for beneficial new industries, may acquire and hold real property, either inside or outside

the corporate limits, and may sell, lease or dispose of it to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality.

(f) A deed, contract of sale, lease, or other instrument evidencing disposition by a borough of land or interest in land classified by the borough as agricultural land shall include, among other terms, conditions and limitations which may be required by law or which the assembly may elect to include, a condition that the land is restricted to agricultural use. The assembly may not by subsequent action waive or abrogate the condition for a period of 50 years. An abrogation of the restriction to agricultural use after the 50-year period requires the consent of any party having an interest in the land. The assembly shall provide for enforcement by appropriate legal means, including but not limited to forfeiture of the purchaser's interest for violation of the condition.

Sec. 29.33.210. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may ~~by ordinance~~ approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

misleading - unconstitutional if not for capital project

(b) A bond, contract, lease, or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year shall be made or approved by ordinance adopted by a majority of the votes authorized on the question.

(c) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

(d) Nothing in this section is intended to prevent the authorizing of payment or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds.

Sec. 29.33.220. (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues ~~levied and collected on an~~ received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Revenues ~~levied and collected~~ received through taxes collected on a borough in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to unified municipalities.

Sec. 29.33.230. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33.260. (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.270. (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.280. (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

## CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES

## (CHAPTER 33. AREAWIDE BOROUGH POWERS AND DUTIES)

### Article 1. SCOPE

Sec. 29.36.010. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

### Article 2. MANDATORY AREAWIDE POWERS AND DUTIES

(Chapter 33, Article 2. ASSESSMENT AND COLLECTION OF TAXES)

Sec. 29.36.040. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.050. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

Cross reference - Boroughs shall provide for as provided in AS

Sec. 29.36.060. (New Section) PLANNING, PLATTING, AND ZONING.

Article 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS

(Chapter 33. Article 5. ADDITIONAL AREAWIDE POWERS)

Sec. 29.36.090. (Sec. 29.33.250.) ADDITIONAL AREAWIDE POWERS. First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.33.070 (AS 29.48.030) and AS 29.33.080 [29.48.035(b)].

Sec. 29.36.100. (Sec. 29.33.260.) TRANSFER BY CITY. (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities.

Sec. 29.36.110. (Sec. 29.33.270.) PETITION FOR POWER. An election on the question of adding an areawide power may be initiated in two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the borough at the preceding regular election may file a petition with the assembly, or

(2) the assembly may propose the acquisition of the power.

Sec. 29.36.120. (Sec. 29.33.280.) INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.130. (Sec. 29.33.290.) ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

## Article 4. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES

(CHAPTER 38. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES

Sec. 29.36.160. (Sec. 29.38.010.) FIRST CLASS BOROUGH. The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. (Sec. 29.38.020.) SECOND CLASS BOROUGH. The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 (AS 29.48.020), or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. (Sec. 29.48.020.) SECOND CLASS BOROUGH POWERS OUTSIDE CITIES. [NOTE: THIS SECTION HAS BEEN COMBINED WITH SEC. 29.38.020] A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080 (Sec. 33) of this chapter;

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(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy. (8) tax, spend, and regulate for the purpose of promoting industrial development

Sec. 29.36.180. (Sec.29.38.030.) ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the area outside cities at the preceding regular election may file a petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. (Sec. 29.38.040.) INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. (Sec. 29.38.050.) ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

## Article 5. POWERS OF THIRD CLASS BOROUGHS

(CHAPTER 41. POWERS OF THIRD CLASS BOROUGHS)

Sec. 29.36.230. (Sec. 29.41.010.) POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized. those under AS 29.33.010

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.42.010-29.42.150 (AS 29.33.070-29.33.245) for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided by (AS 29.63.090) for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200-29.51.510 (AS 29.58.150-29.58.340).

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military

reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.240. (Sec. 29.41.020.) ASSEMBLY TO SERVE AS SCHOOL BOARD. The borough assembly is the borough school board for third class boroughs. The borough executive is the presiding officer of the borough assembly and president of the school board. The borough executive has all powers of a borough executive except for the veto power.

Article 6. SERVICE AREAS

Sec. 29.36.270. (Sec. 29.63.090) SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election. upon petition signed by the owners of qualified voters reside within the area, upon written consent of 100% of the owners

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be

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provided by an existing service area, by annexation to a city, or by incorporation as a city.

## CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS

(CHAPTER 43. POWERS OF CITIES OUTSIDE BOROUGHS

Sec. 29.39.010. (Sec. 29.43.010.) ADDITIONAL POWERS. In addition to the powers granted by (ch. 48) of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. (Sec. 29.43.020.) ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 (ch. 53) of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 (ch. 53) of this title for boroughs.

Sec. 29.39.030. (Sec. 29.53.405) DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.39.040. (Sec. 29.43.030.) EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 (AS 29.33.050) for boroughs.

Sec. 29.39.050. (Sec. 29.43.040.) PLANNING AND ZONING. (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may, provide for planning, platting and zoning, as provided by AS 29.42.010-29.42.245 (AS 29.33.070-29.33.245) for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may, provide for planning, platting and zoning, as provided by AS 29.42.010-29.42.150 (AS 29.33.070-29.33.245) for boroughs.

Sec. 29.39.060. (Sec. 29.43.100.) EXTENSION OF CURFEWS OUTSIDE CITIES. The provisions of a curfew ordinance enacted by a city of any class concerning minors shall be imposed in the total area within 20 miles of the limits of that city. If a given area lies within 20 miles of two or more cities with conflicting curfew ordinances, the provisions of the curfew ordinance of the city having the largest population prevails as to the overlapping area.

Sec. 29.39.070. (Sec. 29.43.105.) ENFORCEMENT OF CURFEWS. (a) The municipal peace officers shall enforce the provisions of the ordinance inside the city limits. Under AS 29.39.060-29.39.080 (AS 29.43.100 - 29.43.110) the state peace officers shall enforce the provisions of the ordinance in the area outside the city limits.

(b) In an area where state peace officers are not available, the municipal peace officer may enforce the provisions of the ordinance in the area outside the city limits if the enforcement responsibilities are delegated by contract between the state and the municipality.

Sec. 29.39.080. (Sec. 29.43.110.) PENALTY FOR VIOLATION OF CURFEW. The penalty for violation of AS 29.36.060-29.36.080 (AS 29.43.100 29.43.110) is as prescribed by the curfew ordinance of the city, and a fine so paid shall be paid to the city when the violation takes place in the city. Otherwise the fine shall be paid to the state. However, the penalty shall not exceed a fine of $300, or imprisonment for 30 days, or both.

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allow enforce state law let state set curfew

CHAPTER 42. PLANNING, PLATTING AND ZONING

(Chapter 33. Article 4. PLANNING, PLATTING AND ZONING)

Sec. 29.42.010. (Sec. 29.33.070.) PLANNING, PLATTING AND ZONING. (a) First and second class boroughs shall provide for planning, platting and zoning on an areawide basis.

(b) The assembly by ordinance may

(1) designate the council of a city within the borough as a board of adjustment within the city;

(2) delegate other planning and zoning powers conferred by this chapter to a city within the borough;

(3) revoke or modify any part or all of the powers delegated under this subsection.

Sec. 29.42.020. (Sec. 29.33.080.) PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

(b) The commission shall prepare and recommend to the assembly

(1) a comprehensive plan consisting of maps and related texts for the systematic development of the borough;

(2) a zoning ordinance to implement the plan;

(3) a subdivision ordinance;

(4) the official map of the borough;

(5) modifications to the documents specified in (1)-(4) of this section.

(c) The commission shall publish notice of and hold at least one hearing before submitting its recommendations under (b) of this section to the assembly.

(d) The commission shall

(1) act as the platting board;

(2) act upon requests for variances;

(3) act upon requests for conditional uses.

(e) Subject to Sec. 150 (Sec. 245) of this chapter, no platting request, variance or conditional use may be granted except upon an affirmative vote of a majority of the commission.

(f) The commission shall designate its presiding officer and shall meet as frequently as is necessary. The commission shall establish , subject to approval by the assembly, rules and regulations for the conduct of its meetings. Meetings shall be public and minutes shall be kept. Minutes and records shall be filed with the municipal clerk and retained as public records.

(g) Exceptions may be granted to building, housing and related codes by the planning commission when an applicant for an exception demonstrates that the exception will result in increased energy efficiency, unless the planning commission determines that the exception would endanger the health or safety of the public.

Sec. 29.42.030. (Sec. 29.33.085.) COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to,

the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

(b) The assembly shall adopt a comprehensive plan based upon the recommendations of the planning commission. The assembly may modify the plan, provided that it first obtains the recommendations of the planning commission. The planning commission shall undertake an overall review of the plan at least once every two years and shall present recommendations based on the review to the assembly.

Sec. 29.42.040. (Sec. 29.33.090.) ZONING. (a) In accordance with the comprehensive plan, the assembly shall regulate and restrict the use of land and improvements by districts or contract zoning to permit specific uses provided for in the contract. Regulations shall be uniform for each class or kind of building, structure, land or water area within each district, but the regulations may differ among districts and exceptions may be made in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments. In this section, "contract zoning" means a zoning reclassification to a less restricted use when the owner of the rezoned property, either through an agreement with the assembly or a covenant in favor of tne borough, places restrictions on the use of the land beyond the zoning requirements generally attaching to the new district in which the property has been placed. The assembly shall hold a public hearing on the proposed contract zoning.

(b) Zoning regulations adopted under (a) of this section may include, but are not limited to, restriction of

(1) land use;

(2) building location and use;

(3) the height and size of structures;

(4) the number of stories in buildings;

(5) the percentage of lot which may be covered;

(6) the size of open spaces;

(7) population density and distribution.

(c) Zoning regulations are designed to

(1) provide for orderly development;

(2) lessen street congestion;

(3) promote fire safety and public order;

(4) protect the public health and general welfare;

(5) prevent overcrowding;

(6) stimulate systematic development of transportation, water, sewer, school, park and other public facilities.

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

(d) Repealed by sec. 45 ch 85 SLA 1979.

(e) A zoning ordinance adopted or amended under (a) of this section may not preclude an activity authorized under a license or permit issued under AS 04 if the activity was licensed or permitted by the Alcoholic Beverage Control Board before the adoption of the zoning ordinance or zoning ordinance amendment.

Sec. 29.42.050. (Sec. 29.33.110.) BOARD OF ADJUSTMENT. (a) The assembly is the board of adjustment but may delegate by resolution or ordinance part or all of its functions to a city within the borough for the area within city boundaries in accordance with AS 29.42.010(b)(1) [AS 29.33.070(b)(1)], in addition to making delegations as provided for an assembly under AS 29.42.150 (AS 29.33.245). Meetings of the borough board are held at the call of the presiding officer and of the city board by the mayor. The presiding officer or mayor may administer oaths and compel

attendance of witnesses. Meetings and hearings of the board shall be open to the public and the board shall keep minutes of its proceedings as a public record.

(b) The board of adjustment shall hear and decide

(1) appeals regarding alleged errors in enforcement of zoning ordinances and building codes;

(2) appeals from the decisions of the planning commission on requests for conditional uses;

(3) appeals from the decisions of the planning commission on requests for variances from the terms of the zoning ordinance which are not contrary to the public interest, when a literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the same district.

(c) A variance shall not be granted because of special conditions caused by actions of the person seeking relief or for reasons of pecuniary hardship or inconvenience. A variance shall not be granted which will permit a land use in a district in which that use is prohibited.

Sec. 29.42.060. (Sec. 29.33.120.) ADJUSTMENT PROCEDURE. An interested party, including but not limited to a borough or city official, may file with the board of adjustment an appeal specifying his objections. Copies are filed with the administrative officer involved and with the borough clerk within the time required by the zoning ordinance. The officer shall provide the board with all pertinent records, including his written decision. An appeal to the board stays enforcement proceedings unless the board or a court issues an enforcement order based on a certificate of imminent peril to life or property made by the enforcement officer.

Sec. 29.42.070. (Sec. 29.33.130.) JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for appeals from the board of adjustment to the superior court.

(b) A municipal officer, a taxpayer, or a person, jointly or severally aggrieved, may appeal an action of the board to the superior court by filing with the borough clerk within the time fixed by ordinance, a notice of appeal specifying grounds. When the notice of appeal is filed, the board shall at once transmit to the superior court clerk copies of all the papers constituting the record in the case.

(c) An appeal from the board of adjustment stays enforcement proceedings unless the court issues an enforcement order based on a certificate of imminent peril to life or property made by the board.

(d) The appeal is heard upon the record by the superior court, and the court may reverse or affirm, wholly or partly, the decision appealed from.

(e) Issues in proceedings under this section have preference over all other civil actions and proceedings. An appeal lies from the decision of the superior court as in other civil cases.

Sec. 29.42.080. (Sec. 29.33.150.) PLATTING JURISDICTION AND POWER. (a) The planning commission acting as the platting board has jurisdiction over platting and shall adopt and publish rules and regulations to implement this power. Jurisdiction includes, but is not limited to, the control of

(1) form, size, and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions of lots or tracts;

(3) street width, arrangement, and right-of-way, including allowance for access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage, and other public utility facilities and improvements.

(b) The regulations adopted under (a) of this section apply to subdivision plats of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board, except that the platting board may

not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat.

Sec. 29.42.090. (Sec. 29.33.160.) PROCEDURE. (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010-40.15.020.

(c) If a municipality has adopted a subdivision ordinance which requires the submission of a preliminary or sketch subdivision plat during the platting procedure, the commissioner of natural resources shall, not later than 60 days before filing a final subdivision plat which contains land to be disposed of to individuals under AS 38.05 or AS 38.08, file a preliminary subdivision plat with the platting authority of the municipality.

Sec 29.42.100. (Sec. 29.33.170.) WAIVER IN CERTAIN CASES. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of Secs. 29.42.080-29.42.170 (Secs. 29.33.150-29.33.240) of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

Sec. 29.42.110. (Sec. 29.33.180.) INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

Sec. 29.42.120. (Sec. 29.33.190.) PENALTIES. (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500 for each lot or parcel transferred, sold, or included in a contract to be sold. The borough may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) No person may record a plat or seek to have a plat recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than $500.

Sec. 29.42.130. (Sec. 29.33.200.) ALTERATION OF REPLAT PETITION. No recorded plat may be altered or replatted except upon petition of the owners of a majority of the land affected by the alteration or replat or by the platting board. No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

Sec. 29.42.140. (Sec. 29.33.210.) NOTICE OF HEARING. The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a copy of the notice to each affected property owner not signing the petition.

Sec. 29.42.150. (Sec. 29.33.220.) HEARING AND DETERMINATION. At the hearing the platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

Sec. 29.42.160. (Sec. 29.33.230.) RECORDING. If the alteration or replat is approved, the revised plat must be recorded by the platting board and is thereafter the lawful plat.

Sec. 29.42.170. (Sec. 29.33.240.) TITLE TO VACATED AREA. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

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Sec. 29.42.150. (Sec. 29.33.245.) DELEGATIONS. The assembly may by ordinance authorize the planning commission, and the platting authority ~~board and the board of adjustment~~ to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the commission or board, to other boards or commissions, or to a hearing officer designated by the commission or board. ~~The assembly shall prescribe procedures for hearings and appeals. The commission or board shall hear and decide appeals de novo.~~

## CHAPTER 45. MUNICIPAL TAXATION

(Chapter 53. MUNICIPAL ASSESSMENT AND TAXATION

Article 1. MUNICIPAL PROPERTY TAX

Sec. 29.45.010. (Sec. 29.53.010.) GENERAL PROPERTY TAX. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter. Unified municipality may levy areawide and nonareawide property taxes.

Sec. 29.45.020. (Sec. 29.73.070) TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE
(AS 14.17) $

STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100) $

MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE
(AS 29.88) $

STATE AID FOR MISCELLANEOUS MUNICIPAL
SERVICES (AS 29.89) $

TOTAL AID $

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 (AS 29.88) and state aid for miscellaneous municipal services under AS 29.62 (AS 29.89). The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. (Sec. 29.53.020.) REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a householder not exceeding $500 in value;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 and 44.62.570.

(f) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under AS 29.53.025(a).

(h) Except as provided in (g) of this section, nothing in (e) - (i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

(i) In (e) - (i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Sec. 29.45.040. (Sec. 29.73.060.) PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental

(i) In (e) - (i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

Sec. 29.45.040. (Sec. 29.73.060.) PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) Municipalities may exclude or exempt or partially exempt residential

receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) Municipalities may exclude or exempt or partially exempt residential

property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

(1) a home rule or first or second class borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to,

excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly ~~without weighted voting~~. ← OK

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is direcly attributable to alteration of

the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later.

Sec. 29.45.060. (Sec. 29.53.030.) MINING CLAIMS. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is fixed at $200 for each 20 acres or fraction of 20 acres. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.

Sec. 29.45.070. (Sec. 29.53.035.) FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other

nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven y ars, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to dete.mine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property ow.er

wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. (Sec. 29.53.040.) MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. (Sec. 29.53.045.) TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. (Sec. 29.53.050.) TAX LIMITATION. (a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of

residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Sec. 29.45.110. (Sec. 29.53.055.) NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. (Sec. 29.53.060.) FULL AND TRUE VALUE. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and Secs. 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Sec. 29.45.130. (Sec. 29.53.070.) RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. (Sec. 29.53.080.) INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the

purposes of the investigation. If refused entry, the assessor may seek a court order to compel entry.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.

Sec. 29.45.150. (Sec. 29.53.090.) STATEMENT. A person who fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a misdemeanor. Upon conviction, he is punishable by a fine of not more than $500, or by imprisonment for not more than 30 days, or by both, together with costs of prosecution.

Sec. 29.45.160. (Sec. 29.53.095.) REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. (Sec. 29.53.100.) ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the

name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. (Sec. 29.53.110.) ASSESSMENT NOTICE. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Sec. 29.45.190. (Sec. 29.53.120.) CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. (Sec. 29.53.130.) APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

Sec. 29.45.210. (Sec. 29.53.135.) BOARD OF EQUALIZATION. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, or it may delegate this authority to a board appointed by it for that purpose. The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business. The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance adopt rules for the membership and conduct of the board.

Sec. 29.45.220. (Sec. 29.53.140.) HEARING. (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed or proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1.

(f) An appellant may appeal to the superior court for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial.

Sec. 29.45.230. (Sec. 29.53.150.) SUPPLEMENTARY ASSESSMENT ROLLS. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll.

Sec. 29.45.240. (Sec. 29.53.160.) TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law.

Sec. 29.45.250. (Sec. 29.53.170.) TAX LEVY AND RATE. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of general ordinances, but the rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Sec. 29.45.260. (Sec. 29.53.180.) RATES OF PENALTY AND INTEREST. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 10 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments and the first half is not paid when due, the entire tax becomes delinquent and penalty and interest accrue as follows:

(1) if the first half is paid when due, the second half is payable on the due date fixed by the assembly for the second half and if not paid is delinquent after that date;

(2) a penalty not to exceed eight percent shall be added to all taxes delinquent until the due date fixed for payment of the second half, and interest at the rate of eight percent a year shall be charged on

the whole of the unpaid taxes, not including penalty, from due date until paid in full;

(3) after the due date for the payment of the second half, a total penalty of not more than 10 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalties, from due date until date paid in full.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

(c) If the assembly charges interest on property taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. (Sec. 29.53.200.) VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. (Sec. 29.53.210.) TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

(b) Real property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. (Sec. 29.53.220.) ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide

the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale.

Sec. 29.45.320. (Sec. 29.53.230.) REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

(b) If the tax on property described in Sec. 40 of this chapter or on a leasehold interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. (Sec. 29.53.240.) FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the superior court for judgment;

(2) publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed within the borough or, if there is no newspaper of general circulation distributed within the borough, post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appear on the list a notice advising of the foreclosure proceeding in which a

petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspection at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. (Sec. 29.53.250.) CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. (Sec. 29.53.260.) LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. (Sec. 29.53.270.) GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded

against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeals as provided in AS 29.33.130(e).

Sec. 29.45.370. (Sec. 29.53.280.) ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. (Sec. 29.53.290.) JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. (Sec. 29.53.300.) TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. (Sec. 29.53.310.) REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year.

During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

(b) A person holding a mortgage or other lien of record covering a part only of a parcel of real property included in the judgment and decree of foreclosure may redeem that part by paying the proportionate amount applicable under the judgment and decree.

Sec. 29.45.410. (Sec. 29.53.320.) EFFECT. Receipt of redemption money by the clerk releases all claims of the borough to the property. The clerk shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk shall file the certificate with the recorder and collect the recording fee from the person redeeming at the time of redemption. The court clerk shall file the certificate as part of the judgment roll.

Sec. 29.45.420. (Sec. 29.53.330.) ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. (Sec. 29.53.340.) POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. (Sec. 29.53.350.) EXPIRATION. (a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $10,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Sec. 29.45.450. (Sec. 29.53.360.) DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid

borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

(b) Conveyance gives the borough or the city clear title except for prior recorded liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

(d) No deed is invalid for irregularities, omissions or defects, unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner is forever barred.

Sec. 29.45.460. (Sec. 29.53.370.) DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist. The ordinance shall contain the information required in (a) of this section.

(c) The clerk shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the property owner at the last address of record.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. (Sec. 29.53.375.) REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale, including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350(a) of this chapter.

(b) After adoption of an ordinance providing for the retention of a parcel of tax-foreclosed property by the municipality for a public purpose, the right of the former record owner to repurchase the property ceases.

Sec. 29.45.480. (Sec. 29.53.380.) PROCEEDS OF TAX SALE. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and

the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under Sec. 350(a) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.490. (Sec. 29.53.385.) PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

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Sec. 29.45.510. (Sec. 29.53.390.) REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. (Sec. 29.53.400.) POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.540. (Sec. 29.53.410.) LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

Sec. 29.45.570. (Sec. 29.53.415.) SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales or

rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

Sec. 29.45.590. (Sec. 29.53.420.) REFERENDUM, ADOPTION AND MODIFICATION. (a) The assembly shall hold a referendum vote on the question of enacting a sales tax or increasing the rate of levy of sales taxes. Borough sales tax propositions may be presented only once in any 12-month period. A sales tax proposition may be submitted to the voters at a regular or special election or at a general election of the state.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough

## ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. (Sec. 29.53.440.) POWER OF LEVY. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs.

Sec. 29.45.620. (Sec. 29.53.450.) POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. (Sec. 29.53.460.) COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

## CHAPTER 48. SPECIAL ASSESSMENTS

## (CHAPTER 63. SPECIAL ASSESSMENTS AND SERVICE AREAS)

### ARTICLE 1. SPECIAL ASSESSMENTS

Sec. 29.48.010. (Sec. 29.63.010.) ASSESSMENT AND PROPOSAL. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of constructing or improving capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under Sec. 15(a)(8) of this chapter. If a governmental unit other than the state benefited by an assessment refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited or

(2) the assembly or council.

Sec. 29.48.020. (Sec. 29.63.015.) PROCEDURE. (a) The assembly or council may prescribe by ordinance the complete special assessment procedure for local improvements, including and subject to the following:

(1) the procedure for filing petition;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

(4) a resolution of the assembly or council determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

(6) published notice of each public hearing required by this section and mailing notice to each legal owner of record of real property within the special assessment district;

(7) a resolution confirming the special assessment roll for the local improvement;

(8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 percent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 percent, except upon approval of not fewer than three-fourths of the assembly or council.

(b) If the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in Secs. 20-70 of this chapter.

Sec. 29.48.030. (Sec. 29.63.020.) DECISION AND NOTICE. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution whether (1) the improvement request is necessary and should be made, and (2) the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council passes a resolution approving an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on the improvement plan. The assembly or council shall publish a notice at least once a week for four consecutive weeks in a newspaper of general

circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

Sec. 29.48.040. (Sec. 29.63.025.) RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment may be made against "unknown owner."

Sec. 29.48.050. (Sec. 29.63.030.) OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed not less than 30 nor more than 60 days after publication of notice on a date specified by the assembly or council. The assembly or council may by resolution approve the plan and proceed with the improvement if the owners of one-half in value of the property to be benefited do not object in writing.

(b) If objections are made by the owners of property bearing one-half of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan.

Sec. 29.48.060. (Sec. 29.63.040.) ASSESSMENT ROLL. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against tracts in proportion to benefit received. Assessments may not exceed actual costs.

(b) The special assessment roll contains property descriptions, names of owners of record and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing.

Sec. 29.48.070. (Sec. 29.63.050.) HEARING AND SETTLEMENT. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll. When the roll is corrected, the clerk shall so certify.

Sec. 29.48.080. (Sec. 29.63.060.) PAYMENT. (a) The assembly or council shall fix times of payment, rate of interest on unpaid installments, and delinquency of assessments. Payment may not be required sooner than 60 days after assessment. Payment may be in one sum or by installments, but a sum or installment may not exceed 25 percent of the assessed value of the property affected. Penalty and interest are the same as for real property taxes.

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, the time of delinquency, and penalties.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.200-29.53.390 for enforcement of property tax liens.

Sec. 29.48.090. (Sec. 29.63.065.) EXEMPTION. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single-family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if

two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560-44.62.570.

(b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claimant must file the initial application during the period of time between the date the assessment roll is certified and the time of payment fixed by the assembly or council. Within one year of the date the assessment roll is certified the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the deparment by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest

which the claimant may h ve already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070-34.10.220. The lien becomes immediately due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

Sec. 29.48.100. (Sec. 29.63.070.) REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

Sec. 29.48.110. (Sec. 29.63.080.) OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

Sec. 29.48.120. (Sec. 29.63.085.) SPECIAL ASSESSMENT BONDS. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the

property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. Interest on the guarantee funds shall be a cost of the improvement district.

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## CHAPTER 51. MUNICIPAL DEBT

(CHAPTER 58. MUNICIPAL DEBT)

### ARTICLE 1. REVENUE ANTICIPATION NOTES

Sec. 29.51.010. (Sec. 29.58.010.) BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

Sec. 29.51.020. (Sec. 29.58.020.) ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

Sec. 29.51.030. (Sec. 29.58.040.) ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New

notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

Sec. 29.51.040. (Sec. 29.58.050.) PRIORITY OF REPAYMENT. The payment of the principal and interest on revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

Sec. 29.51.050. (Sec. 29.58.060.) SALE OF NOTES. The municipality may sell revenue anticipation notes in the manner and at the price it determines, at either public or private sale.

ARTICLE 2. BOND ANTICIPATION NOTES

Sec. 29.51.080. (Sec. 29.58.070.) BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance.

Sec. 29.51.090. (Sec. 29.58.080.) ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

Sec. 29.51.100. (Sec. 29.58.090.) ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in

order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue. Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

Sec. 29.51.110. (Sec. 29.58.100.) REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

Sec. 29.51.120. (Sec. 29.58.110.) SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

Sec. 29.51.130. (Sec. 29.58.120.) LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

Sec. 29.51.140. (Sec. 29.58.130.) USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

Sec. 29.51.150. (Sec. 29.58.140.) SALE OF NOTES. Notes issued under this chapter shall be sold by the municipality in the manner and at the price it determines, at either public or private sale, but no note may be sold for less than par and accrued interest.

ARTICLE 3. GENERAL OBLIGATION BONDS

Sec. 29.51.180. (Sec. 29.58.150.) GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

Sec. 29.51.190. (Sec. 29.58.160.) VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

Sec. 29.51.200. (Sec. 29.58.170.) FORM AND TERMS OF SALE. The assembly or council shall fix the date of the bonds, denominations, maturities, rate of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, and signatures required. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

Sec. 29.51.210. (Sec. 29.58.180.) PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS

Sec. 29.51.240. (Sec. 29.58.200.) REVENUE BONDS. (a) A municipality may acquire, construct, improve and equip capital improvements to be operated upon a revenue-producing basis, and bonds for these purposes are payable solely from unpledged revenue of the public facilities for which the bonds are issued.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

(c) A municipality may also issue revenue bonds for any lawful purpose. The bonds are payable from any amounts pledged by the municipality except taxes and do not constitute general obligations of the municipality.

Sec. 29.51.250. (Sec. 29.58.205.) NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance.

Sec. 29.51.260. (Sec. 29.58.210.) FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose sigrature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

Sec. 29.51.270. (Sec. 29.58.220.) PAYMENT. Bonds issued under AS 29.58.200 - 29.58.220 or the proceedings of the assembly or council authorizing their issuance may contain the covenants which the assembly or council considers advisable concerning

(1) the rates or fees to be charged for services rendered by the public facilities, the revenue of which is pledged to the payment of the bonds, or the terms and conditions of any other amounts collected which are pledged to the payment of the bonds;

(2) the deposit and use of the revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(3) the issuance of additional bonds payable from revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(4) the rights of the bondholders in case of default in the payment of the principal or interest on the bonds, including the appointment of a receiver to operate the public facilities;

(5) other covenants as the assembly or council determines.

ARTICLE 5. REFUNDING BONDS

Sec. 29.51.300. (Sec. 29.58.240.) AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the

bonds, the assembly or council may provide by ordinance for the issuance of general obligation or revenue refunding bonds.

Sec. 29.51.310. (Sec. 29.58.250.) EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

Sec. 29.51.320. (Sec. 29.58.260.) NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

Sec. 29.51.330. (Sec. 29.58.270.) PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to Sec. 180 of this chapter. Revenue refunding bonds are payable according to Sec. 220 of this chapter.

Sec. 29.51.340. (Sec. 29.58.280.) SALE. General obligation refunding bonds or revenue refunding bonds may, in the discretion of the assembly or council, be exchanged ~~at par~~ for the bonds being refunded, or may be sold at public or private sale for an amount not less than par and accrued interest. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

ARTICLE 6. MISCELLANEOUS PROVISIONS

Sec. 29.51.370. (Sec. 29.58.300.) PUBLIC SALE. Repeal The municipality shall sell all bonds at a public or private sale, as provided by ordinance. No bonds may be sold at less than par value.

Sec. 29.51.380. (Sec. 29.58.310.) INTEREST RATE. No municipal bond or note may bear an interest rate exceeding the contract usury rate of interest provided by law.

Sec. 29.51.390. (Sec. 29.58.315.) BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. The governing body or its designee of a home rule or general law municipality shall be the sole contracting authority for bond attorneys, bond consultants and financial consultants engaged in long range financial planning of the municipality which leads to sale of bonds.

Sec. 29.51.400. (Sec. 29.58.320.) REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

Sec. 29.51.410. (Sec. 29.58.340.) BOROUGH INDEBTEDNESS. (a) Boroughs may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a noncity basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be limited to the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to

amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

Sec. 29.51.420. (Sec. 29.58.345.) BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. A home rule city levying property taxes for schools, upon furnishing proof satisfactory to the Department of Education and the Department of Community and Regional Affairs of the needs for school facilities which, if provided, will require the city to exceed limits on authorizing or issuing bonds which may be established by charter, may exceed the limits to the extent necessary to pay costs of school construction. In this section "costs of school construction" means costs as defined in AS 43.18.100(g)(2).

Sec. 29.51.430. (Sec. 29.58.350.) BOND GUARANTEE FUND. (a) To guarantee payment by the state of the principal and interest of bonds issued under the enabling authority of Sec. 345 of this chapter, there is in the Department of Community and Regional Affairs a special fund called the local school bond guarantee fund in which there shall be deposited all money appropriated by the legislature for the purpose of the fund and other money which may be made available for the purpose of the fund from any other source. Money in the fund shall be held and applied solely to further guarantee and provide an additional pledge of payment of all bonds issued under the provisions of Sec. 345 of this chapter. Money shall not be withdrawn from the fund if a withdrawal would reduce the amount in the fund to an amount equal to less than the "maximum debt service reserve" (as defined in this section), except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and for the retirement of bonds in accordance with the terms of a contract between the municipality and its bondholders and for the payments on account of which interest or principal or retirement of bonds other money is not then available in accordance with the terms of the contract. In this

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section "maximum debt service reserve" means, as of any date of computation, the largest amount of money required by the terms of all contracts between municipalities and their bondholders as to bonds issued under Sec. 345 of this chapter to be raised in any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds and payments required by the terms of the contracts to sinking funds established for the payment or redemption of the bonds, all calculated on the assumption that bonds will cease to be outstanding after the date of the computation by reason of the payment of bonds at their respective maturities and the payments of the required money to sinking funds and the application of the money in accordance with the terms of the contracts to the retirement of bonds.

(b) Money in the guarantee fund at any time in excess of the maximum debt service reserve, whether by reason of investment or otherwise, may be withdrawn by the department and transferred to the general fund.

(c) Money at any time in the guarantee fund may be invested in any direct obligation of, or obligations as to which principal and interest is guaranteed by, the United States, the state or a political subdivision.

(d) For purposes of valuation, investments in the guarantee fund shall be valued at the lowest of the par value, cost to the authority, or market value of the investments. Valuation on any particular date shall include the amount of interest then earned or accrued to that date on any money or investments in the fund.

(e) Other provisions of this section notwithstanding, no bonds may be issued carrying the guarantee provided in this section unless there is in the guarantee fund the maximum debt service reserve for all bonds then issued and outstanding and the bonds about to be issued, but nothing prevents or precludes a municipality from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds about to be

issued, upon their issuance, as is needed to achieve the maximum debt service reserve.

(f) In order to assure the maintenance of the maximum debt service reserve in the guarantee fund, there is authorized to be appropriated

CHAPTER 62. STATE PROGRAMS

(CHAPTER 88. MUNICIPAL TAX RESOURCE EQUALIZATION)

ARTICLE 1. MUNICIPAL TAX RESOURCE EQUALIZATION

Sec. 29.62.010. (Sec. 29.88.010.) STATE EQUALIZATION OF TAX RESOURCES FOR LOCAL GOVERNMENT SERVICES. (a) During each fiscal year the department shall compute an equalization entitlement for local government services provided by a taxing unit.

(b) The equalization entitlement computed for a taxing unit is based on the population, relative ability to generate revenue, and local tax burden of the taxing unit and is determined by the application of the formula

Entitlement = P x R where P = population, and R = millage rate equivalent, determined by dividing the

sum of the locally generated revenue of the taxing unit by one-tenth of one percent (0.1) of the full and true value of assessed property of the taxing unit determined under AS 29.88.020(d); however, the property value used under this subsection may not be less than 15 percent of the statewide average per capita full and true assessed property value.

(c) For purposes of this section, locally generated revenue

(1) includes

(A) the actual revenue derived from the levy and collection of local taxes in the taxing unit for local government services during the preceding fiscal year of the taxing unit;

(B) motor vehicle payments received by the municipality during the preceding fiscal year under AS 28.10.431;

(C) revenue from fees, rentals, leases, penalties, licenses or permits received during the preceding fiscal year by the municipality for a function or service over which it has control, including revenues derived from parks and recreation ser-

vices, mass transit, offstreet parking, and garbage and solid waste disposal services;

(D) special assessments received during the preceding fiscal year; and

(E) payments received by a municipality from a utility which are in place of taxes levied and collected by the municipality;

(2) excludes

(A) revenue derived from the levy and collection of municipal taxes and appropriated for the operating expenses and debt service of utilities;

(B) revenue from interest earned on investments and from the sale and lease of land or equipment; and

(C) all other revenue from whatever service derived.

Sec. 29.62.020. (Sec. 29.88.015.) DETERMINATION OF POPULATION. (a) For purposes of this chapter, the population of a taxing unit shall be determined annually by the latest figures of the United States Bureau of the Censis or other population data which, in the judgment of the department, is reliable.

(b) The population of the taxing unit includes the population of any military reservation which is a part of the taxing unit.

Sec. 29.62.030. (Sec. 29.88.020.) DETERMINATION OF MILLAGE RATE EQUIVALENT. (a) The department may require a municipality to return a certification, signed by the municipal treasurer or manager and the mayor, which provides an estimate of the locally generated revenue received by the municipality during the preceding fiscal year.

(b) By October 15 of each year, the department shall make an initial determination of the millage rate equivalent of each taxing unit to be used

for computing and distributing equalization entitlements for the current fiscal year under this chapter. The department shall base the initial determination on the estimates in the certification returned by a municipality under (a) of this section.

(c) As early as possible, but not later than December 15 of each year, the department shall make a final determination of the millage rate equivalent of each taxing unit to use to compute and distribute equalization entitlements under this chapter. The department shall base the determination on audits, financial statements and other financial reports prepared and submitted by a municipality. The department shall adjust the locally generated revenue reported by a municipality to exclude the municipal revenue claimed by the municipality which does not qualify for inclusion in or recognition as locally generated revenue for local government purposes under AS 29.88.010(c)(1). The adjustment shall be made by deducting from total revenue claimed by the municipality the amount of the department's estimate of revenue which is not recognized for local government purposes.

(d) The full and true assessed property value shall be determined by the department in the manner provided for the computation of state aid to education under AS 14.17.140. When the determination of locally generated revenue includes revenue of a utility received under AS 29.88.010(c)(1)(E), the full and true assessed property value shall include the computed assessed value of the utility, determined by dividing the amount of the payment in place of taxes made by the utility by the millage rate which would apply to the utility if the utility were subject to levy and collection of taxes under AS 29.53.

(e) In addition to the computation for municipalities which levy and collect a property tax, the department shall determine an estimated full and true assessed property value under (d) of this section for

(1) each municipality which is a school district and which does not levy and collect a property tax;

(2) each second class city with a population of 750 or more persons; however, a computation is not required under this paragraph more often than once during a period of three successive calendar years; and

(3) all other second class cities, by determining the average per capita full and true assessed property value of all cities having a population of less than 750 persons in which an assessment has been completed by a municipality or for which a determination is not made under (1) or (2) of this subsection.

(f) The department shall annually compute a statewide average per capita full and true assessed property value.

Sec. 29.62.040. (Sec. AS 29.88.025.) REPORTS. A payment of an equalization entitlement may not be made to a municipality under this chapter until the municipality has submitted its certificate of estimated revenue and its finanical report to the department for the fiscal year preceding the year for which the equalization entitlement is sought, together with a budget for the municipality's current fiscal year. The financial report shall include a listing of general revenue collected from taxes levied and assessed by the municipality and any other revenue which, in the opinion of the municipal officials, is eligible for inclusion in computations of the locally generated revenue of the taxing unit.

Sec. 29.62.050. (Sec. 29.88.030.) LIMITATION ON COMPUTATION AND USE OF PAYMENTS. (a) An equalization entitlement generated by the general tax levy of a taxing unit may be used only for authorized expenditures of that taxing unit, but up to 15 percent of the payment of an equalization entitlement generated by areawide revenue of a municipality may be used by the municipality for areawide or nonareawide purposes at the descretion of its assembly or council.

(b) An equalization entitlement determined with reference to revenue other than revenue obtained from the levy and collection of taxes may be used for areawide or nonareawide purposes, at the discretion of the assembly or council.

Sec. 29.62.060. (Sec. 29.88.035.) TAX EQUALIZATION ACCOUNT. The tax equalization account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account. The amount allocated to the account shall be fully distributed by the department as payments to municipalities to fulfill each municipality's share authorized under AS 29.62.010. (AS 29.88.010.). The amount allocated to the account shall be distributed by the department pro rata among eligible municipalities.

Sec. 29.62.070. (Sec. 29.88.040.) ADMINISTRATION. (a) The department may adopt regulations necessary to implement this chapter. The regulations shall include, among other provisions,

(1) procedures and filing dates for submitting certification and financial reports;

(2) procedures for obtaining information required to compute and determine the municipality's millage rate equivalent; and

(3) procedures by which the department shall notify a municipality in writing of the reasons for a proposed disallowance or adjustment of any factor bearing upon the determination of the municipality's entitlement and by which the municipality will be provided reasonable time in which to respond or to challenge the department s determination.

(b) The department shall make reasonable efforts to advise and assist municipalities in collecting information and completing reports necessary for the determination of entitlements under this chapter.

(c) The department shall, by regulation, classify for inclusion or exclusion as a component of a municipality's millage rate equivalent under AS 29.62.010 (AS 29.88.010) any tax revenue appropriated for a utility not included in the definition set out in AS 29.62.080(4) [(AS 29.88.045(4)].

Sec. 29.62.080. (Sec. 29.88.045.) DEFINITIONS. In this chapter

(1) "department" means the department of Community and Regional Affairs;

(2) "municipality" means a city, borough or unified municipality incorporated under the laws of the state;

(3) "taxing unit" means a municipality and

(A) in a borough or unified municipality, a service area or the entire area outside cities;

(B) in a city, a differential tax zone;

(4) "utilities" means electricty, water, sewer, gas heat, or telephone services, and refuse and garbage collection services.

Article 2. STATE AID FOR MISCELLANEOUS MUNICIPAL PURPOSES

(CHAPTER 89. STATE AID FOR MISCELLANEOUS MUNICIPAL PURPOSES.)

Sec. 29.62.110. (Sec. 29.89.010.) REVENUE SHARING PAYABLE. In addition to the equalization entitlements paid under AS 29.62 (AS 29.88), during each fiscal year the department shall pay aid

(1) to a municipality or other eligible recipient which has the power to provide the services described in AS 29.62.030 - AS 29.62.070 (AS 29.88.020 - AS 29.88.040) and exercises the power in the manner required by this chapter;

(2) to a Native village government under AS 29.62.150 (AS 29.89.050).

Sec. 29.62.120. (Sec. 29.89.020.) STATE AID TO MUNICIPALITES FOR ROADS. (a) The department shall pay to a municipality which has power to

provide for road maintenance and exercises that power, $2,500 a mile for each mile of road, street or highway maintained by the local government, excluding (1) the official state highway system, (2) roads, streets or highways not dedicated to public use, (3) roads, streets or highways maintained under the local service road program (AS 19.30.111 - 19.30.251), and (4) alleyways, in accordance with regulations adopted by the Department of Transportation and Public Facilities. A payment may not be made under this subsection for maintenance of a road which is not used by automotive equipment.

(b) A frozen waterway and a connection from an inhabited area to a waterway which may be safely used for public transportation by automotive equipment and is so used during a portion of a year is eligible for a payment of $1,500 per mile if the waterway and connection are maintained during the period of use by a municipality or combination of municipalities. The department, after consulation with the Department of Transportation and Public Facilities, shall determine which waterways and connections qualify and, where the waterways or connections lie outside the corporate limits of a municipality, which municipalities shall receive the payments under this subsection, unless the municipalities involved have agreed in writing to a particular distribution.

Sec. 29.62.130. (Sec. 29.89.030.) STATE AID TO MUNICIPALITIES AND OTHER ELIGIBLE RECIPIENTS FOR HEALTH FACILITIES AND HOSPITALS. (a) The department shall pay

(1) to a municipality which has the power to provide hospital facilities and services and which exercises that power, $1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or $75,000 a hospital for those hospitals with 10 or more beds, or $25,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; money

received under this paragraph may be used only for hospitals and shall be apportioned among qua' fying hospitals as the municipality determines;

(2) on the basis set out in (1) of this subsection to a municipality for a nonprofit hospital not operated by a municipality if the municipality first certifies to the department that the nonprofit hospital is in compliance with all standards for hospitals which have been adopted by the municipality; money may not be paid on behalf of a nonprofit hospital without this certification; payments to the municipality shall be transferred to the nonprofit hospital in accordance with the basis by which the payment was generated by the hospital, and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

(3) to a municipality in which a health facility is operated, $1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the health facility, or $4,000 per health facility as the municipality determines.

(b) A hospital may not receive payment under both (a)(1) and (a)(2) of this section.

(c) Money received by a municipality under (a)(3) of this section shall be used for expenses of health services or operation and maintenance of health facilities as the municipality determines.

(d) Before money may be distributed under this section, the commissioner of health and social services shall certify to the commissioner of community and regional affairs that any accumulation of assets by nonprofit corporations or other recipients under this section is dedicated irrevocably to a public purpose.

Sec. 29.62.140. (Sec. 29.89.040.) STATE AID TO VOLUNTEER FIRE DEPARTMENTS IN THE UNORGANIZED BOROUGH. (a) The department shall pay to a volunteer fire department registered with the state fire marshal and serving an area not in an organized borough or city a sum for protection purposes equal to $10 per capita for the population served by the department, as determined by the state fire marshal.

(b) A grant shall be made under (a) of this section to facilitate the organization of a volunteer fire department in an area not in an organized borough or city, upon application of the proposed fire protection group to the state fire marshal and upon approval of applications according to standards of organization and service prescribed by regulations adopted by the state fire marshal.

Sec. 29.62.150. (Sec. 29.89.050.) STATE AID TO NATIVE VILLAGE GOVERNMENTS. The state shall pay $25,000 to a Native village government for a village which is not incorporated as a city under this title. In this section "Native village government" means

(1) a local governing body organized by authority of the Act of Congress of June 18, 1934 (25 U.S.C. sec. 476); or

(2) a traditional village council or, if there is no traditional village council, the paramount chief or other governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act (43 U.S.C. sec. 1601 - 1628).

Sec. 29.62.160. (Sec. 29.89.060.) POPULATION DETERMINATION. For purposes of this chapter, population shall be determined by the latest figures of the United States Bureau of the Census or other reliable population data, including but not limited to public school enrollment figures, public utility connection, registered voters or certified employment payrolls.

Sec. 29.62.170. (Sec. 29.89.070.) AREA COST-OF-LIVING DIFFERENTIAL. (a) Payments to a municipality or other eligible recipient under AS 29.62.120 - 29.62.130 (AS 29.89.020 - 29.89.030) shall reflect area cost-of-living differentials. Payments shall be based upon the sum of per capita, per mile and per bed or facility grants due each municipality or other recipient multiplied by the appropriate area cost-of-living differential. The area cost-of-living differential for each recipient shall be determined annually by election district under the provisions of AS 39.27.030. Application of the area cost-of-living differential may not result in distribution of an amount less than the amount of the payment determined without reference to application of this section.

(b) The election districts used to establish area cost-of-living differentials under (a) of this section are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965.

Sec. 29.62.180. (Sec. 29.89.080.) MISCELLANEOUS SERVICES ACCOUNT. The miscellaneous services account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each municipality's or other recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible municipalities and other recipients.

Sec. 29.62.190. (Sec. 29.89.090.) REGULATIONS. The department shall adopt regulations necessary to carry out the purposes of this chapter. The regulations shall include minimum standards required to qualify a municipality or other recipient for payments for each service. The department may require a municipality or other recipient to submit a performance report adequate to demonstrate to the department that a service

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for which payment is requested under this chapter was performed by the municipality or other recipient and meets minimum standards of service prescribed by regulation.

Sec. 29.62.200. (Sec. 29.89.100.) DEFINITIONS. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "health facility"

(A) means a facility which is licensed, when required, by the state under AS 18.20.010-18.20.130 and which is owned or operated or both by a municipality or by a nonprofit corporation or other nonprofit sponsor;

(B) includes a public health center, maternity home, community mental health center, facility for the mentally or physically handicapped, nursing home or convalescent center;

(C) excludes a facility operated or wholly supported by the state or the federal government;

(3) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general hospital; the term excludes a facility operated or wholly supported by the state or the federal government.

Article 3. STATE AID FOR HOSPITAL CONSTRUCTION

(CHAPTER 90. STATE AID FOR HOSPITAL CONSTRUCTION)

Sec. 29.62.230. (Sec. 29.90.010.) STATE AID FOR HOSPITAL CONSTRUCTION. If construction of a hospital began after January 1, 1968, and state matching aid for construction approved for payment to the municipality or other hospital sponsor constitutes less than 25 percent of the total project cost, the department shall pay to the municipality or other hospital sponsor each fiscal year $2,500 a bed for the maximum number of beds provided for in the construction design of the facility or five percent of

the total project cost, whichever is greater. State aid provided for in this section shall continue until the municipality or other hospital sponsor has received an amount which, combined with state matching money for construction of the hospital, equals 25 percent of the total project cost. Money received for construction may not be used for any other purpose.

Sec. 29.62.240. (Sec. 29.90.020.) HOSPITAL CONSTRUCTION ASSISTANCE ACCOUNT. The hospital construction assistance account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.62.280 (AS 29.95.010). If amounts in the account are insufficient to pay each recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible recipients.

Sec. 29.62.250. (Sec. 29.90.030.) DEFINITIONS. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general hospital; the term excludes a facility operated or wholly supported by the state or the federal government;

(3) "total project cost" means

(A) costs directly related to the project; and

(B) the total of all costs of financing and carrying out the project, including but not limited to,

(i) the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property, and the acquisition of machinery and equipment as may be necessary in connection with the project;

(ii) an allocable portion of the administrative and operating expenses of the municipality or other hospital sponsor;

(iii) the cost of financing the project, including interest on bonds issued to finance the project; and

(iv) the cost of other items, including any indemnity and surety bonds and premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial advisors, and paying agents for the bonds issued as the issuer considers necessary.

Article 4. ADMINISTRATION OF MUNICIPAL FINANCIAL PROGRAMS

(CHAPTER 95. ADMINISTRATION OF MUNICIPAL FINANCIAL ASSISTANCE PROGRAMS)

Sec. 29.62.280. (Sec. 29.95.010.) ALLOCATION AND DISTRIBUTION. (a) Each year, the Department of Community and Regional Affairs shall allocate money appropriated to the accounts established in AS 29.62 (AS 29.88, AS 29.89, and AS 29.90) in the amounts determined by the legislature.

(b) Money in the miscellaneous services account established in AS 29.62.180 (AS 29.89.080) which exceeds the amount required to fully fund distributions authorized by AS 29.62 (AS 29.89) shall be reallocated to the tax equalization account established in AS 29.62.060 (AS 29.88.035) and distributed according to the provisions of AS 29.62 (AS 29.88).

(c) Money in the hospital construction assistance account established in AS 29.62.240 (AS 29.89.020) which exceeds the amount required to fully fund distributions authorized by AS 29.62 (AS 29.90) shall be reallocated to the tax equalization account established in AS 29.62.060 (AS 29.88.035) and distributed according to the provisions of AS 29.62 (AS 29.88).

Sec. 29.62.290. (Sec. 29.95.020.) QUALIFICATION FOR MINIMUM PAYMENT. (a) A municipality qualifying for an entitlement under AS 29.62 (AS 29.88

or AS 29.89) shall receive a minimum payment of $25,000 plus an area cost-of-living differential for each fiscal year if:

(1) the municipality has conducted a regular election under AS 29.30.010 - 29.30.060 (AS 29.28.010 - 29.28.050) during the fiscal year preceding the year for which payment of an entitlement is authorized by AS 29.62 (AS 29.88 or AS 29.89) and has reported the results of the election to the commissioner of the Department of Community and Regional Affairs;

(2) regular council meetings are held in the municipality in accordance with the requirements of AS 29.24.290 (AS 29.23.210) during the fiscal year preceding the year for which payment of an entitlement is authorized by AS 29.62 (AS 29.88 or AS 29.89) and a record of the proceedings is maintained;

(3) a municipal budget has been adopted for the fiscal year during which payment of an entitlement is authorized by AS 29.62 (AS 29.88 or AS 29.89) and an audit or financial statement for the preceding fiscal year has been prepared and furnished to the Department of Community and Regional Affairs in accordance with AS 29.24.700(a) [AS 29.23.560(a)]; and

(4) local ordinances adopted by the governing body of the municipality have been codified in accordance with AS 29.27.060 (AS 29.48.180).

(b) The area cost-of-living differential payable to each municipality under this section shall be determined annually by election district under the provisions of AS 39.27.030. Except as provided in AS 29.62.300 (AS 29.95.030), application of the area cost-of-living differential may not result in a payment which is less than the minimum payment determined under (a) of this section. For purposes of this subsection, the election districts used are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965.

(c) The Department of Community and Regional Affairs shall pay to each municipality eligible to receive a minimum payment under this section an amount equal to the difference between the minimum payment determined under (a) and (b) of this section and the sum of the amounts payable for the same fiscal year under AS 29.62 (AS 29.88 and AS 29.89).

(d) A payment under this section may be prorated and reduced under AS 29.62.300 (AS 29.95.030).

(e) Payments under this section shall be made from the money allocated to the tax equalization account established in AS 29.62.060 (AS 29.88.035).

Sec. 29.62.300. (Sec. 29.95.030.) PRORATION OF PAYMENTS. (a) Payments under AS 29.62.290 (AS 29.95.020) and AS 29.62. art.4.,(AS 29.88) shall equal the amount allocated to the tax equalization account AS 29.62.060 (AS 29.88.035), adjusted in accordance with AS 29.62.80 (AS 29.95.010).

(b) Adjustments of payments shall be determined by prorating amounts payable under AS 29.62.290 (AS 29.95.020) and amounts payable under article 1 of this chapter (AS 29.88) by a factor which, when applied, reduces all payments in equal proportion so that payment under AS 29.95.020 and payments under AS 29.88 equal the amount allocated to the tax equalization account established in AS 29.88.035.

## CHAPTER 65. GENERAL GRANT LAND

(CHAPTER 18., ARTICLE 3A., GENERAL GRANT LAND)

Sec. 29.65.010. (Sec. 29.18.201.) DETERMINATION OF ENTITLEMENT OF BOROUGHS AND UNIFIED MUNICIPALITIES. The general grant land entitlement of each of the municipalities in this section is the amount set out opposite each:

(1) Municipality of Anchorage - 44,893 acres;

(2) City and Borough of Juneau - 19,584 acres;

(3) City and Borough of Sitka 10,500 acres;

(4) Bristol Bay Borough - 2,898 acres;

(5) Fairbanks North Star Borough - 112,000 acres;

(6) Haines Borough - 2,800 acres;

(7) Kenai Peninsula Borough - 155,780 acres;

(8) Ketchikan Gateway Borough 11,593 acres;

(9) Kodiak Island Borough - 56,500 acres;

(10) Matanuska-Susitna Borough - 355, 210 acres;

(11) North Slope Borough - 89,850 acres.

Sec. 29.65.020. (Sec. 29.18.202.) DETERMINATION OF ENTITLEMENT FOR CITIES. The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of secs. 190 and 200 of this chapter, as repealed by this act, is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of each city at any time between the initial date of eligibility under former secs. 190 and 200 of this chapter and July 1, 1978. Within six months of July 1, 1978, the director shall determine the entitlement for each city eligible to receive general grant land under this section and certify that entitlement to the city.

Sec. 29.65.030. (Sec. 29.18.203.) DETERMINATION OF ENTITLEMENT FOR NEWLY INCORPORATED MUNICIPALITIES. (a) The general grant land entitlement

of a municipality incorporated after July 1, 1978 is 10 percent of the total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality on the date of incorporation of that municipality.

(b) Within six months of the date of incorporation of a municipality which is incorporated after July 1, 1978, the director shall determine the entitlement of each municipality eligible to receive general grant land under (a) of this section and certify the entitlement to the municipality.

Sec. 29.65.040. (Sec. 29.18.204.) STATUS OF ENTITLEMENTS. (a) After July 1, 1978, general grant land entitlements provided in AS 29.18.201 and 29.18.202 are vested property rights which must be fulfilled as provided in AS 29.18.205 or 29.18.208.

(b) General grant land entitlements provided by AS 29.18.203 are property rights which vest on the date of incorporation of the municipality. The entitlement must be fulfilled as provided in AS 29.18.205.

(c) Land may be selected by a municipality to satisfy a general grant land entitlement under AS 29.18.201 and 29.18.202 at any time before October 1, 1980.

(d) Land may be selected by a municipality to satisfy a general grant land entitlement under AS 29.18.203 at any time within one year after the director certifies the entitlement to the municipality.

(e) The time limitations imposed by (c) and (d) of this section for exercising a vested general grant land entitlement do not apply to

(1) the portion of an entitlement which cannot be satisfied by that date because of a shortage of land suitable for residential, commercial and industrial purposes which is vacant, unappropriated, unreserved land;

(2) payments for land deficiency under AS 29.18.208;

(3) the portion of an entitlement which cannot be satisfied because the land selected by a municipality has been selected by a party entitled to select land owned by the United States or the state; or

(4) the portion of an entitlement which cannot be satisfied because the land nominated for selection by the municipality is not tentatively approved for patent to the state.

Sec. 29.65.050. (Sec. 29.18.205.) FULFILLMENT OF LAND ENTITLEMENTS (a) The acreage of each municipality's land selections under former secs. 190 and 200 of this chapter for which patent has been issued before July 1, 1978 shall be credited toward fulfillment of the entitlement of that municipality.

(b) All approved selections under former secs. 190 and 200 of this chapter for which patent has not been issued to a municipality on July 1, 1978 shall be reviewed by the director within nine months of July 1, 1978. Any approved selection of land which was vacant, unappropriated or unreserved on the date of selection is valid as of the date of the approval under former secs. 190 and 200 of this chapter, and a patent shall be issued to the municipality within three months after approval by the director of a plat of survey. The acreage shall be credited toward fulfillment of the municipality's entitlement. No municipality is entitled to receive patent under this chapter to more than its entitlement determined under secs. 201 - 203 of this chapter. Any prior approval by the director of municipal selections for land which was not vacant, unappropriated or unreserved on the date of selection shall be rescinded, and patent may not be issued except when disposal to a third party by sale or lease has occurred. Transfers of land to municipalities under this chapter are subject to AS 38.05.321. Classification actions as reflected upon the land status records of the Department of Natural Resources are determinative of land classification status for purposes of this chapter.

(c) Repealed by sec. 45 ch 85 SLA 1979.

(d) Repealed by sec. 45 ch 85 SLA 1979.

(e) Repealed by sec. 45 ch 85 SLA 1979.

(f) The director shall approve each selection for patent within nine months of its selection by a municipality, and a patent shall be issued to the municipality for land selected in satisfaction of a general grant land entitlement vested under AS 29.18.201 - 29.18.203 within three months after approval by the director of a plat of survey.

(g) Repealed by sec. 45 ch 85 SLA 1979.

(h) Repealed by sec. 45 ch 85 SLA 1979.

(i) Repealed by sec. 45 ch 85 SLA 1979.

Sec. 29.65.060. (Sec. 29.18.206.) SCHOOL, UNIVERSITY AND MENTAL HEALTH LAND. (a) If an entitlement determined in sec. 201 or 202 of this chapter results in a per capita entitlement for the municipality of less than one and one-half acre, the municipality may select vacant school, university or mental health land within the municipality in partial fulfillment of its land entitlement under this chapter. School, university or mental health land may be selected notwithstanding the fact that these lands are not unappropriated and unreserved within the meaning of this chapter and secs. 190 and 200 of this chapter, repealed by this act, but each selection of school, university or mental health land by a municipality must be vacant, unappropriated, or unreserved land as defined in this chapter, except that it need not be general grant land.

(b) The acreage of school, university or mental health land, if any, within a municipality may not be included in the determination of entitlement under sec. 201 or 202 of this chapter.

(c) Land conveyed under this section will be credited against a municipality's remaining land entitlement under this chapter.

(d) Within six months after approval of a municipal selection of school, university, or mental health land, the director shall identify state general grant land of approximately equal value to the land requested by the municipality, and shall propose the replacement land for the concurrence of the appropriate board. If a proposal by the director is rejected by the board, the director shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence, and shall propose the replacement land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired by the Territory and State of Alaska.

(e) The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to the designation of other general grant land as school, university or mental health land in replacement of land selected under this section. The provisions of AS 38.50 and AS 38.05.032 do not apply to such designations under this section. The provisions of AS 38.05.030(a), 38.05.030(e), and 38.05.035(a)(13) which require the approval of the respective trust board before disposal of lands by the director do not apply to selections of school, university or mental health land by a municipality under this section.

(f) For purposes of determining the per capita entitlement under (a) of this section, the population of a municipality shall be the population determined by the commissioner of the Department of Community and Regional Affairs under AS 43.18.010 for the program year beginning July 1, 1978 for a municipality whose entitlement is determined under sec. 201 or 202 of this chapter.

Sec. 29.65.070. (Sec. 29.18.207.) SELECTION AND CONVEYANCE PROCEDURE. (a) Repealed by sec. 45 ch 85 SLA 1979.

(b) Repealed by sec. 45 ch 85 SLA 1979.

(c) If land selected by a municipality is unsurveyed at the time of approval, the director shall survey, or may approve the municipality's survey of, the exterior boundaries of an approved selection without interior subdivision, and shall issue patent in terms of the exterior boundary survey. The cost of the survey shall be borne by the municipality. If land selected by a municipality has been surveyed at the time of its selection, the boundaries shall conform to the public land subdivisions established by the approved survey.

(d) The director may approve municipal selections of land which have been tentatively approved or patented to the state by the federal government, but he may not issue patent to a municipality until the land has first been patented to the state. After approval of a selection by the director, but before patent to a municipality, the municipality may execute conditional leases and make conditional sales only with the consent of the director. Conditional sales and conditional leases made before July 1, 1978 do not require the consent of the director.

(e) Nothing in this chapter affects a valid existing claim, location or entry under the laws of the state or the United States whether for homestead, mineral, right-of-way or other purposes. Nothing in this chapter affects the rights of an owner, claimant, locater or entryman to the full use and enjoyment of the land so occupied.

Sec. 29.65.080. (Sec. 29.18.208.) PAYMENT FOR LAND DEFICIENCY. (a) There is established within the general fund the Alaska municipal land account for the following purposes:

(1) providing payment to the boroughs and unified municipalities designated in AS 29.18.201 for a deficiency of land physically suitable for residential, commercial or industrial purposes; or

(2) providing payment to the boroughs and unified municipalities designated in sec. 201 of this chapter for certain general grant lands selected by the state and conveyed to a Native corporation under the provisions of the Alaska Native Claims Settlement Act.

(b) A municipality shall receive payment for its land deficiency from the account established in (a) of this section. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality which is physically suitable for residential, commercial or industrial purposes amounts to less than one-third acre per capita. Any entitlement under AS 29.18.201 which is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for residential, commercial or industrial purposes. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to $1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for residential, commercial or industrial purposes which has been selected by the municipality. For the purpose of this subsection, the population of the municipality shall be the population determined in accordance with AS 29.18.206(f). No payment may be made to a municipality under this subsection in excess of $9,000,000.

(c) If a municipality selected vacant, unappropriated, unreserved land on or before December 18, 1971, to which the state had received tentative approval or patent, and such land was also selected by a Native corporation organized under the Alaska Native Claims Settlement Act (P.L. 92-203), and title to that land is ultimately vested in that Native corporation, the municipality may, at its option, request payment for land

deficiency from the account established in (a) of this section. The acceptance of payment under this subsection by a municipality constitutes a relinquishment of any other right, title or claim to the land by that municipality. The total payment to a municipality under this subsection may not exceed $1,000 per acre to a maximum of 8,000 acres.

(d) The governor shall annually submit to the legislature a request for an appropriation to the account for the municipalities which have elected to receive payments under (b) or (c) of this section. The request for appropriation shall distinguish between amounts necessary to make payments for land deficiency under (b) of this section and those required to make payments for land deficiency under (c) of this section.

(e) For purposes of fulfilling entitlements under this section, the legislature is authorized to appropriate

(1) not more than $4,000,000 per fiscal year, and not more than $12,000,000 in total, for the purpose of paying entitlements under (b) of this section;

(2) not more than $1,000,000 per fiscal year, and not more than $8,000,000 in total, for the purpose of paying entitlements under (c) of this section.

(f) If an annual appropriation is not sufficient to meet the amount due to all municipalities which have elected to accept payment for land deficiency under (b) or (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under (c) of this section, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An appropriation made under this section is in addition to other grants and entitlements authorized to eligible municipalities.

(g) Payments authorized by this section may not be made to a municipality eligible for an entitlement under sec. 202 or 203 of this chapter.

(h) Payments made under this section shall be used by those local governments which levy property taxes to reduce those levies in proportion to the amount of state payments received by a local government for a given fiscal year. The governing body of each local government shall furnish a notice with the tax statement describing the effect on property tax levies of payments received under this section.

Sec. 29.65.090. (Sec. 29.18.209.) AUTHORIZATION FOR LAND EXCHANGES. The director, with the concurrence of the commissioner, and any municipality are authorized to exchange land or interests in land when it is in the public interest. Land or interests in land exchanged under this section must be of approximately equal value, including the non-monetary value of public benefits. Exchange procedures shall comply with applicable law and municipal ordinances. The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to exchanges of land under this section. The provisions of AS 38.50 do not apply to exchanges of land under this section.

Sec. 29.65.100. (Sec. 29.18.210.) PUBLIC PURPOSE AND EXPANSION NEEDS. (a) Consistent with the best interests of the state, if a municipality does not contain and cannot reasonably acquire sufficient nonfederal land within its boundaries to meet its legitimate needs for public or private settlement or development, it shall be the policy of the state to select federal land reasonably necessary to meet the needs of the municipality and to make the land selected available to the municipality under AS 38.05.315 or (b) of this section.

(b) Where state land is the most logical location for demonstrated municipal expansion for nonpublic settlement and development purposes, and when an exchange of land under sec. 209 of this chapter is not possible or

is not in the public interest, it is the policy of the state to sell or lease the land at public auction. The state may contract with a municipality to act as its agent in an auction of state land under applicable statutes. When a municipality acts as the agent of the state in an auction, the municipality may retain from the proceeds of the auction the expenses which the director determines to be necessary and reasonable.

(c) Nothing in this chapter limits or impairs the authority of the director to transfer land to municipalities, without limit or consideration, for public purposes in accordance with AS 38.05.315. If there is a remaining entitlement of the municipality, land transferred under AS 38.05.315 shall be credited toward fulfillment of the entitlement.

Sec. 29.65.110. (Sec. 29.18.211.) ELECTION OF BENEFITS. (a) A municipality which on July 1, 1978 is engaged in litigation, or which becomes engaged in litigation, regarding a claim to state land under former secs. 190 and 200 of this chapter shall elect either to obtain the benefits provided in secs. 201 -213 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under secs. 201 213 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in sec. 201 of this chapter, the municipality shall file its motion for dismissal within 60 days of July 1, 1978. If the claim involves a city eligible to receive an entitlement under sec. 202 of this chapter, the city shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the director under sec. 202 of this chapter. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under secs. 201 - 213 of this chapter.

(b) A municipality which was eligible to file land selections under former secs. 190 and 200 of this chapter and which does not enter

into litigation over a claim to rights under those sections before the expiration of the time period within which it could make an election under (a) of this section shall be considered to have elected to receive benefits under secs. 201 - 213 of this chapter and to have waived any claim which might have been raised under former secs. 190 and 200 of this chapter.

(c) The provisions of secs. 201 - 213 of this chapter do not affect the rights, if any, of any party to litigation regarding the former AS 29.18.190 29.18.200 or 29.18.420, which litigation is maintained by a municipality that has elected not to obtain the benefits provided by secs. 201 - 213 of this chapter.

Sec. 29.65.120. (Sec. 29.18.212.) ADMINISTRATION. The commissioner may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) necessary to carry out the purposes of secs. 201 - 213 of this chapter.

Sec. 29.65.130. (Sec. 29.18.213.) DEFINITIONS. In secs. 201 - 213 of this chapter, unless the context otherwise requires,

(1) Repealed by sec. 45 ch 85 SLA 1979.

(2) "approved selection" means a municipal land selection which has been approved in writing by the director for transfer by patent to a municipality;

(3) "director" means the director of the division of lands, Department of Natural Resources, or his designee;

(4) "general grant land" means land patented or tentatively approved to the state from the United States under sec. 6(a) or (b) of the Alaska Statehood Act;

(5) "mental health land" means land granted under Title II, sec. 202 of P.L. 84-830, as amended before or after July 1, 1978;

(6) "municipal land selection" means a request by a municipality, filed in writing with the director under authority of secs.

190 and 200 of this chapter repealed by this act or under secs. 201 - 213 of this chapter for vacant, unappropriated, unreserved general grant land within its municipal boundaries in partial fulfillment of its municipal entitlement;

(7) "municipality" means a home rule or general law city or organized borough of any class, and includes unified municipalities established under AS 29.68.240 - 29.68.440;

(8) "patent" means a document, issued by the director to a municipality for a previously approved selection, which conveys and quitclaims all the right, title and interest of the state without reservation or condition except as may be required by law;

(9) "remaining entitlement" means the general grant land entitlement determined in accordance with secs. 201 - 203 of this chapter, reduced by the total acreage of approved selections, including both patented and unpatented parcels;

(10) "school land" means those rectangular sections 16 and 36 within each township surveyed on or before January 3, 1959, and confirmed and transferred to the State of Alaska upon its admission under sec. 6(k), Alaska Statehood Act, 72 Stat. 339, and any other land designated solely for school revenues;

(11) "university land" means all sections 33 reserved to the university under 38 Stat. 1214, as amended (48 U.S.C. 353) and all land granted to or reserved for the benefit of the university;

(12) "vacant, unappropriated, unreserved land" means general grant land as defined in (4) of this section, excluding minerals as required by sec. 6(i) of the Alaska Statehood Act, which

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under secs. 201-213 of this chapter or former secs. 190 and 200 of this chapter repealed by this act; or

(C) is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry purposes,

## CHAPTER 68. MUNICIPAL PROGRAMS

### ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT

Sec. 29.68.010. (Sec. 29.23.395.) INTENT OF SECS. 397-401. It is the intent of Secs. 397-401 of this chapter to provide an opportunity for the young people of Alaska to become involved in the institutions and processes of local government comparable to that embodied in legislation under consideration at the First Session of the Seventh Legislature providing for participation in the executive branch of state government.

Sec. 29.68.020. (Sec. 29.23.397.) COMMISSION. (a) The governing body of a municipality may by ordinance establish a commission on the involvement of young people in local government.

(b) The commission may consist of not more than nine members, drawn from fields of public affairs, education, the sciences, the professions, other fields of private endeavor, from the state or local service, and three additional members from the 17-22 age group, and shall include women and representatives of minority groups. The members shall be appointed by the governing body in the manner prescribed by ordinance without regard to political affiliation and shall serve at the pleasure of that body. One member shall be designated by the governing body as chairman of the commission.

(c) Members of the commission serve without compensation but are entitled to per diem and travel expenses as may be authorized by ordinance.

(d) The commission shall establish procedures to enable it to recommend annually to the governing body a group of promising young men and women from whom the governing body may select interns and youth voting members of municipal boards and commissions. The commission, in establishing these procedures, shall enlist the aid of municipal residents who are actively interested in working with young people. Following adoption of the procedures, the commission shall accept applications from

persons and nominations for consideration, and shall interview all applicants or nominees.

(e) Recommendations of the commission shall be limited to young people who

(1) have a capacity, desire, interest, ability and potential for leadership and service to the community and to the state;

(2) will have attained the age of 17 but not the age of 22 before the beginning of their service.

(f) Annually, the commission shall evaluate the program and shall submit a written report to the governing body.

Sec. 29.68.030. (Sec. 29.23.399.) INTERNS. An intern may be appointed to serve on the staff of the governing body or the municipal administration for a period of time prescrib i by the governing body, with a maximum of one year. He may be assigned responsibilities in any office, department or agency of the municipality. Service will begin at a time prescribed by the governing body. Interns shall be appointed without regard to political affiliation. Salaries shall be individually established by the governing body on the basis of prior experience and the responsibilities of the position to which the intern is assigned.

ARTICLE 2. HISTORICAL DISTRICTS

Sec. 29.68.060. (Sec. 29.48.108.) CREATION OF HISTORICAL DISTRICT COMMISSIONS. The governing body of a general law or home rule municipality may establish a historical district commission or designate the planning and zoning commission or itself to serve as the historical district commission.

Sec. 29.68.070. (Sec. 29.48.110.) ESTABLISHMENT OF HISTORICAL DISTRICTS. (a) In addition to existing municipal authority providing for the preservation, protection, and maintenance of historic sites, the local historical district commission established under Sec. 108 of this chapter, in consultation with the Historic Sites Advisory Committee within the

Department of Natural Resources, may establish a historical district within the boundaries of the municipality.

(b) A historical district shall be a reasonably compact area of historical significance in which two or more structures important in state or national history, and related by physical proximity or historical association, are located. For purposes of this section, "structures important in state or national history" means properties recommended by historical district commissions, which are listed in the National Register of Historic Places or are characteristic of the Russian-American period before October 18, 1867, the early territorial period before 1930, or early Native heritage, reflecting the indigenous characteristics of Native culture in Alaska. Upon recommendation of the governing body of a general law or home rule municipality and the Historic Sites Advisory Committee, the Department of Natural Resources may by regulation formulate additional criteria for the establishment of historical districts not inconsistent with this subsection.

(c) The establishment of a historical district under this section shall be consistent with any applicable comprehensive plan for the municipality.

## CHAPTER 71. GENERAL PROVISIONS

Sec. 29.71.010. (Sec. 29.73.030.) ADVERSE POSSESSION. A home rule or general law municipality may not be divested of title to real property by adverse possession.

Sec. 29.71.020. (Sec. 29.73.040.) TAXATION OF MUNICIPALITIES. No state law or regulation may assess or tax, or be construed to assess or tax, home rule or general law cities or boroughs of the state, unless the law or regulation expressly provides that the cities or boroughs are to be assessed or taxed by the particular law or regulation.

Sec. 29.71.030. (Sec. 29.78.010.) DEFINITIONS. In this title, unless otherwise provided, or the context otherwise requires,

(1) "borough" means a general law first, second or third class organized borough;

(2) "city" means a general law first or second class city;

(3) "conditional use" means exception, special exception, special use, or special permit designated in the zoning ordinance;

(4) "consolidation" means dissolution of two or more municipalities and their incorporation as a new municipality;

(5) "majority" means a simple majority;

(6) "merger" means dissolution of a municipality and its absorption by another municipality;

(7) "municipal election" includes but is not limited to elections to choose city councilmen, borough assemblymen, school board members and utility board members;

(8) "municipality" means a general law municipal corporation and political subdivision, which is a first or second class borough or city, or a third class borough, incorporated under the laws of the state;

(9) "owner", "record owner", or "owner of record" means owner of record or purchaser of record;

(10) "personal property" means tangible property other than real property, ~~such as merchandise and stock in trade, machinery and equipment, furniture and fixtures, motor vehicles and vehicles, boats and vessels and aircraft;~~

(11) "property" means real and personal property;

(12) "published" means appearing at least once in a newspaper of general circulation distributed within the municipality or, if there is no newspaper of general circulation distributed within the municipality, posting in three public places for at least five days;

(13) "real property" means land and improvements and all possessory rights and privileges appurtenant to the property, and includes personal property affixed to the land or improvements;

(14) "regular election" means the municipal election held on the first Tuesday of October annually, or on an election date or at an interval of years provided by ordinance;

(15) "street" includes streets, avenues, boulevards, roads, lanes, alleys, and other ways;

(16) "subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale or building development, includes resubdivision, and, when appropriate to the context, relates to the process of subdividing or to the land or area subdivided;

(17) "voter" means a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution.

(18) "areawide power" means a power of an organized borough exercised throughout the borough;

(19) "nonareawide power" means a power of an organized borough exercised by the borough only in the area outside of cities.

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PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

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FOR DISCUSSION ONLY

CHAPTER 03. THE UNORGANIZED BOROUGH.

Sec. 29.03.010. ESTABLISHMENT. Areas of the state which are not within the boundaries of an organized borough constitute a single unorganized borough.

Sec. 29.03.020. SERVICE AREAS. Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to schools, utilities, land use regulations and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

With change made by the Policy Group
Jan. 17, 18, 1981

Tam Cook

CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES.

****Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city of the first class or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

Sec. 29.06.020. GENERAL LAW. A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.

Sec 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of five classes:

(1) first class boroughs;

(2) second class boroughs;

(3) third class boroughs;

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. (a) A second class city may be reclassified as a first class city by holding an election on the question as provided in this subsection, if the Department of Community and Regional Affairs determines from the best figures available that the population of the city has reached 400 permanent residents.

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

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

(2) the council may propose reclassification.

(c) The council shall hold at least one public hearing within the

city on the question. The council shall then evaluate the ability of the city to assume first class status and make its findings public.

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

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

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

(g) A second class borough may reclassify as a first class or third class borough, and a third class borough may reclassify as a first class or second class borough, in the manner provided by AS 29.36.110 -29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers.

(h) At the time of voting on reclassification of a second class borough to third class status, borough voters in conformity with AS 29.36. shall elect an assembly to serve as the combined assembly and school board of the third class borough if reclassification is approved.

(i) At the time of voting on reclassification of a third class borough to second class or first class status, borough voters shall vote also on the question whether the borough shall upon reclassification retain a combined assembly and school board or a separate assembly and board as otherwise provided for first and second class boroughs. If the majority of votes cast on the question favors retention of the combined assembly and board, the assembly serving at the time of the relassification election

continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a specia. election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board.

(j) The effective date of reclassification of a borough for which reclassification is approved under (h) of this section is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification proposition has been approved by the voters.

****Sec. 29.06.050. TRANSITION. Repeal.

CHAPTER 09. INCORPORATION.

ARTICLE 1. REQUIREMENTS.

Sec. 29.09.010. INCORPORATION OF CITIES. (a) A community which meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community which meets all the standards established in (a) of this section except (a)(1) may incorporate as a second class city.

Sec. 29.09.020. LIMITATIONS ON INCORPORATION OF CITIES. (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.

(b) A community within an organized borough may not incorporate as a city if the services could be provided on an areawide or nonareawide basis by the borough in which it is located or by annexation to an existing city.

Sec. 29.09.030. ORGANIZED BOROUGHS. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

ARTICLE 2. PROCEDURES.

Sec. 29.09.060. PETITION. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs. The petition shall include the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

*(4) [Effective January 1, 1981] composition and apportionment of the assembly or council;

(5) for a first class borough, a designation of areawide powers to be exercised;

(6) for a second class borough, a designation of areawide and nonareawide powers to be exercised;

(7) maps, documents, and other information required by the Department of Community and Regional Affairs;

(8) for first class city incorporation, the signatures and resident address of 50 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(9) for second class city incorporation, the signature and resident address of 25 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(10) for borough incorporation, the signature and resident address of 15 percent of the permanent resident voters in each first class city and 15 percent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;

(11) for a city, a designation of the powers proposed by the petitioners to be exercised;

(12) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation.

Sec. 29.09.070. REVIEW. The Department of Community and Regional Affairs shall review petitions for content and signatures and shall return deficient petitions for correction and completion.

Sec. 29.09.080. INVESTIGATION. (a) If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

(b) The department may combine petitions for incorporation from the same general area.

(c) The department shall hold at least one public hearing in the area proposed for incorporation.

Sec. 29.09.090. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal.

Sec. 29.09.100. DECISION ON BOROUGH INCORPORATION. (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110. INCORPORATION ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition. Within 30 days after notification, the lieutenant governor shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial officers in the same election. If incorporation is rejected, no officers are elected. The election is held not less than 30 nor more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in the incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each power to be exercised outside cities only is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing outside cities.

(d) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under this section.

Sec.29.09.120. ELECTION OF INITIAL OFFICERS (a) Repealed by Sec. 4 ch. 23 SLA 1976.

(b) Nominations for initial officers are made by petition. The petition is in the form prescribed by the lieutenant governor and includes the name and address of the nominee and a statement of the nominee that he is qualified under the provisions of this title for the office that he seeks. A person may file for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a home rule or first class city. Petitions to nominate officers of a second class city must include the signature and resident address of 10 voters in the area of the proposed city. Petitions to nominate elected municipal officers must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officers are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under (a) - (c) of this section.

(d) The initial elected municipal officials take office on the first Monday following certification of their election.

(e) The initial elected borough assembly and city council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130. INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. Service areas in a newly incorporated borough or city shall be integrated into the borough or city within two years after the date of incorporation. On integration the borough or city succeeds to all the rights, powers, duties, assets and liabilities of the service areas. After integration, the borough assembly or city council may exercise within a former service area all of the rights and powers exercised by the service area at the time of integration, and may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a borough or city as successor to the service area. Upon integration no less than all property in the service area at the time of integration remains subject to taxation to pay the principal of and interest on the bonds. The provisions of this section apply to all organized boroughs whether incorporated or organized before or after September 10, 1972.

Sec. 29.09.140. TRANSITION. (a) The powers and functions exercised by home rule or general law cities and service areas which are succeeded to by a newly incorporated borough or city are exercised by them until the new borough or city assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new borough or city.

(b) The borough or city shall give written notice of its assumption of the powers, duties and other items enumerated in Secs. 130-140 of this chapter, to the city, and service area concerned before the assumption. Borough or city officials shall consult with the officials of the city and service area concerned, and arrange an orderly transfer.

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

Sec. 29.09.150. CHALLENGE OF LEGALITY. No person may challenge the formation of a municipality except within six months of the date of its incorporation.

ARTICLE 03. TRANSITIONAL ASSISTANCE.

Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to borough or city government and in order to provide for development and interim governmental operations, each borough and city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, other than a unified municipality incorporated under the provisions of (AS 29.85), or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to $10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough and each first class city incorporated or established by reclassification outside an organized borough is entitled to at least $25,000.

(b) Within 30 days after the date of incorporation of a borough or city after September 10, 1972, the Department of Community and Regional Affairs shall determine the number of voters in the borough or city who voted in the incorporation election.

(c) Within 30 days after the completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough or city the total amount of money to which the borough or city is entitled.

CHAPTER 12. ALTERATION OF MUNICIPALITIES.

ARTICLE 1. CHANGE OF NAME.

Sec. 29.12.010. CHANGE OF MUNICIPAL NAME. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Department of Community and Regional Affairs.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order.

ARTICLE 2. ANNEXATION AND EXCLUSION.

Sec. 29.12.040. LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presen-

tation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.

Sec. 29.12.050. ANNEXATION OF MILITARY RESERVATIONS. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under Sec. 040 of this chapter. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part.

ARTICLE 3. MERGER AND CONSOLDIATION.

Sec. 29.12.080. METHODS OF MERGER AND CONSOLIDATION. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission, or

(2) the local option method specified in Secs. 090-160 of this chapter .

Sec. 29.12.090. PETITION. (a) Residents of two or more municipalities may file a merger or consolidation petition with the Department of Community and Regional Affairs. The petition must be signed by a number of municipal voters of each municipality equal to at least 25 percent of the number of votes cast in its last regular election.

(b) The petition includes

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information which show that the proposed municipality meets the standards for municipal incorporation .

Sec. 29.12.100. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.110. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.120. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the merger or consolidation.

(b) The Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the merger or consolidation petition, unless officials of the municipalities agree to a single hearing.

Sec. 29.12.130. DECISION. If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets these standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition. The decision may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition. Within 30 days after notification, the lieutenant governor shall order an election within the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election is held not less than 30 nor more than 90 days after the election order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 -15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within 10 days, set a date for election of officers of the new municipality under AS 29.09.120. The election date is not less than 60 nor more than 90 days after the election order. This date is the effective date for the merger or consolidation.

Sec. 29.12.150. ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the others.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160. ORDINANCES. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality.

ARTICLE 4. UNIFICATION OF LOCAL GOVERNMENTS.

Sec. 29.12.190. UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.12.200. UNIFICATION TO BE PROPOSED BY PETITION. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition.

Sec. 29.12.210. PETITION REQUIREMENTS. (a) The petition shall read: "PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law: 'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law? Yes [] No []'

| Signature | Address | Inside First Class or Home Rule City | Outside First Class or Home Rule City |
|---|---|---|---|

(b) The petition shall be signed by at least

(1) that number of qualified voters of the borough living outside all first class and home rule cities in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election; and

(2) that number of qualified voters residing in each first class and home rule city located in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election in each city.

Sec. 29.12.220. REVIEW OF PETITION. Upon receipt of a petition, the borough assembly shall review the petition within 15 days after its receipt to determine whether it complies with Sec. 200 of this chapter. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

Sec. 29.12.230 CALL FOR CHARTER COMMISSION NOMINATIONS. Once it is determined by the borough assembly that a petition meets the requirements of Sec. 200 of this chapter, or the assembly by its resolution proposes an election on formation of a charter commission to propose a unification charter, the assembly shall issue a call for the nomination of charter commission candidates, specifying the filing deadline and outlining the procedure described for making nominations under Sec. 240 of this chapter.

Sec. 29.12.240. NOMINATION OF CHARTER COMMISSION CANDIDATES. (a) Charter commission candidates shall be nominated by petition signed by at least 50 qualified voters of the area from which the candidate seeks election or by a number of qualified voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough.

Sec. 29.12.250. QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least one year immediately preceding the date his nomination petition is filed with the borough clerk.

****Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough; or,

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

Sec. 29.12.270. ELECTION. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution

(b) The ballot on the question of unification shall be worded exactly as in Sec. 210(a) of this chapter.

(c) The election of charter commission members shall take place at the same time as the election on the question of unification.

(d) All costs incurred in conducting an election under this chapter shall be paid by the borough.

Sec. 29.12.280. REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION. (a) The votes on unification shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities of the borough. The other classification shall consist of all votes cast in the remaining areas of the borough. In order for unification to be approved, it is necessary that a majority of the votes in each classification favor unification.

(b) If unification is approved, those charter commission candidates who received the highest number of votes from their respective areas shall serve as members of the commission.

Sec. 29.12.290. CHARTER COMMISSION ORGANIZATION AND PROCEDURE. (a) The charter commission authorized by this chapter shall hold its first meeting within 30 days of the date of certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. No decision of the commission is valid or binding unless approved by that number of members necessary to constitute a quorum.

(c) The charter commission may elect other officers from among its membership, adopt rules governing its procedures and hire and discharge commission employees. Rules adopted must conform with the provisions of this chapter.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and shall be available for public inspection at the borough office.

(e) Except as provided in AS 29.12.340(e), vacancies on the charter commission shall be filled by a majority vote of the commission . The person appointed to fill a vacancy must be a qualified voter of the same area as the person whom he succeeds and must have been a qualified voter of that area for at least one year immediately preceding the date of his appointment.

(f) The borough assembly may grant a per diem allowance to the commission members and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by this chapter.

(g) Costs, fees, and other expenses incurred by the charter commission are a debt of the borough and shall be paid upon proper verification.

Sec. 29.12.300. CHARTER PREPARATION. (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in AS 29.12.380. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to AS 29.12.360;

(2) provisions for

(A) the establishment of service areas; and

(B) the establishment of districts or sections for the election of members of the legislative body of the unified municipality, if election of members of the legislative body is not areawide, and procedures by which to reapportion the election districts or sections;

(C) reapportionment of the sections, if established;

(3) provision for nonpartisan government and provision for the selection, organization, authority and responsibilities of the governing body and its executive and administrator;

(4) the transfer or other disposition of property and other rights, claims, assets and franchises of the local government to be unified under the charter;

(5) provision for exercise of the rights of initiative and referendum as required by AS 29.15.050;

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by AS 29.12.340, is effective;

(8) designation of the new municipality's official name, subject to the provisions of (b) of this section;

(9) other charter provisions which the charter commission elects to include and which may be included in a home rule charter under this chapter and the state constitution.

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law.

Sec. 29.12.310. PUBLIC HEARINGS. Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter commission whenever and wherever it believes necessary and appropriate.

Sec. 29.12.320. FILING OF PROPOSED CHARTER. Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy with signatures affixed shall also be filed with the clerk of each city within the borough.

Sec. 29.12.330. PUBLICATION AND POSTING OF PROPOSED CHARTER. Within 10 days after filing the proposed charter, the borough clerk shall have it published once in at least one newspaper having general circulation distributed within the borough, if there is a newspaper having general circulation distributed within the borough. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places within each city of the borough and each area outside cities. Copies of the proposed charter shall be made available by the borough assembly to the public at both the office of the borough clerk and the office of the clerk of each city within the borough. The clerk shall publish notice by radio and television of the publication, posting, and availability of the proposed charter in a manner intended to apprise the entire borough population of the existence of the proposed charter.

Sec. 29.12.340. ELECTION ON CHARTER. (a) The proposed charter adopted by the charter commission shall be submitted to the voters for ratification or rejection at the borough election specified in AS 29.12.300. The borough clerk shall prepare the ballots for use in the election and shall give published notice of and otherwise conduct the election in the manner in which regular municipal elections are conducted. In addition, the clerk shall publish notice of the election by radio and television in a manner intended to apprise the entire borough population of the election.

(b) A person who is a qualified voter of the borough may vote in the election on the proposed charter.

(c) If a majority of the votes cast in the area of the borough outside all first class and home rule cities and a majority of the votes cast in the remaining area of the borough, composed of all first class and home rule cities, are cast in favor of the proposed charter, the charter is ratified. If the charter is ratified, two copies of the charter shall be filed with each of the following authorities:

(1) lieutenant governor;

(2) commissioner of the Department of Community and Regional Affairs;

(3) district recorder for the area of the borough;

(4) clerk of the borough;

(5) clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a proposed charter to the voters at a general or special borough election called by the borough and held within one year of the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved.

(e) If after the rejection of the first proposed charter, more than one-half of the charter commission members resign from the commission, the borough assembly shall appoint new members to fill the vacancies in accordance with AS 29.12.160(e).

Sec. 29.12.350. EFFECT OF THE CHARTER AFTER RATIFICATION. Upon ratification, the charter of a unified municipality organized under AS 29.12.190 - 390 operates to dissolve all local governments within the area of unification in accordance with the charter.

Sec. 29.12.360. ASSETS AND LIABILITIES. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness or other debt incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by ordinance if the governing body determines that the asset for which the bonded indebtedness or other debt was incurred was used for the benefit of the larger area before unification, or is so used after unification. However, preunification bonded indebtedness or other debt for sewage col-

lection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt.

Sec. 29.12.370. ORDINANCES. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body.

Sec. 29.12.380. RIGHT TO STATE AND FEDERAL FUNDS PRESERVED. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under AS 29.12.190 - 29.12.390.

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all powers

(1) not prohibited it by law or charter;

(2) granted to organized boroughs and first class cities.

ARTICLE 5. DISSOLUTION.

Sec. 29.12.420. METHODS OF DISSOLUTION. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.12.430 - 29.12.500

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the

Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

Sec. 29.12.430. PETITION. (a) Municipal residents may file a dissolution petition with the Department of Community and Regional Affairs in the form prescribed by the department. The petition must be signed by a number of municipal voters equal to at least 25 percent of the number of votes cast in the last regular municipal election.

(b) The petition includes

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution.

Sec. 29.12.440. STANDARDS. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

(1) it is free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by ch. 09 of this title, or it ceases to use each and every one of its mandatory powers.

(b) A home rule or general law city in a borough may petition for dissolution if the borough consents to assume the city's rights, powers, duties, assets and liabilities. The consent must be ratified by a majority of borough voters voting on the question.

Sec. 29.12.450. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.460. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.470. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be dissolved.

Sec. 29.12.480. DECISION. If the Local Boundary Commission determines that the municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

Sec. 29.12.490. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a dissolution petition. Within 30 days after notification, the lieutenant governor shall order an election within the municipality to determine whether the voters desire dissolution. The election is at least 30 and not more than 90 days after the election order.

(b) A person who is a qualified voter of the municipality may vote in the dissolution election.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If dissolution is approved, he shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.12.500. SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities as provided in AS 29.09.130-29.09.140.

CHAPTER 15. HOME RULE MUNICIPALITIES.

ARTICLE 1. CHARTERS.

* Sec. 29.15.010. MUNICIPAL CHARTER ADOPTION. A first or second class municipality may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec 29.15.020. NOMINATION. (a) Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

**** (b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

Sec. 29.15.030. ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission.

Sec. 29.15.040. PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be

signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter.

Sec. 29.15.050 INITIATIVE AND REFERENDUM. ****(a) A municipal charter shall provide procedures for initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 percent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by Sec. 7, art. XI of the state constitution.

Sec. 29.15.060. CHARTER ELECTION. The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter.

Sec. 29.15.070. CHARTER ADOPTION. (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

(1) lieutenant governor - two copies;

(2) Department of Community and Regional Affairs - two copies;

(3) district recorder - one copy;

(4) municipal clerk - one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

* Sec. 29.15.080. CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter except that no amendment shall be effective unless ratified by the voters.

ARTICLE 2. HOME RULE LIMITATIONS.

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 Borough Transition

(2) AS 29.12.010 Municipal Name Change

(3) AS 29.12.040 Annexation and Exclusion

(4) AS 29.12.080 - 29.12.160 Merger and Consolidation

(5) AS 29.12.420 - 29.12.500 Dissolution

(6) AS 29.15.080 Charter Amendment

(7) AS 29.24.010 Conflict of Interest

(8) AS 29.24.020 Meetings Public

* (9) (Effective January 1, 1981) AS 29.24.060; 29.24.080 - 29.24.140 Borough assembly composition and Apportionment; Borough Assembly Members

(10) AS 29.24.150(c) Expulsion of Borough Assemblymen

(11) AS 29.24.200(f) Removal of Borough Mayor from Office

(12) AS 29.24.290(b) Expulsion of City Councilman from Office

**** (13) AS 29.24.340(a) Repeal

(14) AS 29.24.350 Removal of Mayor from Office

(15) AS 29.24.680 Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 Municipal Reports

(17) AS 29.27.010(a)(12) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 Codification

(19) AS 29.30.010, 29.30.030(b) - 29.30.040 Municipal Elections

(20) AS 29.30.060(f) Expulsion, Removal from Office

(21) AS 29.30.210 - 29.30.330 Recall

(22) AS 29.33.020 Extraterritorial Jurisdiction

(23) AS 29.33.030 Eminent Domain

(24) AS 29.33.080 Garbage and Solid Waste Services

(25) AS 29.33.090(b) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090(c) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100 - 29.33.160 Utilities

**** (28) AS 29.33.220 Repeal

(29) AS 29.33.230 Post Audit

(30) AS 29.36.010(b) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020(a) Responsibility for education on Military Reservations

(32) AS 29.36.130(c) Acquisition of Additional Areawide Powers

(33) AS 29.39.020 - 29.39.060 Powers of Cities Outside Boroughs

(34) AS 29.42.040(d) Zoning of State Land for Homesite Entry

(35) AS 29.42.080(b) Applicability of Local Platting Regulations to State Land in a Municipality

(36) AS 29.45.010 - 29.45.530 Borough and City Property Taxes

(37) AS 29.45.020 Taxpayer Notice

(38) AS 29.45.580(d) Interest on Sales Tax

(39) AS 29.48.090 Exemption from Special Assessment

(40) AS 29.51.420 - 29.51.430 Bonded Debt for School Construction

(41) AS 29.51.210(b) Security for Bonds

(42) AS 29.51.390 Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. Municipal Tax Resource Equalization

(44) AS 29.62. State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 Adverse Possession

(46) AS 29.71.020 Taxation of Municipalities

# CHAPTER 18. DEVELOPMENT CITIES

**** Repeal.

CHAPTER 21. CAPITAL CITY.

Sec. 29.21.010. INCORPORATION. There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city.

Sec. 29.21.020. BOUNDARIES. The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state.

Sec. 29.21.030. CITY COUNCIL. (a) Until council members elected by the residents of the capital city take office as provided in AS 29.21.060 the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governo The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in AS 29.21.160 the successors of the initia appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance.

Sec. 29.21.040. FILLING A VACANCY. If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacmen who shall serve for the unexpired portion of the term.

Sec. 29.21.050. APPOINTMENT OF CITY OFFICIALS. Until a mayor is elected in accordance with AS 29.21.060, the council shall appoint a city manager for the capital city to serve at the pleasure of the council. The city manager may not be a council member.

Sec. 29.21.060. TRANSITION. (a) When the capital city attains a population of 400 permanent residents, as certified by the lieutenant governor based on the best information available, the lieutenant governor shall notify the council of this determination. The lieutenant governor shall specify an election date which shall be the first Tuesday of October following the notification, except that if it is less than six months from the date of the certification to the first Tuesday of October then the election date shall be the first Tuesday of October of the year following. The elected members shall take office on the Monday following the election.

(b) After the lieutenant governor has specified the election date, the council shall make arrangements for an election at which five council members and a mayor shall be elected in the manner prescribed by ordinance and law. The expenses of the election shall be borne by the state. The council of the capital city shall have six members. The governor shall designate one council member holding office on the date of the election to remain a member of the council for a single three-year term commencing on the date the elected council members take office. The successors to the appointed council members shall be elected by the residents, except that if the appointed council member leaves office during the three years, the governor may appoint a successor. The terms of all other appointed or designated council members expire when the elected council members take office. The term of elected council members is as provided in AS 29.24.280 except that three of the members are elected for an initial term of one year.

*Sec. 29.21.070. PLANNING AND LAND USE REGULATION AUTHORITY. The general development plan and specific development plans constitute the land use plan for the capital city area. When a parcel of land has been developed in accordance with the applicable specific development plan, that parcel becomes subject to all planning, zoning, subdivision, building code or other similar ordinances of the Matanuska-Susitna Borough.

Sec. 29.21.080. TRANSFER OF UTILITIES TO THE CAPITAL CITY. The development corporation, in cooperation with the capital city, shall arrange for and agree to an orderly schedule for transferring to the capital city ownership of, and financial and operational responsibility for utilities and any other facilities which the development corporation considers to be integral parts of the capital city infrastructure. Before January 1, 1985, the development corporation and the council of the capital city shall jointly retain independent consultants to study and determine an orderly schedule for transfer of these utilities and facilities to the capital city. The study shall consider the capabilities of the capital city and its existing and anticipated residents to finance the cost of these utilities and other facilities and their operating expenses. The consultants shall propose a recommended schedule for and terms of transfer which are commensurate with the capital city's existing and anticipated population, tax base and any other factors relating to its capability to finance and operate these facilities as they consider appropriate. The development corporation shall, after considering the consultants' report, propose a schedule of and terms and conditions of the transfer to the capital city, which shall, upon review and approval by the council, be included in an agreement between the development corporation and the capital city. If the development corporation and the capital city are unable to agree within six months after the development corporation submits its proposal, the development corporation shall submit the proposal to the Legislative Budget and Audit Committee

which shall consider the proposal, and if the committee considers it appropriate to do so, shall recommend to the legislature legislation it considers desirable for the disposition of the utilities and other facilities. If the legislature does not enact legislation regarding the disposition within one year after the proposal is submitted to the Legislative Budget and Audit Committee, the development corporation may at any time thereafter sell or dispose of the utilities and facilities or any of them to a private person or entity or government body, or continue to operate them.

Sec. 29.21.090. DEFINITIONS. In AS 29.21.010 - 29.21.090, unless the context requires otherwise,

(1) "capital city area" means the area described in AS 29.21.020

(2) "capital city " means the municipality incorporated by this chapter;

(3) "development corporation" means the Alaska Capital City Development Corporation;

(4) "general development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to the general development plan;

(5) "specific development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to each specific development plan.

Sec. 29.21.100. SHORT TITLE. AS 29.21.010 - 100 of this chapter may be cited as the Capital City Incorporation Act.

CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES.

ARTICLE 1. CONFLICTS OF INTEREST, PUBLIC MEETINGS.

****Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law municipality shall adopt a conflicts of interest ordinance which provides that a member of the governing body shall declare a substantial financial interest he has in an official action and ask to be excused from a vote on the matter. The presiding officer shall rule on the question. His decision may be overidden by the majority vote of the governing body.

Sec. 29.24.020. MEETINGS PUBLIC. Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

ARTICLE 2. GOVERNING BODIES.

****Sec. 29.24.050. (Sec. 29.23.010.) GENERAL POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

Sec. 29.24.060. ASSEMBLY COMPOSITION AND APPORTIONMENT. [Effective January 1, 1981].

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

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

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

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

Sec.29.24.070. COMPOSITION AND FORM OF REPRESENTATION. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.24.080.

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390;

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

Sec. 29.24.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.24.060. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.24.070(b)(2) or (b)(3) the assembly shall submit with the proposition of a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.24.060 the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060.

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seacs which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

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(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060.

At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registerd voters who are residents of the borough request the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.24.060, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.24.060 the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.090. APPORTIONMENT APPEALS. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.24.060 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of community and regional affairs

requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.24.060 or whether a decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under AS 29.24.080(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community and regional affairs to review a decision of the borough assembly under AS 29.24.080(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.24.060, or if he determines that the decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is not correct, the commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.24.060 and submit the ordinance to the voters.

(d) When the borough assembly has been directed by the commissioner of community and regional affairs to prepare reapportionment ordinance under (c) of this section, the borough assembly shall, within two months of its receipt of the commissioner's order, adopt an ordinance providing for reapportionment. The borough assembly shall submit an

ordinance adopted under this subsection to the voters at a regular election or special election held within 60 days of the date of adoption of the reapportionment ordinance.

(e) If at the end of the time period provided under (d) of this seciton an ordinance providing for reapportionment has not been approved by the voters, the commissioner of community and regional affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.100. JUDICIAL REVIEW AND RELIEF. (a) The commissioner of community and regional affairs may request the superior court to enforce a reapportionment order issued under AS 29.24.090(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.24.080(a);

(2) a determination by the borough assembly under AS 29.24.080 that the standards of AS 29.24.060 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.24.080(d);

(4) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(c);

(5) a reapportionment ordinance approved by the voters under AS 29.24.090(d); and

(6) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(e);

Sec. 29.24.110 EFFECTIVE DATE OF APPORTIONMENT. (a) A change in assembly apportionment or composition under AS 29.23.080 or AS 29.24.090 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.24.080(a), AS 29.24.080(e), or AS 29.24.090(d); or

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(d).

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

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

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(e).

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

Sec. 29.24.120. APPLICABLITY OF APPORTIONMENT PROVISIONS. The provisions of AS 29.24.080-29.24.110 do not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390;

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

****Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The

council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

****Sec. 29.24.130. REGULAR TERM OF OFFICE. Repeal.

****Sec. 29.24.140 QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the council. A member of the assembly who ceases to be a qualified voter immediately forfeits his office. A member of the council who ceases to be a qualfied city voter immediately forfeits his office.

(b) A governing body may by ordinance establish a durational residency requirement for its members not to exceed three years.

(c) An assembly or council member who represents an area less than that of the total borough or city and who becomes a resident of another area within the municipality may continue to serve until the next regular election unless provided otherwise by ordinance.

(d) A municipality may by ordinance establish district residency requirements for members of its governing body.

****Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three-year terms and until their successors have qualified unless different terms not exceeding four years are prescribed by charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a governing body is changed by charter or ordinance the term of an official holding office at the time the change becomes effective is not affected.

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

****Sec. 29.24.150. PROCEDURES OF GOVERNING BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding

officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) A municipal governing body shall hold at least one regular meeting every month, unless otherwise provided by ordinance. A special meeting may be held at the call of the presiding officer or at least one-third of the members provided a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held. A waiver shall be made a part of the journal for the meeting.

(c) A majority of the total membership of a governing body authorized by law shall constitute a quorum. A member disqualifed by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(d) Actions of a governing body are adopted by a majority of the total membership of the body. All members present shall vote on every question unless they are required to abstain from voting on a question by law. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it is necessary only to so state.

(e) A governing body shall maintain a journal of its official proceedings which shall be a public record.

(f) A governing body may, consistent with law or charter, determine by ordinance its own rules of procedure and order of business.

****Sec. 29.24.160. DEPARTMENTS. Repeal.

****Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor, vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent from the municipality for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office as determined by two-thirds vote of the governing body;

(5) if a member of the governing body, misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 and two-thirds of the members of the governing body concur in expelling him;

(8) no longer physically resides in the municipality and the governing body by two-thirds vote declares the seat vacant.

****Sec. 29.24.175. FILLING A VACANCY. (a) If a vacancy occurs in a governing body, the remaining members shall within 30 days, unless a different period is provided by ordinance, appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to serve the balance of the term. If less than 30 days remain in a term, a vacancy shall not be filled.

(b) Notwithstanding subsection (a), if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall within seven days appoint a number of qualified persons to constitute a quorum.

ARTICLE 3. BOROUGH EXECUTIVE AND ADMINISTRATOR.

****Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a municipality is vested in a mayor elected by the voters or by the governing body as provided in this article.

(b) The mayor shall act as ceremonial head of government, execute official documents upon authorization of the governing body, and is responsible for additional duties and powers prescribed by this chapter.

****Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a borough or first class city shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor of a borough or first class city begins on the first Monday following certification of his election.

(b) The mayor of a second class city is elected by and from the council and serves until a successor is elected and has qualified. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately. The mayor of a second class city shall serve a one-year term unless a longer term is provided by ordinance, except that the mayor of a second class city may serve only while he is a member of the council regardless of the term established for the office of mayor.

(c) The governing body may not limit the number of terms a mayor may serve.

****Sec. 29.24.206. QUALFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter of a borough or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor in tnat city.

(b) Residency requirements for the office of mayor not exceeding three years may be prescribed by ordinance.

****Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same powers and duties as those of the manager.

(b) The mayor may take part in the discussion of all matters before the governing body.

(c) The mayor may not vote on any matter before the governing body, except that the mayor of a first class city may vote in the case of a tie and the mayor of a second class city may vote on all matters as a council member.

Sec. 29.24.220. EXECUTIVE ABSENCE. The borough mayor, subject to assembly approval, shall designate a person to act as mayor during the mayor's temporary absence or disability. If a manager plan has been adopted, the assembly shall designate by resolution a borough administrative officer to act as manager during his absence or disability.

****Sec. 29.24.230. ASSEMBLY PARTICIPATION. Repeal.

****Sec. 29.24.240. VETO. (a) Except as provided in subsections (c) and (d), the mayor may veto any ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items.

(b) A veto must be exercised before the next regular meeting of the governing body and must be accompanied by a written explanation of the reasons for that action. A veto may be overridden by vote of two-thirds of the authorized membership of the governing body within 21 days following exercise of the veto or at the next regular meeting, whichever is later.

(c) The veto does not extend to

(1) appropriation items in a school budget ordinance;

* (2) actions of the governing body sitting as board of equalization or the board of adjustment;

(3) adoption or repeal of the manager form of government.

(d) The mayor of a third class borough and the mayor of a second class city has no veto power.

****Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) The governing body shall, upon two-thirds concurring vote, declare the office of mayor vacant only when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) if, as a member of the assembly or council, he misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office;

(7) is convicted of a felony or misdemeanor described in AS 15.56; or

(8) no longer physically resides in the municipality.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occuring six months before a regular election shall be filled by the governing body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the governing body is chosen, he shall resign his seat on the assembly or

council. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.

(c) Notwithstanding (b) of this section, in a second class city, the office of mayor is filled by and from the council and retains his seat on the council.

ARTICLE 4. CITY COUNCIL.

****Sec. 29.24.280. COMPOSITION, ELIGIBILITY, ELECTION AND TERM. Repeal.

****Sec. 29.24.290. PROCEDURE. Repeal.

****Sec. 29.24.300. FILLING A VACANCY. Repeal.

ARTICLE 5. CITY EXECUTIVE AND ADMINISTRATOR.

****Sec. 29.24.330. Repeal

****Sec. 29.24.340. Repeal.

****Sec. 29.24.350. Repeal

****Sec. 29.24.360. Repeal.

****Sec. 29.24.370. Repeal.

****Sec. 29.24.380. Repeal.

****Sec. 29.24.390. Repeal.

ARTICLE 6. SCHOOL BOARDS.

****Sec. 29.24.420. SCHOOL BOARDS. (a) Each municipal school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large unless a different method of election has been approved by the voters in a regular election.

(b) Nothwithstanding (a) of this section, assembly members in a third class borough serve as the school board and the mayor is president of the school board.

****Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. (a) The governing body may, by ordinance, establish advisory, administrative, technical, or quasi-judicial boards and commissions.

(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the governing body.

ARTICLE 7. UTILITY BOARDS.

* Sec. 29.24.450. UTILITY BOARDS. (a) The governing body of a municipality operating a public utility may provide by ordinance for a managing board of five members and define the board's powers and duties.

(b) As determined by ordinance, members of the board are appointed by the municipal executive and confirmed by the governing body or are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. The term of a utility board member is two years and until a successor is selected and has qualified. However, the governing body may by ordinance provide for a different term not to exceed four years and not altering the current term of an elected incumbent.

(c) Vacancies in the board are filled by the municipal executive. Executive appointments shall be confirmed by the governing body. A person selected to fill a vacancy on a utility board serves until the expiration of the term and until a successor is elected and has qualified.

(d) Unless otherwise provided by ordinance, the board shall

(1) choose its chairman and secretary;

(2) appoint the manager of the public utility for a term not longer than five years and set his salary;

(3) formulate and enforce the general rules and policies of the utility.

ARTICLE 8. OTHER OFFICERS AND EMPLOYEES.

****Sec. 29.24.480. APPOINTMENT OF OFFICERS. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative official. Unless otherwise provided by ordinance, officials described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative official, must be confirmed by the governing body.

Sec. 29.24.490. MUNICIPAL ATTORNEY. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

* Sec. 29.24.500. MUNICIPAL CLERK. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the governing body and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The governing body may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

****Sec. 29.24.510. MUNICIPAL TREASURER. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the governing body directs.

****Sec. 29.24.515. DEPARTMENTS. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

****Sec. 29.24.520. APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS. Repeal.

****Sec. 29.24.530. PERSONNEL SYSTEM. (a) Except as provided by (b) of this section, all appointments and promotions of municipal employees are made on the basis of merit. The governing body may provide for a personnel system and classified service.

(b) By ordinance the governing body may designate confidential or managerial positions which are wholly or partially exempt from the classified service filled by persons who serve at the pleasure of their appointing authority and whose terms of employment are determined by their appointing authority.

ARTICLE 9. ADOPTION OR REPEAL OF MANAGER PLAN.

Sec. 29.24.550. APPLICATION. A municipality may adopt a manager plan of government.

* Sec. 29.24.560. PETITION. Adoption of a manager plan may be initated either by petition or upon motion of the governing body. A petition for the adoption of a manager plan is submitted to the governing body.

The petition must be signed by a number of municipal voters equal to the following percent of the votes cast at the preceding regular election:

(1) 25 percent when the municipality has fewer than 7,500 persons;

(2) 15 percent when the municipality has 7,500 persons or more.

****Sec. 29.24.570. ELECTION. Upon receipt of the petition or upon its own motion, the governing body shall provide by ordinance or resolution for a vote on the question at the next regular or special election.

* Sec. 29.24.580. ADOPTION. (a) If the manager plan is approved, the governing body shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The governing body shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

****Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the governing body may at any time appoint one of its members or other elected municipal o fficial as manager.

* Sec. 29.24.600. TERM. Subject to the contract of employment, the manager holds office at the pleasure of the governing body.

****Sec. 29.24.610. APPOINTMENT OF TEMPORARY OR NEW MANAGER. Repeal.

****Sec. 29.24.620. REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. Within 60 days after repeal, the governing body shall enact provisions for the reorganization of the municipal executive and administrative functions.

****Sec. 29.24.630. POWERS AND DUTIES OF A MANAGER. As chief administrator the manager shall

(1) appoint, suspend, or remove municipal employees and administrative officials, except as provided otherwise in this title and AS 14.14.065; he may hire necessary administrative assistants and may authorize an administrative official to appoint suspend, or remove subordinates;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program adopted;

(4) make monthly financial reports and other reports on municipal finances and operations as required by the governing body;

(5) exercise care and custody over all real and personal property of the municipality except as provided otherwise in AS 29.36.040;

(6) perform other duties required by law or by action of the governing body; and

(7) serve as personnel officer unless the governing body authorizes him to appoint a personnel officer.

****Sec. 29.24.640. INTERGOVERNMENT APPOINTMENTS. A borough adopting a manager plan, may by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in this chapter. Nothing in this section affects the authority of the governing body to provide for other dual officeholding if the dual offices held are compatible, or otherwise to appoint officials and employees in accordance with law.

ARTICLE 10. MISCELLANEOUS PROVISIONS.

*Sec. 29.24.650. OATHS OF OFFICE. Municipal officials, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk.

*Sec. 29.24.660. BONDING. The administrator and the other municipal officials or employees which the governing body may designate shall give bond in the amount and with the surety prescribed by the governing body. Premiums on bonds are paid by the municipality.

****Sec. 29.24.670. SALARIES OF ELECTED OFFICIALS. The governing body shall by ordinance provide a method of determining the salaries of elected officials. The salary of the mayor may not be reduced during his term of office unless during his term a manager plan is adopted. An elected official may not receive any other compensation for service to the municipality unless otherwise provided by ordinance. Per diem payments or reimbursements for expenses are not compensation under this section.

****Sec. 29.24.680. PROHIBITIONS. (a) Repeal.

(b) Repeal.

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district, ~~unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed.~~

(d) For purposes of this section a school district employee is not a municipal employee.

****Sec. 29.24.690. PERSONNEL SYSTEM. Repeal.

Sec. 29.24.700. REPORTS. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) repealed.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, toegther with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

****Sec. 29.24.710. VACANCIES. Repeal.

CHAPTER 27. MUNICIPAL ENACTMENTS.

* Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCES. (a) In addition to other actions which this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

(1) establish, alter or abolish municipal departments;

**** (2) Repeal.

(3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;

(4) provide for the levying of taxes;

**** (5) make appropriations except supplemental appropriations or transfer of appropriations;

(6) grant, renew, or extend a franchise;

**** (7) Repeal.

**** (8) adopt, modify or repeal the comprehensive plan, land use and subdivision regilations, building and housing codes, and the official map;

(9) approve the transfer of a power to a borough from a city;

(10) designate the borough seat;

(11) provide for the retention or sale of tax-foreclosed property.

(12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

(b) This section grants no authority but requires the governing body to use ordinances in exercising certain of its powers.

Sec. 29.27.020. FORM OF ORDINANCES. Repeal.

****Sec. 29.27.030. ORDINANCE PROCEDURE. (a) Ordinances are introduced in writing in the form required by the governing body.

(b) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the governing body or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The governing body shall hear all interested persons wishing to be heard. After the hearing, the governing body shall consider the ordinance and may adopt it with or without amendment. The governing body shall print and make available copies of adopted ordinances.

(c) Ordinances take effect upon adoption or at a later date specified in the ordinance.

* Sec. 29.27.040. EMERGENCY ORDINANCES. (a) To meet a public emergency the governing body may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the assembly or council that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The governing body must print and make available copies of adopted emergency ordinances.

(b) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility for its services.

(c) Emergency ordinances are effective for 60 days.

****Sec. 29.27.050. CODES OF REGULATION. The governing body may in a single ordinance adopt or amend by reference provisions of a standard

published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The governing body shall provide for the adopted code to be sold or made available at no charge to the public.

Sec. 29.27.060. CODIFICATION. (a) Each ordinance after adoption shall be codified.

**** (b) Within three years after incorporation of the municipality, the municipal clerk or his designee shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

(c) In (a) of this section, "codified" means

(1) the ordinance has been given a serial number or other permanent identifying number and, bearing a notation of the date of adoption and the designation of the adopting authority, it has been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision which establishes a rule of conduct or behavior and which is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

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

* Sec. 29.27.070. RESOLUTIONS. The govering body shall provide for the maintenance of a permanent file of resolutions that have been adopted.

****Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the governing body may prescribe punishment not to exceed the penalty imposed for a class B misdemeanor. By ordinance mandatory nonsuspendable imprisonment not to exceed five days may be imposed for violation of an ordinance.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy upon application for injunctive relief and a finding of a violation or a threatened violation, the injunction shall be granted. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost, or at no charge.

CHAPTER 30. ELECTIONS.

ARTICLE 1. REGULAR AND SPECIAL ELECTIONS.

****Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Sec. 29.30.030. ELECTION DATES. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

* (b) The governing ~~b~~body may call a special election upon at least 20 days notice.

Sec. 29.30.040. VOTER QUALIFICATION. A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who ~~is~~ has registered to vote in state elections at least 30 days before the municipal election and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities.

(Re-draft so that registration permitted is state election)

provided, however, that a municipality ~~but the municipality~~ may require by ~~registered~~ ordinance that a person be ~~a registered resident~~ ~~a resident of~~ the precinct in which he seeks to vote.

****Sec 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

* Sec. 29.30.060. ELECTION CONTEST AND APPEAL. (a) The governing body may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the governing body by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the governing body shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting and authorize the results to be certified.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the governing body and has commenced, within 10 days after the governing body has finally declared the election results, an action in the

superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.24.150(c), of a member of a city council under AS 29.24.290(b) of a borough mayor under AS 29.24.200(f) or of a city mayor under AS 29.24.350 is final and is not subject to judicial review.

ARTICLE 2. INITIATIVE AND REFERENDUM.

Sec. 29.30.090. RESERVATION OF POWERS. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by Sec. 7, art. XI, of the state constitution.

****Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

Sec. 29.30.100. PETITION. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election. ~~The governing body may~~

****Sec. 29.30.110. CONTENTS OF PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be;

(7) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition. The statement provided under AS 29.30.110(a)(7) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

* Sec. 29.30.140. PROTEST. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the

municipal executive shall present the protest at the next regular meeting to the governing body which shall hear and decide the protest.

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

****Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the governing body shall hold a special election within 75 days, but not sooner that 45 days after certification.

(b) If the governing body adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

****Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of

certification of a petition, the governing body shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the governing body may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the governing body repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

****Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the governing bdoy after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the governing body for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

ARTICLE 3. RECALL.

****Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

Sec. 29.30.220. GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

****Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signatures and residence addresses of at least ten municipal voters who will sponsor the petition;

(2) The address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularily.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

****Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) The name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be;

(7) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by a number of voters residing within the municipality equal to 35 percent of the number of votes cast at the last regular election for that office held prior to the issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by a number of the voters residing within the district equal to 35 percent of the number of votes cast in the district at the last regular election for that office held prior to the issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficent, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

****Sec. 29.30.260. NEW RECALL PETITION APPLICATION. A new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

* Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall immediately submit it to the governing body.

****Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the governing body, the governing body shall submit the recall at that election.

(b) If no regular election occurs within 75 days the governing body shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the governing body.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The governing body may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

****Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

****Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote on the question is required to recall an officer.

* Sec. 29.30.320. EFFECT. If an incumbent is not recalled at the recall election, an application for a a petition to recall the same incumbent may not be filed sooner than six months after the recall election.

****Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body, the governing body, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the governing body are recalled, the governor shall appoint at least three qualified persons to the governing body. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the governing body are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the governing body may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

CHAPTER 33. POWERS AND DUTIES APPLICABLE TO.
HOME RULE AND GENERAL LAW MUNICIPALITIES.
ARTICLE 1. GENERAL POWERS.

Sec. 29.33.010. GENERAL POWERS. All ~~Municipalities~~ 1 m have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

**** (7) to levy taxes and special assessments, and impose liens for their enforcement;

(8) to enforce ordinances and to prescribe penalties for violations;

**** (9) to acquire, manage, control, use and dispose of real and personal property, irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under AS 29.36.270(f).

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for ~~public community~~ leave as is. purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

Sec. 29.33.010(1) COMBINING OFFICES. Repeal. The assembly or council may combine two or more appointive or administrative offices.

* Sec. 29.33.020. EXTRATERRITORIAL JURISIDICTION. ****(a) A municipality may provide, to the extent otherwise authorized by law, parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, transportation facilities, airports, utility services, solid and septic waste disposal, and wharves harbors and other marine facilities outside its boundaries, subject to AS 29.36.010 and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

,,,, Sec. 29.33.030. EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250 - 09.55.460.

Sec. 29.33.040. EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.36.100.

Repeal

(c) AS 29.36.170 - 29.36.200 are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

ARTICLE 2. FACILITIES, SERVICES AND REGULATION.

Sec. 29.33.070. MUNICIPAL FACILITIES AND SERVICES.

****(a) To the extent that a municipality may exercise the powers necessary to provide the service or facility and subject to other provisions of law a municipality may exercise the powers necessary to provide the following:

(1) streets and sidewalks;

(2) sewers and sewage treatment facilities;

(3) harbors, wharves, and other marine facilities;

(4) watercourse and flood control facilities;

(5) health services and hospital facilities;

(6) cemeteries;

(7) police protection and jail facilities;

(8) cold storage plants;

(9) telephone systems;

(10) light, power and heat;

(11) water;

(12) transportation systems;

(13) community centers;

(14) libraries, visual or performing arts centers, or museums;

(15) recreation facilities;

(16) airport and aviation facilities;

(17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 of this chapter;

(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;

(19) parking and parking facilities;

(20) housing and urban renewal, rehabilitation and development;

(21) preservation, maintenance and protection of historic sites, buildings and monuments;

**** (22) Repeal.

(23) emergency medical services and facilities.

**** (24) provide any other facility or service necessary to carry out a public purpose.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec.20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.080. GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance; award contracts for

collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by Sec. 6 ch 76 SLA 1973.

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

Sec. 29.33.090. REGULATORY POWERS. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

**** (4) Repeal.

(5) licensing, impounding and disposition of animals;

**** (6) Repeal.

**** (7) Repeal.

**** (8) Repeal.

**** (9) Repeal.

(10) alcoholic beverages as provided by AS 04.15.070;

(11) recreational devices as provided by AS 05.20.100;

**** (12) Repeal.

**** (13) Repeal.

**** (14) building, housing and related codes, which may be provided by cities within boroughs or, in the manner required in (b) of this section, by first or second class boroughs in the area outside cities or areawide;

(15) condemnation and abatement of public nuisances and hazards;

**** (16) Repeal.

(17) water pollution control;

(18) air pollution control as provided in AS 46.03.140 - 46.03.230;

**** (19) to the extent not otherwise prohibited, any activity affecting the general health, safety, well-being and welfare of its inhabitants;

(20) licensing of day care facilities.

**** (21) municipally owned utilities to the extent not prohibited by AS 42.05.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec. 20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (15), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

****Sec. 29.33.100. MUNICIPALLY-OWNED UTILTIES. Repeal.

Sec. 29.33.110. FRANCHISES AND PERMITS. ****(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, and may permit them the use of streets and other public places under regulations prescribed by ordinance.

**** (b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least a majority of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The

ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.33.120. PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS. 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

****Sec. 29.33.130. HEARING FOR REGULATION OF UTILITIES RATES. Repeal.

****Sec. 29.33.140. RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. Repeal.

****Sec. 29.33.150. FURTHER PROCEEDINGS. Repeal.

****Sec. 29.33.160. APPLICATION. Repeal.

ARTICLE 3. FISCAL DUTIES.

****Sec. 29.33.190. CENTRALIZED PURCHASING. Repeal.

Sec. 29.33.200. MUNICIPAL PROPERTIES. ****(a) Repeal.

**** (b) Repeal.

**** (c) Repeal.

**** (d) The governing body shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality. Each transaction disposing of land or an interest in land which is not subject to a competitive process shall be by ordinance.

**** (e) Repeal.

**** (f) Repeal.

Sec. 29.33.210. BUDGET AND CAPITAL PROGRAM. (a) The ~~assembly or council~~ governing body shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

**** (b) Repeal.

(c) The governing body may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

**** (d) Repeal.

****Sec. 29.33.220. EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to a unified municipality.

Sec. 29.33.230. POST AUDIT. The governing body shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the governing body

shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

ARTICLE 4. CONSTRUCTION OF POWERS.

Sec. 29.33.260. GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.270. EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.280. ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES.

ARTICLE 1. SCOPE.

Sec. 29.36.010. SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

ARTICLE 2. MANDATORY AREAWIDE POWERS AND DUTIES.

Sec. 29.36.040. EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

.... Sec. 29.36.050. ASSESSMENT AND COLLECTION OF TAXES. Boroughs shall assess ~~and collect~~ and may collect property, sales, and use taxes levied within their boundaries, subject to ch. 45 of this title. Taxes levied by a city ~~and~~ shall be collected by a borough ~~and~~ and returned in full to the levying city.

****Sec. 29.36.060. PLANNING, PLATTING, AND LAND USE REGULATION.

ARTICLE 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS.

Sec. 29.36.090. ADDITIONAL AREAWIDE POWERS. First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.33.080 and 29.33.090.

Sec. 29.36.100. TRANSFER BY CITY. (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities.

Sec. 29.36.110. PETITION FOR POWER. An election on the question of adding an areawide power may be initiated in two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the borough at the preceding regular election may file a petition with the assembly, or

(2) the assembly may propose the acquisition of the power.

Sec. 29.36.120. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.130. ELECTION. (a) The assembly shall, within 30 days after its findings have beer made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications.

One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This section applies to home rule and general law cities.

ARTICLE 4. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES.

Sec. 29.36.160. FIRST CLASS BOROUGH. The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. SECOND CLASS BOROUGH. (a) The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

****(b) A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080;

(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

**** (8) Tax, spend, and regulate for the purpose of promoting economic development.

Sec. 29.36.180. ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the area outside cities at the preceding regular election may file a petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

ARTICLE 5. POWERS OF THIRD CLASS BOROUGHS.

Sec. 29.36.230. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

* (b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and land use regulation in accordance with AS 29.42.010 - 29.42.150 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the

manner provided by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200 - 29.51.510

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

****Sec. 29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD. Repeal.

ARTICLE 6. SERVICE AREAS.

****Sec. 29.36.270. SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Addition Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the

assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election, or if no voters reside within the area, all owners of real property within the service area must consent in writing to the exercise of the power.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(e) The assembly may exercise or delegate to a service area any powers which may be exercised by a first class borough in the area outside cities. In a second class borough, each exercised or delegated power must be approved by a majority vote at a regular or special election held within the service area. The rate of taxation and the issuance of bonds are subject to assembly approval.

(f) A second class borough may establish a service area by ordinance which may include only vacant, unappropriated and unreserved land owned by the municipality. A second class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second class borough may provide those services in a service area established under this

subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance.

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS.

Sec. 29.39.010. ADDITIONAL POWERS. In addition to the powers granted by ch. 48 of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 of this title for boroughs.

Sec. 29.39.030. DIFFERENTIAL TAX ZONES. Moved to 29.45.535.

Sec. 29.39.040. EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 for boroughs.

****Sec. 29.39.050. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside boroughs shall, and second class cities outside boroughs may, provide for planning, platting and land use regulation within their boundaries as provided by AS 29.42.010 - 29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may provide for planning, platting and land use regulation, as provided by AS 29.42.010 - 29.42.150 for boroughs.

****Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

****Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

****Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

CHAPTER 42. PLANNING, PLATTING, AND LAND USE REGULATION

****Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

Sec. 29.42.020. PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

**** (b) In addition to the responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehersive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

Sec. 29.42.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

**** (b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary.

****Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, or for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

****Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

****Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the board of adjustment, hearing officer or other body. A proceeding under this section has preference over all other civil actions and proceedings.

****Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting board necessary for other public uses.

(b) The assembly by ordinance shall establish a platting authority to administer subdivision regulations adopted by the borough and perform other duties. The platting authority may consist of members of the planning commission or of other municipal residents.

****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

****Sec. 29.42.090. PROCEDURE. (a) The platting authority shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the platting authority fails to act, the plat is considered approved and a certificate of approval shall be issued by the platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the platting authority. The platting authority shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting authority shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

****Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

Sec. 29.42.110. INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

****Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Nothwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

****Sec. 29.42.120. PENALTIES. Repeal.

****Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting authority upon petition of the state, the municipality, a public utility, or the owners of a majority

of the land affected by the alteration or replat. No platted street may be vacated, except upon petition of the state, municipality, or a public utility, or owners of the majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

*Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The platting authority shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The platting authority shall also mail a copy of the notice to each affected property owner not signing the petition.

*Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting authority shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

*Sec. 29.42.160. RECORDING. If the alteration or replat is approved, the revised plat must be recorded by the platting authority and is thereafter the lawful plat.

Sec. 29.42.170. TITLE TO VACATED AREA. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

****Sec. 29.42.180. DELEGATIONS. Repeal.

****Sec. 29.42.190. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or with an ordinance adopted under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chpater is guilty of a class B misdemeanor.

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or threatened violation, the superior court shall grant the injunction.

(c) Every day upon which an unlawful act or condition continues shall constitute a separate violation.

CHAPTER 45. MUNICIPAL TAXATION

Article 1. MUNICIPAL PROPERTY TAX

****Sec. 29.45.010. GENERAL PROPERTY TAX. A general law or home rule borough other than a unified municipality, may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A tax if levied on real property, personal property, or both must be assessed, levied and collected as provided in this chapter.

****Sec. 29.45.020. TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, or both, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE
(AS 14.17) $

STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100) $

MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE
(AS 29.88) $

STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89) $

TOTAL AID $

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

**** (1) municipal, state or federally owned property, except that a private leasehold, contract or other interest in the property shall be taxable to the extent of those interests;

**** (2) household furniture of the head of a family or household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

**** (4) property of a nonbusiness organization or its auxiliary composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

**** (3) Repeal.

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 and 44.62.570.

**** (f) No exemption may be granted under (e) of this section except upon written application

for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 or a date provided by ordinance which is not later than March 31, of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 or a date provided by ordinance which is not later than March 31, of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under (e) of this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under AS 29.53.025(a).

(h) Except as provided in (g) of this section, nothing in (e) - (i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

(i) In (e) - (i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Sec. 29.45.040. PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental

receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

**** (1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage.

(2) classify and exempt from taxation

**** (A) Repeal.

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the

conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

(1) a home rule or first or second class borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or

partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is direcly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later.

****Sec. 29.45.060. MINING CLAIMS. Repeal.

Sec. 29.45.070. FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be

assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file

assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file

for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. TAX LIMITATION. (a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year. All property - real/personal to be taxed at same rate.

**** (b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of

residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsectio population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Sec. 29.45.110. NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. FULL AND TRUE VALUE. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and Secs. 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Sec. 29.45.130. RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

**** (b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the investigation. The assessor may seek a court order to compel entry and production of records.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.

****Sec. 29.45.150. STATEMENT. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a class B misdemeanor.

Sec. 29.45.160. REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to

be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. ASSESSMENT NOTICE. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Sec. 29.45.190. CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

****Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the assembly, municipal residents, or a combination of assembly members and residents. The assembly shall be ordinance establish the qualifications for membership.

(b) The board is governed in its proceedings by rules adopted by ordinance which are consistent with general rules of administrative procedure. The board may alter an assessment of a lot or parcel only pursuant to an appeal filed as the the particular lot or parcel.

(c) Notwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law shall be appealed directly to the superior court.

Sec. 29.45.220. HEARING. (a) If an appellant fails to appear the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

**** (c) The only grounds for adjustment are proof of unequal, excessive, improper, or undervaluation based on facts which are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(d) The board shall certify its actions to the assessor within seven days.

**** (e) Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

**** (f) An appellant or the assessor may appeal the board's determination to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

Sec. 29.45.230. SUPPLEMENTARY ASSESSMENT ROLLS. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll.

Sec. 29.45.240. TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

**** (e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law, or a disaster declared by the governor under AS 26.23.010 26.23.110.

Sec. 29.45.250. TAX LEVY AND RATE. ****(a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of a general ordinance. The rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Sec. 29.45.260. RATES OF PENALTY AND INTEREST. ****(a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 20 percent may be added to all delinquent taxes, and interest at the rate of 15 percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments penalty and interest on an unpaid installment accrues from the date the installment becomes due.

Repeal

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

the amount

change

**** (c) Repeal.

Repeal (b) ?

repeal accepted

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

**** (b) Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice is given by posting or publication. The siezure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty and interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. If the property is sold for more money than is needed to satisfy the tax, upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

**** (b) If the tax on property described in AS 29.45.080 or on a taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the superior court for judgment;

(2) publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed within the borough or, if there is no newspaper of general circulation distributed within the borough, post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appear on the list a notice advising of the foreclosure proceeding in which a petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspecti at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitut and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeals as provided in AS 29.33.130(e).

Sec. 29.45.370. ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and de ree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

**** (b) Repeal.

****Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough releases the judgment obtained under AS 29.45.380. The clerk or his designee shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk or his designee shall collect the recording fee at

the time or redemption and shall file the certificate with the record as part of the judgment roll.

Sec. 29.45.420. ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. EXPIRATION. ****(a) At least 30 days before the expiration of the redemption period the clerk or his designee shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be

sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

**** (b) Conveyance gives the borough or the city clear title except for prior recorded tax liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

**** (d) No deed is invalid for irregularities, omissions or defects in the proceedings under this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person having an interest in the property is forever barred.

Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of

this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist. The ordinance shall contain the information required in (a) of this section.

**** (c) The clerk or his designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the last record owner of the property as his name appears on the assessment rolls of the municipality.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale,

Sec. 29.45.490. PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

****Sec. 29.45.510. REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough or, if in the absence of suit, it becomes obvious to the assembly that judgment for recovery of the taxes would be obtained if legal proceedings were brough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at ~~15~~ Eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

(c) The assembly may correct manifest clerical errors at anytime.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter.

The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.535. DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.45.540. LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

**** Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition for second class city incorporation may request that a property tax proposal be placed in the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails.

ARTICLE 4. BOROUGH SALES AND USE TAX

Sec. 29.45.570. SALES AND USE TAX. ****(a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

**** (d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

**** (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION. ****(a) A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question at a regular or special election.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. POWER OF LEVY. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

CHAPTER 48. SPECIAL ASSESSMENTS

****Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The governing body may assess against the property of a state or federal governmental unit and private real property benefited all or a portion of the cost of acquiring, installing or constructing capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an improvement refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the governing body of the owners of one-half in value of the property to be benefited or

(2) the governing body.

Sec. 29.48.020. PROCEDURE. ****(a) The governing body may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvments, including and subject to the following:

**** (1) a procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

**** (4) a resolution or ordinance of the governing body determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

**** (6) published notice of each public hearing required by this section and mailing notice to each record owner of real property within the special assessment district;

**** (7) a resolution or ordinance confirming the special assessment roll for the local improvement;

* (8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 percent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 percent, except upon approval of not fewer than three-fourths of the governing body.

**** (b) To the extent that the governing body does not prescribe a procedure for special assessments as permitted by this section, the governing body shall comply with the special assessment procedures set out in AS 29.48.030 - 29.48.100.

Sec. 29.48.030. CREATION OF DISTRICT. **** (a) When an improvement proposal has been filed with the municipal clerk and presented to the governing body, it shall find by resolution or ordinance whether (1) the improvement requested is necessary and should be made, and (2) if by petition the request has sufficient and proper petitioners. The findings of the governing body are conclusive.

(b) If the governing body approves an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The governing body shall set a time for public hearing on the improvement plan and the period for filing objections to the plan. The governing body shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

****Sec. 29.48.040. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate "unknown owner."

****Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of 60 days after publication of notice. The governing body may by resolution or ordinance approve the plan and order the improvement subject to the limitation of (b) of this section.

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the governing body may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 percent. A revised plan shall be approved and adopted as an original plan in accordance with AS 29.48.030.

Sec. 29.48.060. ASSESSMENT ROLL. ****(a) At any time after project approval, the governing body shall assess the authorized percentage of the cost against property within the district in proportion to benefit received.

**** (b) The special assessment roll shall contain property descriptions, names of record owners and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing.

****Sec. 29.48.070. HEARING AND SETTLEMENT. After the public hearing, the governing body shall correct errors and any inequalities in the roll. If an assessment is increased, a new hearing shall be set and notice mailed, except that a new hearing and notice is not required of all record owners of property subject to the increased assessment consent in writing to the increase. Objections to the increased assessment shall be limited to record

two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560-44.62.570.

**** (b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

**** (1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed and the time of payment fixed by the governing body. Within one year of the date the assessment roll is confirmed the governing body for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the deparment by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest

which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipali for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070-34.10.220. The lien becomes immediate due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

Sec. 29.48.100. REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

****Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment district is created, there may be included in the assessments

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs of all engineering and surveying to be done in connection with creating the district or improvement;

(3) the cost of mailing and publishing of notices;

(4) interest on interim financing;

(5) the cost of legal services and other expenses incurred in the formation of the special assessment district;

(6) the cost of completing the improvement and financing the improvement, including the issuance of any bonds.

(b) The total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

Sec. 29.48.110. OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

****Sec. 29.48.115. INTERIM FINANCING. (a) The governing body may provide by resolution or ordinance for the issuance of notes in payment of the costs of any local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance and shall be redeemed either in cash or bonds for the improvement project.

(b) All notes issued against assessments shall be claims against the assessments which are prior and superior to a right, lien or claim of a surety upon the bond given to the municipality to secure the performance of its contract for a local improvement project or to secure the payment of persons who have performed work or furnished materials under the contract.

(c) The municipal treasurer may accept notes against special assessments upon conditions prescribed by the governing body in payment of

(1) assessments against which the notes were issued in order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of assessments; and

(3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

**** (c) Before the governing body may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund.

CHAPTER 51. MUNICIPAL DEBT.

ARTICLE 1. REVENUE ANTICIPATION NOTES.

Sec. 29.51.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

Sec. 29.51.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

Sec. 29.51.030. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New

notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

Sec. 29.51.040. PRIORITY OF REPAYMENT. The payment of the principal and interest on revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

****Sec. 29.51.050. Repeal.

ARTICLE 2. BOND ANTICIPATION NOTES.

Sec. 29.51.080. BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance.

Sec. 29.51.090. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

Sec. 29.51.100. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue.

Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

Sec. 29.51.110. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

Sec. 29.51.120. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

Sec. 29.51.130. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

Sec. 29.51.140. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

****Sec. 29.51.150. Repeal.

ARTICLE 3. GENERAL OBLIGATION BONDS.

Sec. 29.51.180. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

Sec. 29.51.190. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

****Sec. 29.51.200. Repeal.

Sec. 29.51.210. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

Sec. 29.51.240. REVENUE BONDS. ****(a) A municipality may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenue of the public enterprise or corporation.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage

loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

**** (c) Repeal.

Sec. 29.51.250. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance.

Sec. 29.51.260. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.270. Repeal.

****Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

ARTICLE 5. REFUNDING BONDS.

Sec. 29.51.300. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance for the issuance of general obligation or revenue refunding bonds.

Sec. 29.51.310. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

Sec. 29.51.320. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

Sec. 29.51.330. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to Sec. 180 of this chapter. Revenue refunding bonds are payable according to Sec. 220 of this chapter.

****Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation or revenue refunding bonds may, at the discretion of the governing body, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

****Sec. 29.51.350. OTHER MUNICIPAL FINANCING. (a) A municipality may authorize by ordinance or resolution the issuance of revenue bonds to finance any project which serves a public purpose, and the bonds shall be secured and payable solely from the revenue and property of the project.

(b) Bonds issued under this section are not a debt or liability of the municipality and do not create or constitute an indebtedness, liability or obligation of the municipality nor do they constitute a pledge of faith, credit or taxing power of the municipality. Each bond must contain on its face a statement that the principal and interest on the bond are payable solely from the revenues and property of the project being financed, that the municipality is not obligated to pay the principal or the interest on the bonds except from those sources, and that neither the faith and credit nor the taxing power of the municipality is pledged to the payment of principal or interest on the bond.

(c) A municipality may

(1) loan the proceeds of the bonds issued under this section;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the project being financed;

(3) enter into covenants and agreements concerning bonds issued under this section which the municipality determines to be desirable;

(4) provide for any matter which effects the security of the bonds.

(d) In this section

(1) "bonds" means bonds, notes, or other evidence of indebtedness;

(2) "project" includes but is not limited to commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism, and medical projects and programs.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

****Sec. 29.51.370. SALE. Bonds and notes issued under this chapter may be sold at either public or private sale by the municipality in the manner and at the price it determines.

****Sec. 29.51.375. FORMS AND TERMS. The governing body may by ordinance or resolution fix the date, denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and other requirements for issuing bonds or notes. If an official whose signature appears on the bonds or coupons ceases to be an official before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.380. INTEREST RATE. The interest rate payable on a bond or note shall be determined by the governing body and is not subject to the usury rate limitations of AS 45.45.010.

****Sec. 29.51.390. Repeal.

Sec. 29.51.400. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

****Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a nonareawide basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and only the full faith and credit of the area voting on the indebtedness is pledged for the payment of the debt.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

****Sec. 29.51.420. Repeal.

****Sec. 29.51.430. Repeal.

****Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

CHAPTER 62. STATE PROGRAMS

No change.

CHAPTER 65. GENERAL GRANT LAND

No change.

CHAPTER 68. MUNICIPAL PROGRAMS

ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT

Repeal.

ARTICLE 2. HISTORICAL DISTRICTS.

No change.

CHAPTER 71. GENERAL PROVISIONS

No change.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

**Municipality of Anchorage**

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 264-4545

*GEORGE M. SULLIVAN, MAYOR*

OFFICE OF THE MUNICIPAL ATTORNEY

January 7, 1981

TO: Title 29 Policy Committee Members

Re: Proposed Draft on Municipal Powers & Duties

Attached please find a proposed draft of a new Title 29 chapter on Municipal Powers and Duties. This draft was prepared and reviewed by the Technical Committee in response to numerous complaints that the present law on this subject is extremely confusing and overly restrictive for municipal governments. The proposed draft attempts to consolidate in one place all provisions dealing with the powers of various classes of local government, including all provisions for the assumption of new municipal powers.

Since this work represents a major reorganization of the present statutes, a section by section comparison of old and new provisions will be difficult. For reference, the proposed material would replace the following provisions in present law:

AS 29.33.010 - .050
AS 29.33.250 - .290
AS 29.38.010 - .050
AS 29.41.010 - .020
AS 29.43.010 - .110
AS 29.48.010 - .110
AS 29.48.190; .210; .220; .270;
AS 29.48.310 - .330

Hopefully, you will find the proposed organization a bit easier to follow and understand than the rather confusing collection of present statutes listed above.

Aside from reorganization, the primary change in the proposed draft is to eliminate the "laundry list" approach to describing permissible municipal powers. The proposed statutes would identify those powers that can be exercised by the assembly or council for various classes of governments and would then allow exercise of any other general law power provided such powers are assumed by vote of the people or transferred as required under present law.

Given the short time before the January 17 Policy meeting, Tam Cook and I agreed to mail the proposed draft to the Policy Committee members so that there would be a chance to review it prior to the Juneau meeting. There is certainly no pride of authorship on my part, and your comments and criticisms will be most welcome.

If you have questions on the proposed draft prior to the January 17 meeting, please feel free to contact me at 264-4236, and I will do my best to answer them.

Sincerely yours,

DEPARTMENT OF LAW

Theodore D. Berns
Municipal Attorney

TDB:gml
Attachments
cc: Tam Cook

29.33.110 (b)

The non-competitive grant of the exclusive right to use a public street or right of way for more than 5 years to a utility or a transportation system not certificated by the APUC or ATC shall be valid only if approved by a majority of the qualified voters, voting on the question at a regular or special municipal election.

Approved

Prepared by: Theodore D. Berns
Title 29 Technical Committee
January 2, 1981

# CHAPTER 33. MUNICIPAL POWERS AND DUTIES

## (CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

### Article 1. GENERAL POWERS

Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments and to impose liens for the enforcement thereof;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property, and interests in such property whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for ~~public~~ community purposes for the good of the municipality; leave as is

(12) to borrow money and issue evidences of indebtedness.

(13) to regulate the operation and use of its public rights of way, public facilities and services.

Repeal Combining Offices 29.33.010(1) in Draft #3

Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL JURISDICTION. (a) A municipality may, to the extent otherwise authorized ~~or permitted~~ by law, provide parks, roads (including ice roads), trails, playgrounds, solid and septic waste disposal, wharves, harbors and other marine facilities, emergency medical services, cemeteries, airports, transportation systems and utility services outside its boundaries, and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

OK

No change

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030 (Sec. 29.73.020.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

No change

Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside cities in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS_____.

(c) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

what if borough has road power can it grant franchise in a city?

Sec. 29.33.050. FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges and may grant permits for use of streets and other public places.

ok

(b) No exclusive franchise is valid until it has been ratified by a majority of the qualified voters voting on the question at a regular or special municipal election.

use Lee's

No

retain existing (c)

Sec. 29.33.060. (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a utility to the extent that the utility is not regulated under AS 42.05, provided that interest must be paid on any deposit required by the utility. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return in invested capital.

should city set rate utility being operated on an area wide basis by the borough?

ok with changes

and may provide what is a reasonable deposit for meters and security for service to be given

Sec. 29.33.070. MUNICIPAL PROPERTY.

The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land of the municipality. ~~Each disposal of land or an interest in land shall be by ordinance unless the assembly or council finds by resolution that the land or interest in land is without substantial value to the municipality.~~

unless otherwise provided by ordinance

HOLD

Sec. 29.33.080. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

No change

(b) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

Sec. 29.33.090. (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes ~~and levied and~~ collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to unified municipalities.

No change

Sec. 29.33.100. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of

No change

the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 2. MANDATORY AREAWIDE POWERS

Sec. 29.33.110. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this article on an areawide basis, both inside and outside cities within their boundaries.

(b) No city may exercise an areawide power once that power is being exercised by a borough.

Sec. 29.33.120. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.33.130. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess ~~and collect~~ and may collect property, sales and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city ~~and~~ shall be collected by a borough ~~are~~ and returned in full to the levying city. (29.36.060)

Sec. 29.33.140. LAND USE REGULATION. First and second class boroughs shall provide for planning, platting and land use regulation in accordance with AS 29.42._____.

Article 3. ADDITIONAL CITY AND BOROUGH POWERS

Sec. 29.33.150. FIRST CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through .140, a first class borough in the areas outside cities, may exercise any power not otherwise prohibited by law.

(b) A first class borough may, by ordinance, exercise the following additional powers on an areawide basis:

1. ~~Providing~~ provide transportation systems
2. provide Water pollution control
3. provide Air pollution control as provided in AS 46.03.140-.240
4. Licens~~ing~~ of day care facilities
5. Regulation of animals (use existing lang.)

(c) In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise any other power not otherwise prohibited by law provided that such power has been transferred by a city and approved by the borough

assembly or has been acquired pursuant to sec. .190 of this chapter.

Sec. 29.33.160. SECOND CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through .~~150~~ 40, a second class borough, in the area outside cities, may, by ordinance, exercise the following powers:

1. Providing transportation systems
2. Regulation of fireworks (use existing lang.)
3. Regulation of animals (use existing lang.)
4. Regulation of drivers and motor vehicles, including snow vehicles and off highway vehicles, to the extent allowed under AS 28.01.010.
5. Provision of garbage and solid waste collection and disposal. add storage or "septic waste" use lang. from extraterritorial Sec.
6. Air pollution control as provided in AS 46.03.140-.240
7. Water pollution control
8. Participation in federal or state loan programs for housing rehabilitation and improvement for energy conservation.
9. Economic development programs and activities.

(b) A second class borough may, by ordinance, exercise the following additional powers on an areawide basis:

1. Providing transportation systems
2. Regulation of animals (use existing lang.)

10) the power to receive and expend grants for public purposes.

3. Air pollution control as provided in AS 46.03.140-.240

4. Water pollution control

5. Licensing of day care facilities

(c) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis or in the area outside cities, exercise any other power and may provide other services or facilities not otherwise prohibited by law on an areawide basis provided that such power has been transferred by a city and approved by the borough assembly for exercise within the city or has been acquired by election under Sec. .190 of this chapter, or in the area outside cities, provided it has been acquired by election under Sec. .190.

redraft

Sec. 29.33.170. CITIES WITHIN ORGANIZED BOROUGHS. (a) In addition to the power conferred under Sec. .010, a first or second class city within an organized borough may exercise any power not otherwise prohibited by law. In accordance with Sec. .110, a city may not exercise a power once that power is being exercised by a borough.

ok

Sec. 29.33.180. CITIES OUTSIDE ORGANIZED BOROUGHS. (a) Cities outside an organized borough may exercise any power not otherwise prohibited by law.

ok

should this include 2nd class?

(b) ( Cities) outside an organized borough may assess, levy and collect a general property tax and a sales or use tax. A property, sales or use tax if levied must be assessed, levied and collected as provided by Chapter 45 of this title for boroughs.

ok 29.39.020

**Cities may, by ordinance, establish, alter and abolish differential tax zones for property taxes for services not provided in the entire city or provided at a different level than provided generally within the city.**

**(c) Home rule and first class cities outside an organized borough ~~shall~~ constitute city school districts and shall establish, operate and maintain a system of public schools as provided by AS 29.36.040 for boroughs.**

**(d) Home rule and first class cities outside an organized borough shall, and second class cities outside an organized borough may, provide for land use regulation as provided by AS 29.42.010-.245 for boroughs.**

(New 29.36.100 am)

Sec. 29.33.190. ACQUISITION OF ADDITIONAL POWERS. (a) A borough acquires additional powers by holding an election on the question as provided by this section. For acquisition of areawide powers, the election shall be held areawide. For acquisition of powers in the area outside cities the election shall be held in the area outside cities only.

(b) An election under this section may be initiated by a petition signed by a number of voters equal to 15% of the number of votes cast at the preceeding regular election in the area in which the election is to be held or by the assembly. A petition under this section shall be filed with the borough clerk who shall certify to the assembly whether the petition contains sufficient signatures. Upon certification, the assembly shall, at the next regular meeting, order an election on the question to be held

within 60 days of the order. If more than one power, service or facility is proposed, each shall appear separately on the ballot.

identical present law (c) In the case of acquisition of additional areawide borough powers, the borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the

redraft

bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33.200. (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.210. (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.220. (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title area illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

Note
Garbage
in Anal
report
29.33.080

# STATE OF ALASKA

## THE LEGISLATURE

1980

Source: CSSCR 66

Legislative Resolve No.: 39

Directing the Alaska Legislative Council to revise AS 29 (Municipal Government).

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

WHEREAS Alaska has a system of local government that differs uniquely in constitutional concept and in law from traditional local government; and

WHEREAS the law governing municipalities in Alaska was last reviewed completely in 1972 at which time significant elements of the local government structures were still in a formative stage; and

WHEREAS numerous amendments to the municipal code have been made since its adoption which have not been fully integrated into the code; and

WHEREAS much experience in the Alaska system of local government has been gained since adoption of the municipal code; and

WHEREAS there is a need for a comprehensive revision of the municipal code which will consider the 1972 code, amendments to it, and the experiance gained since its adoption;

BE IT RESOLVED by the Alaska State Legislature that under the provisions of AS 24.20.090 and Uniform Rule 48(c) the Alaska Legislative Council is directed to prepare a revision of Title 29 of the Alaska Statutes (Municipal Government) by directing the legal services division of the Legislative Affairs Agency to prepare the revision with the assistance of a policy advisory group representative of the concerned public from all areas of the state and persons experienced in the application of AS 29, and soliciting the advice of the Alaska Code Revision Commission; and be it

FURTHER RESOLVED that the policy advisory group consist of two members of each house of the legislature appointed by the presiding officer of each house; public members of the policy advisory group shall be selected by the presiding officer of each house from persons recommended by legislative members, by the Department of Community and Regional Affairs, the Alaska Municipal League, the Rural Alaska Community Action Program, Inc., the Department of Law, and by the legal services division; and be it

FURTHER RESOLVED that a proposed revision of AS 29 be presented to the legislature during the first 30 days of the First Session of the Twelfth Legislature.

**CHANGE RECOMMENDED BY TECHNICAL COMMITTEE - Jan. 6, 7, 1981**

Sec. 29.36.270. SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. [The borough may include a city within a service area if the city council agrees by ordinance or if approval is granted by a majority of voters residing within the city and by a majority of voters residing within the boundaries of the proposed service area, but outside of the city.]

(The rest of the section is the same).

EXPLANATION: Makes it clear that a city may be included within a service area if the council or voters agree.

Approved

## ISSUES TO BF IDENTIFIED IN A POLICY ADVISORY GROUP REPORT

1. How to provide representation for people living outside municipal boundaries, but within a municipal service area (as when a city extends utility service beyond its boundaries).

2. Should a uniform provision on executive sessions be included in Title 29 delineating specific occasions when it is appropriate to call for an executive session of a municipal governing body?

3. Should there be only two classes of borough -- home rule and general law?

4. Should there be only two classes of city -- home rule and general law?

5. Should villages which are currently unincorporated be recognized as municipal corporations under state law? Should IRA councils be recognized as municipal governing bodies?

6. Should the state or local government be primarily responsible for providing the following services: water system and sewage disposal inspections; subdivision review of on-site sanitation capabilities; sanitation inspections of restaurants, hotels, etc; clean-up of small oil spills; the issuing of oily waste burn permits and surface oiling permits; litter control; vehicular emmisions control? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to meet applicable standards to qualify for federal funding and to avoid state liability if the programs are not properly carried out by the local governments?

7. Should the state or local government be primarily responsible for the provision of health services? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to qualify for federal funding?

8. How to insure that local issues are dealt with in the unorganized borough, since the legislature rarely meets as the assembly for the unorganized borough.

9. How to avoid establishing multiple governmental and administrative bodies with duplicate functions in small communities which suffer from a lack of people to fill the positions.

10. Should there be a regionally elected body in the unorganized borough to manage local service programs and to deal with the state?

11) Unorganized to H.R.

12) Waste

13) CRA Handbook

14) Provision of services and government in unorganized borough

Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all the legislative powers not prohibited by law or charter.

Sec. 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of four classes:

(1) first class boroughs;

(2) second class boroughs;

(3) repeal

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. Section unchanged to:

(g) A second class borough may reclassify as a first class borough in the manner provided by AS 29.36.110 - 29.36.130 for the addition of powers by boroughs, except that the petition or proposal requests reclassification instead of requesting addition of powers.

(h) repeal.

(i) repeal.

(j) repeal.

Sec. 29.06.050. TRANSITION. (a) A third class borough existing on the effective date of this act shall continue as a third class borough under the conditions established by law prior to the effective date of this act until it becomes reclassified in accordance with this section.

(b) A third class borough may reclassify as a first or second class borough in the manner provided by AS 29.36.110 - 29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers. If reclassification is approved, a school board shall be elected in conformity with AS 14.12 at the next regular election if it occurs within 90 days of the date of the

et 3rd class borough go directly to Home Rule.

Wains to exist as it was on effective date of the Act.

reclassification election, or at a special election within 90 days of the date of the reclassification election. Expiration dates of terms of members elected at a special election must coincide with the date of the regular election. Until a board is elected and qualified, the assembly continues to serve as the board.

EXPLANATION; Third class boroughs are eliminated. A transition section provides that the existing third class borough retain its status until it is reclassified. The option of allowing the assembly to continue to serve as school board of a borough which is reclassifed from third to first c. second class currently contained in AS 29.06.030(i) has been eliminated, so that if the third class borough changes its classification it must elect a school board. (NOTE: This was prepared as a request of the Policy Group to eliminate third class boroughs. If it is approved upon reconsideration, additional technical drafting changes will be required to eliminate references to third class boroughs in other sections.)

Note: ~~3rd~~ Class cities which go H.R. will become school districts. If in the unorganized borough or 3rd class borough will have to providing planning, platting, and land use regulation under 29.39.050 (old) 29.43.040 (H.R. Limitation 33)

Sec. 29.09.180. ORGANIZATIONAL GRANTS. (a) For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or for a second class city reclassified after January 1, 1981, is entitled to an organizational grant of $150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organizational grant.

EXPLANATION: This section is being resubmitted as the recommendation of the Technical Group after considering legislation on the matter proposed by Community and Regional Affairs.

Rejected

use Palmer's Bill

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all the powers

(1) not prohibited it by law or charter;

(2) granted to home rule boroughs.

EXPLANATION: Existing language in (2) is confusing in that the reference to cities may imply a limitation of some sort on the powers of a unified municipality. This is a clearer statement of existing law.

O/C

Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law municipality shall adopt a conflicts of interest ordinance which other provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest.

EXPLANATION: The second sentence is deleted as redundant. After considering the alternative proposed by the Policy Group, the Technical Group reasserts its original recommendation. It is felt that a person should not vote on a matter in which he has a substantial financial interest and that disclosure of the interest is not adequate protection for the public.

rejected

use 29.24.010 as previously approved

Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor and member of the school board. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor or member of the school board, vacant when the person elected.

(The rest of the section was previously approved by the Policy Group).

EXPLANATION: The Technical Group upon reconsideration recommends that the governing body not be allowed to declare the office of a school board member vacant. Current law allows the members to determine vacancy on the school board.

approved

Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. The governing body may, by ordinance, establish advisory or quasi-judicial boards and commissions.

EXPLANATION: Upon reconsideration, the Technical Committee would like to limit specific authority tc set up boards to exclude administrative boards. In addition, subsection (b) is deleted from the draft which was originally approved by the Policy Group because it is felt that appointment power is adequately included under general separation of powers principles and ought not to be further restricted in an inflexible statute applying to every type of board.

rejected
use previous section

Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. A member of the governing body may not be appointed manager of the municipality sooner than one year after leaving office except by a vote of three-forths of the authorized membership of the governing body.

EXPLANATION: Upon reconsideration, it is felt that the prohibition against serving as manager ought not to apply to officials other than members of the legislative body. This change would allow the governing body to appoint a municipal official to the office of manager without the one year or super majority restriction.

accepted

Sec. 29.24.680. PROHIBITIONS. Repeal.

EXPLANATION: (a) and (b) have been approved for repeal by the Policy Group. Upon reconsideration it is felt that the rest of the section should also be repealed. (c) and (d) were adopted for a specific Juneau problem which no longer exists according to Mr. Lee Sharp.

rejected
was as amended
p. 67

Ok p. 67
Title 14

Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCE. (a)

(12) repeal.

The rest of the section is unchanged.

EXPLANATION: It is felt that (12) should be repealed as redundant because the provision is contained in AS 36.25. (Note: changes to (2), (5), (7), and (8) were previously approved by the Policy Group and the Technical Committee makes no further recommendation with regard to those paragraphs.)



Sec. 29.27.050. CODES OF REGULATION. The governing body may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopted ordinance need be printed after adoption. The governing body shall provide for the adopted code to be made available to the public at no more than cost.

EXPLANATION: The Policy Group previously approved changes made to the last line of this section - "The governing body shall provide for the adopted code to be sold or made available at no charge to the public." It is felt that this would be more flexible in that a municipality would also have the option of collecting a fee which represents only a part of the cost.

Approved

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance the governing body may prescribed penalties not to exceed those imposed for a class B misdemeanor and may require mandatory, nonsuspendable imprisonment not to exceed five days.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

EXPLANATION: Technical drafting changes with no substantive impact on the section as previously approved by the Policy Group in (a) and (b). Subsection (c) has been changed from the language previously approved so that a municipality has the option of charging less than full cost.

Approved

Sec. 29.30.030. ELECTION DATES. (a) ~~The governing body shall give~~ At least 20 days notice of a regular or special election shall be given.

(b) The date of a regular election is the first Tuesday of each October unless a different date or interval of years is provided by ordinance.

EXPLANATION: Technical changes. The notice requirement is applied to the regular election as well as the special election.

accepted

29.30.040. Voter Qualification. See amendment.

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular (~~or~~ special election) occuring no sooner than 45 days after certification of the petition.

Other subsections as previously approved.

EXPLANATION: The Technical Committee wishes to reassert its first recommendation that no special election be required in the initiative process. In rejecting this suggestion, the Policy Group appears to have felt that the initiative process should be treated the same as the recall and referendum processes, both of which require a special election if a regular election is not held within a given time period. The Technical committee feels that the initative process, seeking to establish new law, is not as much of an emergency situation as the recall of an official or the repeal of an unpopular law, and therefore that the expense and inconvenience of holding a special election on an initiative ought not to be placed on municipalities.

accepted

Sec. 29.30.300. ELECTION NOTICE. At least 20 days notice of an election to recall an official shall be given notwithstanding an ordinance or charter provision to the contrary.

EXPLANATION: It is felt that since a recall must be done at a regular or special election, procedural requirements dealing with election apply so most of this section is eliminated as redundant. The notice provision is necessary to bind home rule municipalities.

OK

(Note requirement already in 29.30.030)

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body his office becomes vacant and is filled in accordance with AS 29.24.175.

(b) Nothwithstanding subsection (a), if all members of the governing body are recalled, the governor shall appoint three qualified persons to the governing body. The appointees shall appoint additional members to fill remaining vacancies in accordance with AS 29.24.175.

(c) If all officials are recalled from a school board the governor shall appoint three qualified persons to the school board. The appointees shall appoint additional members to fill remaining vacancies.

(d) A person appointed under (a) - (c) of this section shall serve until a successor is elected and takes office.

(e) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held not more than 60 days from the date the recall election is certified, except that if a regular election occurs within 75 days after certification the successor shall be chosen at that election.

(f) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: Redrafted at the request of the Policy Group. This would provide that vacancies in a governing body resulting from recall would be filled as any other vacancy, unless all members of the body are recalled, in which case the governor shall appoint members so that local government can continue to function. If all members of a school board are recalled, the governor would have the same power of appointment to that board.

accepted

Sec. 29.42.~~150~~ 180. DELEGATIONS. The assembly may by ordinance authorize the planning commission and the platting authority to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the planning commission or platting authority, to other boards or commissions or to a hearing officer designated by the planning commission or platting authority.

EXPLANATION: The Technical Committee originally recommended repeal of this section. Upon reconsideration, it is recommended that it be retained in a slightly redrafted form to insure that there is no question that hearing officers may be used by the planning commission and platting authority to hear individual cases.

accepted

Sec. 29.45.610. POWER OF LEVY. (a) A city within a borough which levies and collects areawide sales or use taxes may levy sales or use taxes on all sources taxed by the borough in the manner provided for boroughs, except that the assembly may by ordinance authorize a city to levy and collect sales or use taxes on other sources.

(b) A city within a borough which does not levy and collect areawide sales or use taxes may levy and collect sales or use taxes in the manner provided for boroughs.

use existing language of AS 29.45.620

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Repeal.

EXPLANATION: Subsection (a) is altered to allow a city to levy taxes on other sources if authorized by a borough. It is felt that borough authorization should be required since the borough does the collecting and would experience added administrative difficulties if the city and borough tax differ. Subsection (b) contains the material formerly in AS 29.45.620

Hold

OK with change

Sec. 29.33.200. MUNICIPAL PROPERTIES. (Section as previously approved by the Policy Group with the following new subsection:)

(g) Dedication of streets, rights of way, easements or other areas for public use shall not be construed to require the municipality to maintain, improve or provide for municipal services in the area dedicated and the dedication shall not impose any liability on the municipality for the condition of the area dedicated.

EXPLANATION: Since the municipality may be the recipient of land deeded over by a private person without the muncipality's approval, it is felt that the municipality should not be liable for the condition of property just as the result of dedication. This would not affect the liability of a municipality for the condition of land which it undertakes to improve or maintain.

accepted

p. 10 Palmer's Bill

A BILL

Accepted by Policy Group Jan 17, 1981

For an Act entitled: "An Act providing organizational grants to newly incorporated cities and boroughs, providing transitional assistance to newly incorporated boroughs; and providing for an effective date."

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

*Section 1. AS 29.18.180 is amended to read:

Sec. 29.18.180. Organization grants to cities. (a) For the purpose of defraying the cost of transition to [BOROUGH OR] city government and in order to provide for development and interim government operations, each [BOROUGH AND] city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, [OTHER THAN A UNIFIED MUNICIPALITY INCORPORATED UNDER THE PROVISIONS OF AS 29.85, OR A MUNICIPALITY INCORPORATED BY CONSOLIDATION], is entitled to a first year organization grant equal to $50,000. [$10 FOR EVERY VOTER WHO VOTED IN THE BOROUGH OR CITY INCORPORATION ELECTION. HOWEVER, EACH INCORPORATED BOROUGH AND EACH FIRST CLASS CITY INCORPORATED OR ESTABLISHED BY RECLASSIFICATION OUTSIDE AN ORGANIZED BOROUGH IS ENTITTED TO AT LEAST $25,000.]

(b) Within 30 days after certification of the incorporation election favoring incorporation or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the city the total amount of first year organization money to which the city is entitled.

(c) A city eligible for and receiving a first year organization grant under subsections (a) and (b) of this section is entitled to a second year organization grant of $25,000. Within 30 days after the beginning of the city's second fiscal year, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the city the total amount of second year organizational grant money to which the city is entitled.

*Sec. 2. AS 29.18 is amended by adding a new section to read:

Sec. 29.18.185. Organization grants to boroughs. (a) For the purpose of defraying the cost of transition to borough government and in order to provide for development and interim governmental operations, each borough incorporated after January 1, 1981, other than a unified municipality incorporated under the provisions of AS 29.68.030 - 040, or a municipality otherwise incorporated by consolidation, is entitled to organization grants for the first three full years of incorporation according to the following schedule: First year of incorporation the borough is entitled to $300,000; second year of incorporation, the borough is entitled to $200,000; third year of incorporation, the borough is entitled to $100,000. In addition to state support provided in this section, the borough is also entitled to regular State Aid to Local Governments payment under AS 29.88.010 - 29.95.030.

(b) Within 30 days after the date of incorporation of a borough after January 1, 1981, the Department of Community and Regional Affairs shall determine the population of the borough.

(c) Within 30 days after completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough the total amount of money under this section to which the borough is entitled for the first year of incorporation. The second and third entitlements will be transmitted within 30 days after the beginning of the subsequent borough fiscal years, or as soon thereafter as money is appropriated to it for the purpose.

*Sec. 3. AS 29.18 is amended by adding a new section to read:

Sec. 29.18.186. Transitional Assistance to boroughs. Each borough incorporated after January 1, 1981, other than a unified municipality incorporated under the provisions of AS 29.68.030 - 440, or a municipality otherwise incorporated by consolidation, is entitled to transitional assistance provided in (a) and (b) of this section. (a) The Department of Community and Regional Affairs shall provide assistance with establishment of the initial assessment and collection department for a borough that has adopted a sales tax.

(b) The department shall establish the initial assessment roll for a borough that has adopted a property tax. The initial assessment roll shall contain all the information required by AS 29.53.100(a). In the preparation of the initial assessment roll, the department may contract for the services of appraisers and others whose services are required to complete and report the initial assessment. ~~When completed, the initial assessment roll shall be certified by the commissioner, and the completed roll, together with all supporting information and materials prepared~~

~~roll, the department may contract for the services of appraisers and others whose services are required to complete and report the initial assessment~~. When completed, the initial assessment roll shall be certified by the commissioner, and the completed roll, together will all supporting information and materials prepared by the department, shall be transmitted to the borough assembly. The department, to the extent appropriations are available for the purpose, shall continue to fund the assessment function and related staff for a period of three years after the completion of the initial roll.

(c) There is established in the Department of Community and Regional Affairs the transitional assistance to boroughs fund. The fund shall be administered by the Commissioner and shall be used to pay for transitional assistance under (a) and (b) of this section.

(d) An appropriation made for transitional assistance to a borough is valid for the three years of required assistance and the unexpended balance shall be carried forward to subsequent fiscal years for those years. Between July 1 and August 31 of each fiscal year, a statement supporting the amount of the unexpended balance required to complete transitional assistance projects for which the initial appropriations was made and the amount that may be lapsed shall be recorded with the Department of Administration.

*Sec. 4. AS 29.18 is amended by adding a new section in article 3 to read:

Sec. 29.18.187. Definitions.

(1) "assessment functions" include discovering and describing taxable property; appraising that property; and preparing an Assessment roll.

*Sec. 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

**Sec. 29.48.030. Municipal facilities and services.** (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

(1) streets and sidewalks;
(2) sewers and sewage treatment facilities;
(3) harbors, wharves, and other marine facilities;
(4) watercourse and flood control facilities;
(5) health services and hospital facilities;
(6) cemeteries;
(7) police protection and jail facilities;
(8) cold storage plants;
(9) telephone systems;
(10) light, power and heat;
(11) water;
(12) transportation systems;
(13) community centers;
(14) libraries, visual or performing arts centers, or museums;
(15) recreation facilities;
(16) airport and aviation facilities;
(17) garbage and solid-waste collection and disposal service and facilities subject to AS 29.48.033;
(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;
(19) parking and parking facilities;
(20) housing and urban renewal, rehabilitation and development;
(21) preservation, maintenance and protection of historic sites, buildings and monuments;
(22) consumer protection;
(23) emergency medical services and facilities.

(am § 3 ch 215 SLA 1975; am § 4 ch 78 SLA 1978; am § 5 ch 62 SLA 1979)

**Cross reference.** — As to emergency medical services, see AS 18.08.

**Effect of amendments.** — The 1975 amendment added "not in conflict with AS 18.70.075, but not limited to AS 18.70.075" to the end of paragraph (18) of subsection (a).

The 1978 amendment added paragraph (23) to subsection (a).

The 1979 amendment added "visual or performing arts centers or museums" to the end of paragraph (14).

As the rest of the section was not affected by the amendments, it is not set out.

**Applied** in Libbey v. City of Dillingham, Sup. Ct. Op. No. 2097, File No. 3861, 612 P.2d 5 (1980).

**Cited** in Groves v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1168, File No. 2016, 536 P.2d 1221 (1975).

**Sec. 29.48.033. Garbage and solid waste services.**

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in

Language to allow municipalities to install transfer sites instead of landfills, and operate them in lieu of landfills exempt from APUC regulations or Tariff carriers

the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by § 6 ch 76 SLA 1973.

(am §§ 5, 6 ch 76 SLA 1973)

**Effect of amendment.** — The 1973 amendment rewrote subsection (b) and repealed subsection (c).

As the rest of the section was not affected by the amendment, it is not set out.

**Definition of collect.** — Collect is defined as the "bringing together into one body or place." McClellan v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**Definition of disposal.** — Disposal means the act of passing over the control of solid waste to the operators of a disposal site. McClellan v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**Dumpsters are garbage containers.** — Drop-boxes and dumpsters, which are used as intermediate disposal facilities, are garbage and refuse containers. McClellan v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**And are not equivalent of final landfill sites.** — Interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of subsection (b) of this section and AS 42.05.221(f) that certificate holders be compensated for their interests. McClellan v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**Operation of garbage disposal sites does not constitute a utility service;** it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. McClellan v. Kenai Peninsula Borough, Sup. Ct. Op. No. 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

**Sec. 29.48.035. Regulatory powers.** (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

(4) transportation fares;

John W. McCLELLAN d/b/a Alpine Refuse, and Homer Transfer Co., Inc., Appellants,

v.

KENAI PENINSULA BOROUGH, R. F. Miller Enterprises, Inc., d/b/a Peninsula Sanitation Co., and Burton Carver & Co., Inc., Appellees.

KENAI PENINSULA BOROUGH, R. F. Miller Enterprises, Inc., d/b/a Peninsula Sanitation Co., and Burton Carver & Co., Inc., Cross-Appellants,

v.

John W. McCLELLAN, d/b/a Alpine Refuse, and Homer Transfer Co., Inc., Cross-Appellees.

Nos. 2493, 2543.

Supreme Court of Alaska.

June 8, 1977.

Holders of certificates issued by Alaska Public Utilities Commission allowing them to provide garbage and refuse collection and disposal utility service in borough filed suit against borough praying for injunctive relief and declaratory judgment after borough awarded to others contracts covering all hauling of refuse to sanitary landfills and maintenance and operation of transfer sites. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J., granted borough's motion for summary judgment and the plaintiffs appealed. The Supreme Court, Burke, J., held that (1) borough was liable to appellants for fair market value of certificates of public convenience and necessity or that portion of certificate that would be affected, (2) defendant's motion for change of venue should have been granted, and (3) costs should have been awarded defendants.

Reversed and remanded.

1 Municipal Corporations ⇐607

Contracts which were awarded by city and which covered all hauling of refuse to sanitary landfills and maintenance and operation of transfer sites pertained to "collection and disposal," within statute precluding political subdivision from providing for waste collection and disposal service in any area, to extent it lies within area granted to waste carrier by certificate issued by Public Utilities Commission, until subdivision has purchased certificate, equipment and facilities of carrier or that portion which would be affected at fair market value, thereof, was liable for fair market value of certificate of public convenience and necessity issued by Commission or that portion of certificate that would be affected. AS 29.48.030(b), 42.05.221(b).

See publication Words and Phrases for other judicial constructions and definitions.

2 Venue ⇐37, 52(1)

Proceeding on motion for summary judgment qualifies as "precedent or antecedent" hearing within statute providing that any precedent or antecedent hearings or acts shall be conducted in senate district within judicial district at location which would best serve convenience of parties and the witnesses. Thus defendants' motion for change of venue from Anchorage to Kenai should have been granted, where controversy arose in Kenai Peninsula Borough, three defendants were located approximately 11 miles from courthouse in Kenai and one of plaintiffs had its principal place of business in Homer, approximately 96 miles from courthouse in Kenai. AS 22.10.030(d).

3 Venue ⇐46

Where party has brought action in improper locality and refuses upon request of other party to stipulate to change of venue to proper locality, venue statute is circumvented if, for even a hearing disposing of entire matter, court assumes venue. AS 22.10.030(d).

4 Costs ⇐155

To help protect defendants from having the right to proper venue denied, motion for costs for having to make change of venue motion is proper. AS 22.10.030(d).

**5. Costs ⇐155**

Where plaintiffs' refusal to stipulate to change of venue to proper locality forced counsel for defendants to travel to improper locality for hearings on combined motions for summary judgment and change of venue, defendants who moved for costs for having to make change of venue motion were entitled to such. AS 22.10.0[illegible]

---

John R. Strachan, Anchorage, for appellant.

John M. Stern, Jr., Anchorage, for appellant/cross-appellees.

Charles K. Cranston, Gallagher, Cranston & Snow, Anchorage, for appellees/cross-appellants.

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

## OPINION

BURKE, Justice.

This is an appeal by John W. McClellan, d/b/a Alpine Refuse and Homer Transfer Co., Inc., from an order granting summary judgment to Kenai Peninsula Borough, R. F. Miller Enterprises, Inc., d/b/a Peninsula Sanitation Co., and Burton Carver & Co., Inc. The controversy centers on the power of the Borough of Kenai to set up intermediate sites for the disposal of solid waste products and to contract with private refuse companies to transfer the solid waste to final landfill areas. The dispute requires us to construe AS 29.48.033(b) and AS 42.05.221(f), both of which provide in pertinent part:

> "... A political subdivision of the state[1] may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the [Alaska Public Utilities] commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value."

On June 20 and June 27, 1974, the Borough allowed contractors to bid on one year contracts covering all hauling of refuse to sanitary landfills and maintenance and operation of transfer sites.[2] Pursuant to these bids, contracts were awarded to Peninsula Sanitation and Burton Carver & Co.

Appellants, holders of certificates issued by the Alaska Public Utilities Commission allowing them to provide garbage and refuse collection and disposal utility service in the Kenai Peninsula Borough,[3] filed suit in the superior court against the Borough praying for injunctive relief and a declaratory judgment. The Borough made a cross-motion for summary judgment, establishing substantial agreement as to the facts. Judge Eben Lewis, in an order handed down March 10, 1975, granted the Borough's motion and held that:

> "... the system of disposition of solid waste ... of the Borough utilizing large boxes as intermediate disposal

1. AS 42.05.221(f) includes the words "of the state" whereas AS 29.48.033(b) does not.

2. Transfer sites are distinguishable from the final disposal points in that the former serve as intermediate facilities where trash may be left off by private citizens rather than collected door to door.

The transfer sites were located at:

a) Ninilchik and Anchor Point, Project E 74-11

b) Kasilof, North Kenai and Sterling, Project E 74-12

c) Cooper Landing, Hope and Moose Pass, Project E 74-13

The Alpine appeal only has reference to the hauling, collection and disposal of solid wastes in Project E 74-13, whereas the Homer Transfer Co. appeal deals with E 74-11 and E 74-12.

3. AS 42.05.701(2)(1) includes within the definition of a public utility the "furnishing [of] collection and disposal service of garbage, refuse, trash or other waste material."

This court in *Homer Electric Association, Inc. v. City of Kenai*, 423 P.2d 285, 286-9 (Alaska 1967) stated that a certificate of public convenience and necessity is a property right and as such is entitled to protection.

facilities to be subsequently transported to permanent disposition sites by its own forces or through a contractor employed through normal contracting procedures does not preempt without compensation the regulated utility function of going to customers for the immediate collection of solid waste.[4]

The question presented to this court is one of statutory interpretation. As one commentator has stated, "[it] seems that anyone looking for principles of interpretation would first hit upon the rather obvious idea that the statute should be given the meaning which will express the actual intention of the legislator when the law was enacted."[5] In this case we have been unable to find any legislative guidance which would illuminate our path.

[1] In the situation at bar the dispute may be centered on the meaning of the phrase "collection and disposal" as used in AS 29.48.033(b) and AS 42.05.221(f). As has been stated, other had deleted

> It is [illegible] a basic rule of statutory construction that general words should be given a general construction, that is they should be given their full and natural meaning, unless the statute in some manner reveals that the legislative intent was otherwise.[6]

Given this principle we note that Webster's Seventh New Collegiate Dictionary (1969) defines collection as "the act or process of collecting" or "something collected." Collect is defined as the "bringing together into one body or place." The fact pattern presented is clear on the point that refuse was gathered at the various intermediate sites and was hence collected.

To accept the lower court's interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of AS 29.48.033(b) and AS 42.05.221(f) that certificate holders be compensated for their interests. Such a result is not a reasonable reading of the statute.

In awarding Alpine Refuse and Homer Transfer their certificates of public convenience and necessity for the collection of refuse, the Alaska Public Utilities Commission, in an order dated February 26, 1974, endeavored to clarify the confusion generated by the legislature's failure to define "disposal" in AS 29.48.033(b) and AS 42.05.221(f). The Commission found:

> that disposal in this instance means the act of passing over the control of solid waste to the operators of a disposal site. Hence, the operation of garbage disposal sites does not constitute a utility service, it is only the *passing over of control of solid waste to the disposal site operator* which is regulated as a utility function. (emphasis added)[7]

The Commission in apparent anticipation of the Borough's actions went on to state that they considered:

> drop-boxes and dumpsters which are used as intermediate disposal facilities, to be garbage and refuse containers. Thus, if in the future the Borough program includes the placement of drop-boxes, large disposal dumpsters, or large disposal containers as intermediate disposal facilities, the Commission is of the opinion that suitable arrangements can be made for the certificated utility in that area to service those facilities.[8]

We agree with this interpretation of AS 29.48.033(b) and 42.05.221(f). Therefore, we hold that the Borough of Kenai is liable to the appellants for the fair market value of their certificates of public convenience and necessity or that portion of the certificate that would be affected and remand to the superior court for findings as to such value.

4. Record on Appeal, 145.

5. F. Frankfurter, Interpretation of the Written Law, Sutherland Statutory Construction, Vol. 4 at 41 (4th edition, D. Sands 1973).

6. E. Crawford, *Unwritten Construction of Statutes*, 324 (1940).

7. Record on Appeal, 1928.

8. *Id.* at 26.

## CROSS APPEAL

At the hearing on the parties' cross-motions for summary judgment, cross-appellant Borough made an additional motion for change of venue. Judge Lewis ruled that if both motions for summary judgment were denied, venue for trial would be changed from Anchorage to Kenai. Thus, he denied the motion for change of venue for the purpose of hearing the motions for summary judgment.

[2] Cross-appellants urge that the court erred in failing to grant their motion for change of venue prior to a hearing on the summary judgment motions. Their argument is predicated on AS 22.10.030(d) which states in pertinent part:

> Subject to § 40 of this chapter, a trial and any *precedent or antecedent hearings* in an action shall be conducted in a senate district within the judicial district at a location which would best serve the convenience of the parties and witnesses. However, if there is any part of more than one senate district within the boundaries of a borough, the trial and related hearings shall be conducted within the borough's boundaries at a location which would best serve the convenience of the parties and witnesses. (emphasis added)

That the word "shall" is generally considered to signal a mandate from the legislature is buttressed by its definition in Ballentine's Law Dictionary (3rd ed. at 1171) that it is

> [o]rdinarily, a word of mandate in a statute, the equivalent of 'must' where appearing in a statute.

A motion for summary judgment as Professor Wright has written [9]

> [p]ermits any party to a civil action to move for a summary judgment upon a claim, counterclaim, or cross-claim as to which there is no genuine issue of material fact and upon which the moving party is entitled to prevail as a matter of law. The motion may be made as to all or part of a claim of defense. It may be made on the pleadings or the record or it may be supported by affidavits. The motion strikes at the heart of the claim. In effect it argues that as a matter of law upon admitted or established facts the moving party is entitled to prevail.

Given that such a proceeding carries with it the potential final disposition [10] of an action, it would appear to clearly qualify as a "precedent or antecedent" hearing as set out in AS 22.10.030(d). As such it should have been conducted in the senate district [11] within the judicial district at a location which would best serve the convenience of the parties and witnesses. In the case presented, the controversy arose in the Kenai Peninsula Borough, the three defendants are all located approximately 11 miles from the courthouse in Kenai and one of the plaintiffs, Homer Transfer Co., Inc. has its principal place of business in Homer, Alaska, which is approximately 90 miles from the courthouse in Kenai.[12]

As we have previously stated with respect to AS 22.10.030(d):

> In enacting this provision, the legislature made explicit the fact that its purpose was "to make the administration of justice more accessible to the people of rural areas of the state." [13]

Given this legislative intent it follows that AS 22.10.030(d) should be read so as to effectuate its avowed purpose. Therefore, we find that the lower court erred in failing

9. C. A. Wright, *Law Of Federal Courts*, 441 (2d ed. 1970).

10. Rule 56(c), Alaska Rules of Civil Procedure provides in pertinent part:

> Judgment shall be rendered forthwith if the pleadings, depositions and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.

11. It should be noted that Senate District K and a portion of Senate District S lie within the Kenai Peninsula Borough. Appellants Brief at 7-8.

12. Record on Appeal 65-66.

13. *Alvarado C. State*, 486 P.2d 891, 905 n. 40 (Alaska 1971).

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to grant the defendant's motion for change of venue.

[3-5] Prior to the hearing on the motions for summary judgment the defendants offered to stipulate to a change of venue. However, the plaintiffs refused. This refusal forced counsel for the defendants to travel to Anchorage for the combined motions for summary judgment and change of venue. Where a party has brought an action in an improper locality, and refuses upon request of the other party to stipulate to change of venue to the proper locality, AS 22.10.030(d) is circumvented if, for even a hearing disposing of the entire matter, the court assumes venue. To help protect defendants from having their right to proper venue denied, a motion for costs for having to make a change of venue motion is proper. In the case presented the defendants made such a motion. Given the violation of AS 22.10.030(d), the lower courts failure to grant costs to the defendant is also error. We therefore remand this matter to the superior court for a determination of what costs should have been awarded the defendants.

REVERSED and REMANDED.



Robin Curtis BROWN, Appellant,

v.

STATE of Alaska, Appellee.

No. 2522.

Supreme Court of Alaska.

June 13, 1977.

By a judgment of the Superior Court, Third Judicial District, Anchorage, P. J. Kalamarides, J., the defendant was convicted, on his plea of guilty to indictment charging unlawful sale and distribution of marijuana and he appealed challenging constitutionality of statute. The Supreme Court held that while prohibition of possession of marijuana in the home for personal use could not be justified, there was no constitutional protection against the buying or selling of marijuana.

Affirmed.

**Drugs and Narcotics ⇒76**

While problems caused by marijuana do not present a sufficiently close and substantial relationship to public welfare as to justify prohibition of its possession in the home for personal use, plaintiff could be properly convicted of aiding in the sale of a substantial quantity of marijuana, since neither the Federal nor Alaska Constitutions affords protection for buying or selling the marijuana. AS 17.12.010.

Phillip P. Weidner, Drathman & Weidner, Anchorage, and Brian Shortell, Public Defender, Anchorage, for appellant.

Glen C. Anderson, Asst. Dist. Atty., Joseph O. Balfe, Dist. Atty., Anchorage, and Avrum Gross, Atty. Gen., Juneau, for appellee.

Before BOOCHEVER, C. J., RABINOWITZ, CONNOR and BURKE, JJ., and DIMOND, J. Pro Tem.

OPINION

PER CURIAM.

Robin Curtis Brown pled guilty to an indictment charging him with the unlawful sale and distribution of marijuana. Brown reserved the right to appeal the constitutionality of AS 17.12.010.[1] Brown arranged for the sale of two pounds of marijuana by

1. AS 17.12.010 provides:

"A. Prohibited. Except as otherwise provided in this chapter, it is unlawful for a person to manufacture, compound, counterfeit, possess, have under his control, sell, prescribe, administer, dispense, give, barter, supply or distribute in any manner, a depressant, hallucinogenic, stimulant drug.

# Memorandum

**Alaska Court System**

TO: Legislative Affairs Agency
Att: Melissa Fouse

DATE : January 7, 1981

FROM: Jeanne R. Martin
Secretary to Area Court Administrator

SUBJECT: Use of Court Facilities

Attached is a form entitled Conditions of Use of Court Facilities, which should be signed and returned to me, at Mail Stop 4100, or Room 241 of the Alaska Court and Office Building. The copy should be retained for your files.

If you have any questions, please do not hesitate to call me at 465-3434.

Please stop at Room 241 on Friday, January 16, to get the key to Room 320.

dm. F-1
ev. 2-73

# CONDITIONS OF USE OF COURT FACILITIES

1. No smoking material is permitted in the Courtroom.

2. No food or beverage is allowed in the Courtroom.

3. If borrowed, Courtroom key is to be returned to the Superior Court, Room 241 (or Building Security if after 4:30 p.m.)

4. Lights are to be turned off and all doors locked.

5. Furniture that has been rearranged is to be placed in its original position.

6. No use of Court System recording equipment.

7. Any writing materials, visual aids, or other equipment brought into the Courtroom must be removed.

I have reserved Room 320, Third Floor Grand Jury Room

for government use
(type of activity)

on January 17 and 18, 1981 (Saturday and Sunday)
(date and hours)

I agree to the conditions stated above. I acknowledge that if one or more of the above described conditions are not met, I may be denied further use of Court facilities.

Rebecca Abel Fouse
Name

Legislative Affairs Agency
Title Revision Commission
Organization

Pouch Y
Address

08 JAN 80
Date Signed

Phone Number: 465-3809 (Melissa)

Room capacity: 20 - with large conference table.

Coffee Pot available for your use.

**THE CITY AND BOROUGH OF JUNEAU**
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski, Senator
Chairman, Title 29 Revision Policy Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

File: Title 29 Revisions

Subject: Recall

Dear Senator Sturgulewski:

At the meeting held by your committee in Fairbanks just before the Alaska Municipal League meeting, a great deal of debate focused on the question of whether the grounds for the recall of a local official should be narrowly or broadly drawn. Mayor Larson requested from me a defense of narrowly drawn grounds and other procedures designed to provide the elected official with some measure of protection. Please consider this letter as that defense.

Many features of our democratic system of government are accepted as basic and necessary to the system. These ascertions are seldom examined critically as it is unpopular and distasteful for any one to seriously undertake criticism of what is popularly perceived to be the underpinnings of our democratic form of government. Recall is one such uncritically examined element of our democratic system of government.

First, we should note that our system of government is not a pure democracy but it is rather a democratic republic. Article IV, Section 4 of the U.S. Constitution guarantees to each state a republican form of government, not a democracy. That Constitution provides for neither an initiative or recall. Throughout the history of the United States, the states themselves have not universally provided for recall.

The upsurge of recall provisions came about during the government reform movement. While recall may be viewed as a procedure which strengthens democratic principles, it clearly accentuates one of the greatest weaknesses of the democratic system - its vulnerability to popular but ill-conceived whims of the public and its manipulation by a minority.

The Greek philosopher who first categorized the various forms which government could take, and who gave democracy its name, rated

democracy rather low as a form of government which would best serve the needs of its subjects. Being subject to the whims of a relatively uninformed populace made a democracy ill suited to consistently serve the needs of the public. The Federalist Papers and the U. S. Constitution clearly show that the thoughtful leaders of our country who drafted our Constitution had severe reservations about the democratic form of government and sought to overcome those perceived deficiencies. They provided us with an electoral college which, they hoped, would have the collective wisdom necessary to select a statesman worthy and capable of discharging the duties of President of the United States. They did not provide for his direct election by the populace as would have been the more "democratic" method. They provided us with two houses of Congress, one of which would be based upon population and which might reflect popular sentiment and a second house which would provide equal representation to all the states. This second house, it was hoped, would provide the mechanism for preventing the enactment of popular but ill-conceived measures. A further check upon both of these houses was given to the President who could veto measures he believed were inappropriate. The drafters of our Constitution believed that these and other checks, along with the probability that various interest groups would form different coalitions on different measures, would combine to overcome one of the more serious defects of the democratic form of government. They apparently did not feel that recall was either necessary or desirable. In fact, I suggest that the "open season" type of recall which has been proposed for Title 29 is contrary to the very principles which are reflected in our Constitution and the philosophy of those who drafted it.

Under our republican form of government, an elected official does not serve as a mere extension or agent of those who elected him. The elected official is expected to exercise his informed and considered judgment in providing for the public good. If it were reasonable to believe that the public could become adequately informed on all the public issues which face a legislative body, then it might also be reasonable to assume that the general public could also function in the manner of a town meeting and decide all public issues. Because few of us are able to devote the time necessary to become so informed, we delegate to our elected officials the responsibility to become adequately informed and to make decisions as to the public needs. If the public is dissatisfied with a policy decision made by public officials, the initiative and referendum may be used to correct what are perceived to be errors of decision making. When recall is used in such cases, it is not corrective in nature, it is vindictive and punitive.

As already noted, recall was a concept which became popular during the reform era. It was aimed not at governmental bodies which had

made decisions which were unpopular with various segments of populace but was aimed at corrupt individuals. The public good demands that persons be removed from office who are corrupt or dishonest in office, who fail to perform prescribed duties of the office or who are physically unable to perform the duties of the office. If there is no administrative or judicial procedure for removing such persons from office, it would be appropriate to provide a method for the electorate to effect such a removal. However, any such system should be strictly limited to removals for corruption, dishonesty affecting the public good, and inability or refusal to perform the duties of the office. It would be an abuse of the recall mechanism to permit recall of an elected official merely because the official had participated in making a decision which was unpopular with a large segment of the public. Any controversial matter is likely to be unpopular with a large segment of the public and public officials should not have the threat of recall hanging over their heads whenever their honestly held convictions compel them to vote in a certain manner. Unfortunately, a review of recall efforts will reveal that most, if not all recall efforts, are actually based upon an action taken by the entire body and have little or nothing to do with any of the legitimate grounds for recall. To make matters worse, the proponents of the recall often resort to slander or grossly exaggerated accusations in their recall petition.

It cannot be denied that there is currently a movement in the direction of single issue politics. When there are groups about which openly flaunt their "hit list," it behooves us to examine the elements of our political system in light of this new phenomenon. A recall provision which requires merely that someone be dissatisfied with an elected official's performance amounts to a declaration of open season on all elected officials. If the recall mechanism can be called into play for essentially no reason at all, the quality of persons who will run for public office will suffer as will the basic decision making process itself. At the municipal level, once a recall petition has been placed in circulation, and even more so after it has been filed, the proponents of the recall often become very forceful and vocal in airing their belief that the governing body should cease making important decisions until after the recall matter has been settled. As local elected officials are not insensitive to public demands, such demands do have an impact on the elected body. Unnecessary delay in decision making coupled with an overemphasis on the recall petitioners' position on matters before the body may combine to produce results which are not in the best interest of the public. The tension and turmoil which a recall petition creates within the elected body and the community is an undesirable but, nevertheless unavoidable, effect of a recall attempt. Therefore, every effort should be made to minimize the unnecessary exposure of a municipality to these effects. The "open season" type of recall will serve to maximize the number of occasions upon

which the local government will experience these effects. These negative effects can be minimized without destroying the right of recall if the grounds for recall are narrowly drawn to limit them to matters such as corruption in office and inability or refusal to perform the functions of the office. Not only does this narrow the grounds to those which are truely relavent to the purpose of recall but it also would reduce the ease with which a recall effort could be mounted against several members of a governing body based upon the way the body had voted.

Not only must the grounds be drawn narrowly to insure that the recall mechanism is not abused but the recall system should clearly provide for judicial review of the grounds stated. Failure to provide a clear right of judicial review renders the requirement for clear and narrow grounds a nullity.

Before any group should be permitted to force the public to undergo the expense of an election, there should be a very substantial showing that the public is indeed interested in voting on the proposed issue. Therefore, there should be a substantial signature requirement. Under state law, those seeking a recall petition for a state official must first submit an application containing the signatures of at least 10% of those who voted in the last election in the relevant district. If the Lieutenant Governor determines that the application is sufficient, a petition is issued and the petitioners must then obtain signatures equal to at least 25% of those who voted in the last general election in the relevant district. Thus, at the state level the legislature has provided for a recall system which places a significant burden upon the petitioners and thus may well filter out most of those recall efforts which would be unsuccessful. In addition, the grounds for recall (lack of fitness, incompetence, neglect of duties, and corruption) are all narrow enough that the political philosophy or the way a person voted would not be a sufficient basis for a recall. Further, the legislature has clearly provided for a mechanism for judicial review of a determination by the Lieutenant Governor.

Recall is not a matter to be taken lightly and is not one which should be easily initiated or carried out. A political system which provides for the relatively easy recall of an elected official for reason of the way that official voted on a particular matter is a system which has lost one of the essential characteristics of our republican form of government. We should not cater to the fickleness of the electorate if to do so would tend to reduce the effectiveness of local government without some significant, compensating good. Our system of government will function most smoothly, most effectively and for the benefit of the general good if we provide for a recall system with narrowly drawn grounds and with other mechanisms which are designed to prevent the abuse of the recall system. The "open season" system brings with it disruptions

which serve no legitimate or public purpose. The "open season" approach should be abandoned.

Very truly yours,

Gerald L. Sharp
City-Borough Attorney

GLS:jr

cc: Mayor Ron Larson
Mat-Su Borough

Tam Cook, Esq.
Legislative Affairs

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801
LAW DEPARTMENT (907) 586-3300

December 9, 1980

The Honorable Arliss Sturgulewski
Senator, State of Alaska
Chairman, Title 29 Revision Policy
Committee
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

FILE: Title 29 Revisions

SUBJECT: Initiative and Recall

Dear Senator Sturgulewski:

In reviewing the changes which the Policy Committee made to the proposed initiative and referendum proceedings, I note that a municipality will now be required to hold special elections for initiatives. Present law requires that initiatives be filed within 90 days of the next regular muncipal election. This requirement eliminates the need lor the muncipality to ever have to hold a special election on an initiative. However, there seems to be little reason not to allow petitioners to file an initiative at any time they please so long as the municipality is not required to undergo the expense of special elections. It was this approach which the Technical Committee suggested.

The Legislature has seen fit to provide an initiative procedure at the state level which does not permit the filing of an initiative petition to generate the requirement for a special election. Further, an initiative petition could be filed with the State and not be placed on the ballot for almost two years. Municipalities have elections each year. If they are required to place initiatives on the next occuring regular or special election, initiatives at the local level will be voted on, in all cases, much more quickly than at the State level. If the State cannot be put to the expense of a special election for an initiative, it seems inappropriate to force municipalities to undergo the expense of special elections for initiatives.

I also believe that if a referendum is filed, no special election should be held unless the referendum has been filed in such a

manner that the effect of the measure to be referred is suspended.

For the foregoing reasons, I strongly suggest that the Committee consider changing the election requirements for initiative and referendum to provide that initiatives are placed on the first regular or special municipal election held not sooner than 75 or 90 (or some other reasonable time) days after the initiative is submitted to the Legislative body. I would suggest that a referendum be treated in the same manner unless the filing of the referendum operates to effect a suspension of the matter to be referred. In such cases, a special election should be held if required.

Sincerely,

Gerald L. Sharp
City-Borough Attorney

GLS:phl

cc: Tam Cook, Esq.
Legislative Affairs

Approved w changes — Jan 17-18 meeting, Policy Group

TITLE 29 REVISION COMMISSION
Policy Advisory Group Meeting

Minutes of December 15, 16, & 17, 1980

The fourth meeting of the Policy Advisory Group - Title 29 Revision Commission was held December 15, 16, & 17, 1980 in the Adventure Room of the Captain Cook Hotel, Anchorage, Alaska. The meeting was called to order by Senator Arliss Sturgulewski, Chairman, at 9:00 a.m.

Present as members of the Policy Advisory Group were: Senator Arliss Sturgulewski, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, James Kohler and Jonathan Solomon. Present substituting for Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. The Technical Committee was represented by Ted Berns and Russell Walker as members of both groups. Present from the staff of Legal Services was Tamara Brandt Cook, Legislative Counsel.

Guests and members of the public attending were: Stephanie Scott, Haines Borough; Cris Fowler, AOGA; Robert Walker, Exxon; Carl Mogli, Napakiak; David Dye, Community Planning, Department of Community and Regional Affairs; and Jim Gottstein.

There were no presentations by guests or members of the public.

Chairman Sturgulewski reported on attending the meeting of the Rural Development Council. She says they are concerned with the definitions of "rural" and the relationship of rural communities with Title 29.

The chair requested copies of the Alaska Municipal League Policy Statement issued as a result of its November convention in Fairbanks.

The minutes of the previous meetings were approved as distributed with no corrections or additions.

Under Old Business, Patrick Poland reported that the news release prepared by Legal Services had been distributed and was expected to appear in the December issue of the RuralCAP newsletter. The newsletter distributed by the University of Alaska at Fairbanks was not expected to be published in December but the news release would be included when it was published.

The subcommittee report regarding AS 29.09.180 (Organization Grants) as postponed due to Marilyn Dimmick not being present.

The subcommittee report on AS 29.30.040 (Voter Qualification) was postponed to 17 December.

Ted Berns reported on the Technical Committee's three day meeting saying they had covered a great deal of material in those three days and he hoped that the Policy Group would be able to review all the material produced by that meeting.

Tamara Brandt Cook reported on the format of the presentation of the bill. She said that a draft would be prepared, going first to the revisor of statutes, then to the legal editor and would then be put into final form for presentation to the rules committee for introduction into the legislature.

Turning to the proposed drafting changes submitted by the Technical Committee, it was agreed that the original motion to approve all changes unless otherwise noted would be held in force.

Approved by the Policy Group without changes were: AS 29.24.050, 29.24.125, 29.24.160, 29.24.206, 29.24.210, 29.24.240. Approved with minor wording changes were: AS 29.24.140, 29.24.145, 29.24.150, 29.24.175, 29.24.200, 29.24.250. Sections with substantive changes made by the Policy Group were: AS 29.24.170 and 29.24.205.

The meeting was recessed at 4:30 p.m. until 8:30 a.m. 16 December.

At 8:30 a.m. the meeting was called to order at the Captain Cook Hotel in the Quarterdeck 19 conference room. Policy Advisory Group members attending were: Senator Arliss Sturgulewski, Senator-elect Charles Parr, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, and Jonathan Solomon. Representing Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. Guests and members of the public attending were Stephanie Scott, Haines Borough; Robert Walker, Exxon; Cris Fowler, AOGA; David Dye, Community Planning, Department of Community and Regional Affairs, and Carl Mogli, Napakiak.

There were no presentations by guests or members of the public.

Approved by the Policy Group without changes were: AS 29.24.160, 29.24.200(e), 29.24.210, 29.24.390, 29.24.430, 29.24.450, 29.24.480, 29.24.510, 29.24.515, 29.24.570, 29.24.620, 29.24.630, 29.24.640, 29.24.670, 29.33.030, 29.33.190, 29.33.210, 29.33.220, 29.42.020, 29.42.030, 29.42.060, 29.42.070, 29.42.085, 29.42.090, 29.42.100, 29.42.115, 29.42.120, 29.42.130, 29.42.150. Accepted by the Policy Group with wording changes were: AS 29.24.010, 29.24.530, 29.24.680, 29.24.690, 29.33.090, 29.42.010, 29.42.050, 29.42.080, 29.42.160. Sections with substantive changes made by the Policy Group were: 29.24.420, 29.33.010, 29.33.020, 29.33.070, 29.33.130, 29.33.140, 29.33.150, 29.33.160, 29.33.200, 29.29.060, 29.42.040. A drafted section sent back to the Technical Committee for further review was 29.42.040. Drafted changes not accepted by the Policy Group were AS 29.33.120 and 29.33.110.

Section w/substantive change

29.42.040

Section 29.39.060 (Planning & Land Use Regulation) was earmarked as a policy issue to be reviewed later.

The meeting was recessed at 4:30 p.m. due to lack of a quorum.

At 8:30 a.m. 17 December 1980 the Policy Advisory Group meeting was again called to order in the Captain Cook Hotel, Quarterdeck 19 conference room. Members attending were: Senator Arliss Sturgulewski, Representative Margaret Branson, Ted Berns, Terry Cook, Marilyn Dimmick, Ronald Larson, Gene Moore, Russell Walker, and Jonathan Solomon. Representing Ex-Officio members were Patrick Poland for Palmer McCarter and Marilyn Miller for Ginny Chitwood. Guests and members of the public attending were Stephanie Scott, Haines Borough; Robert Walker, Exxon; Cris Fowler, AOGA; Carl Mogli, Napakiak; David Dye, Community Planning, Department of Community and Regional Affairs; and Timothy Troll, City Manager of St. Mary's. John Messenger represented the Technical Committee briefly, explaining the changes to the sections regarding bonding.

Sections accepted without changes by the Policy Advisory Group were: AS 29.39.060, 29.39.070, 29.39.080, 29.45.010, 29.45.020, 29.45.050, 29.45.100, 29.45.140, 29.45.150, 29.45.220, 29.45.240, 29.45.250, 29.45.260, 29.45.300, 29.45.310, 29.45.320, 29.45.400, 29.45.410, 29.45.440, 29.45.450, 29.45.460, 29.45.570, 29.45.590, 29.48.010, 29.48.020, 29.48.030, 29.48.040, 29.48.050, 29.48.060, 29.48.070, 29.48.080, 29.48.090, 29.48.105, 29.48.115, 29.48.120, 29.51.280, 29.51.340, 29.51.370, 29.51.390, 29.51.420, 29.51.430, 29.51.440, 29.51.250, 29.51.380, 29.51.370, 29.51.050, 29.51.150, 29.51.305, 29.51.240, 29.51.350, 37.30.100. Sections accepted with wording changes were: AS 29.27.080, 29.36,170, 29.36.270, 29.45.210, 29.51.410. Sections accepted with substantive changes made by the Policy Group were: AS 29.45.030, 29.45.545. Sections not accepted were AS 29.45.030 and 29.48.090. A section sent back to the Technical Committee for new language was 29.45.610. The Policy Group moved to repeal AS 29.45.060.

The chair directed the Technical Committee to review the following: Can a city be inside/a part of a service area? Staff is to review service area language throughout the Title. The Technical Committee is to bring back wording to allow the transition from any class of ~~city~~ municipality to Home Rule.

Stephanie Scott representing the Haines Borough spoke in defense of third class boroughs. The Haines Borough objects to the recommendation that third class boroughs be eliminated. She distributed a letter from the mayor of the Haines Borough asking what the basis for the recommendation was. The Haines borough wants a list of the reasons for the elimination of the third class borough. Marilyn Miller said that the Alaska Municipal League concurred with the elimination of third class borougns, or at least opposed the formation of any more third class boroughs. The City of Haines also concurs with the elimination of third

class boroughs. Ted Berns made a motion that the Policy Group go on the record as concuring with the Alaska Municipal League's position that third class boroughs be eliminated. The motion carried. The chair directed the Technical Committee to draft language which eliminates the formation of third class boroughs but which does not alter the status of the Haines Borough.

The question of Organization Grants is to be held for the next meeting of the Policy Group.

The chair directed the Department of Community and Regional Affairs to look into dissemination of information regarding non-taxable property to state assessors.

Tim Troll says the 14c3 negotiations are affected by the current municipal properties statute and approves of the recommended change.

The dates of the next Policy Advisory Group meeting were set for the 17th and 18th of January, 1981 in Juneau. The Technical ~~Group~~ Committee will have one more meeting as well.

The meeting was adjourned at 4:30 p.m. 17 December 1980.

No change

Respectfully submitted,

Melissa Aber Fouse

Melissa Aber Fouse
Secretary, Title 29 Revision Commission

# AGENDA

## TITLE 29 REVISION COMMISSION
## Policy Group Meeting

January 17th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

a. Presentation by Larry Kimball, Director, Division of Community Planning, Department of Community and Regional Affairs: "Planning for Small Communities."

3. Old Business:

a. Approval of Minutes.
b. Report by subcommittee chairman on AS 29.09.180. (Organizational Grants).
c. Report by subcommittee chairman on AS 29.30.040 (Voter Qualifications).
d. Presentation of proposed drafts by the Technical Committee.
e. Other Old Business.

4. New Business:

a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
b. Presentaion of proposed items for consideration by Ex-Officio Members.
c. Presentation of proposed items for consideration by the Technical Revision Committee.
d. Other new business.

January 18th:

1. Introduction of guests and members of the public attending.

2. Presentations by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business.

4. New Business.

# HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711


January 5, 1980

Tamara Cook
Legislative Affairs
Pouch Y
Juneau, Alaska 99811

RE: Title 29 Revisions with respect to a third class borough

Dear Tam:

Now that the Commission has agreed to "grandfather" the Haines Borough we need to look at the statutes and revisions to the statutes which are a problem for the third class borough and which, in some cases, just forget the third class borough.

First of all, we suggest that you simplify 29.41.020 Assembly to Serve as School Board by striking the sentence "Where applicable weighted voting shall apply to board decisions." This sentence is profoundly misleading because weighted voting is prohibited by AS 29.23.021(c).

In order to assert the applicability of 29.48.010 General Powers to the third class borough, we suggest that a sub-section (e) be added to 29.41.010 stating that the general powers conferred by 29.48.010 apply to the third class borough. This would clarify the question posed by Marie Matsuno in her letter of 9/4/80 to Jon Halliwill, Mayor, City of Haines, as to whether the general powers are applicable to the third class borough area-wide or only on a specifically granted service area basis. We believe that our intrepretation of 29.48.010 as applicable to the third class borough carte blance is in line with the interpretation provided in Femmer v. City of Juneau 9 Alaska 175(1937) as foot noted in the present Title 29.

During the revision process I noticed that the third class borough seems to be at odds with 29.33.310 (new section 29.23.420) School Boards. This section states that all board members are elected at large. As you know, the third class borough assembly is the school board. The assembly may elect to be composed other than at large as outlined in 29.23.023 Composition and Form of Representation. It seems that neither the existing 29.23.310 nor the revised version recognize the special relationship between the third class borough assembly and the school board. Does the statement in 29.41.020 that the third class borough assembly is the school board supercede 29.23.310 which mandates an at large election

of school board members or is it necessary to write a clarifying subsection to 29.23.310 indicating that the members of the third class borough school board are the members of the assembly and are elected and composed in accordance with 29.23.023 for assemblies. I would appreciate it if you would take a look at this situation.

For ease of use, new section 29.24.240 Veto should contain a subsection (e) stating that the mayor of a third class borough has no veto power. The mayor is denied the veto power in 29.41.020 (old section number).

Similarly, in new section 29.24.150 Procedures of Legislative Bodies the first sentence should read

> ...except that in a borough which has adopted the manager form of government under AS 29.25.550, or in the third class borough, the mayor serves as presiding officer.

Thank you for looking at these four items. See you in Juneau on the 17th.

Sincerely yours,

Stephanie

Stephanie K. Scott
Administrative Secretary

Received 1/15
cc Policy Groups

# WINGREN ENTERPRISES

(907) 225-4365
P.O. BOX 5197
KETCHIKAN, ALASKA 99901

10 January, 1981

Senator Arliss Sturgulewski
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Sturgulewski

I quote Alaska Statute 29.53.025. It reads, in part as follows:
(b) Municipalities may by ordinance
(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certified net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

The City of Ketchikan and the Ketchikan Gateway Borough has chosen to listen to the hue and cry from boat owners that if their taxes are increased, they will take their boats and their business elsewhere. I, along with numerous other taxpayers, feel that boats should be taxed on assessed valuation, the same as other real property, including airplanes. It is very unlikely that our local government will change to assessed valuation, as long as they have another option. It is also very unlikely that our local state legislators will ever push to amend the state law to make taxation on assessed valuation mandatory. I therefore appeal to you, whom I understand has given this matter some study, to introduce such legislation.

Very truly yours

Paul J. Wingren

Received 7/14 cc Policy Group

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

**DEPT. OF COMMUNITY & REGIONAL AFFAIRS**
*DIVISION OF LOCAL GOVERNMENT ASSISTANCE*

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4707

July 15, 1980

Haines Borough Assembly
Box H
Haines, Alaska 99827

Dear Assembly Members:

Title 29, which contains the Alaska Statutes on municipal government, specifies that the mayor of a third class borough must be elected at-large for that position. An assemblyman cannot assume the position of mayor since the assemblyman was elected as a voting member of the borough's governing body and the mayor cannot vote. Each assembly member elected to that position has an obligation to vote.

As the mayor of a third class borough cannot vote or exercise the veto power, the assembly need not be concerned about affecting the present borough apportionment by the election of a mayor in addition to the assembly members. There would be no change to the present apportionment.

These comments are offered for your consideration as the Haines Borough prepares for its regular election this fall.

Sincerely,

Palmer McCarter
Director

PMc:MF:jh

cc: Stephanie Scott, Haines Borough
Thomas Elanton, Borough Attorney

Received 7/17/80 SKS

21-P3LH

MEMORANDUM

FROM: FOLTA & ASPER, Borough Attorneys

TO: HAINES BOROUGH ASSEMBLY

RE: Voting By Borough Mayor

DATE: September 18, 1973

A question has come up under the new municipal code regarding the vote of the Borough Mayor in a Third-class Borough. Third-class Borough questions are difficult to resolve because Chapter 41 of Title 29, which refers to them, only briefly indicates what they can and cannot do. For questions not answered in Chapter 41 we assume that provisions governing First and Second class boroughs apply. The fact that Haines is the only Third class Borough in the state means that no guidance can be had on these questions from the experience of other municipalities in Alaska.

At the present time the assembly has chosen a mayor from among its members and the mayor is following section 29.23.160 which says that the mayor shall participate in assembly decisions but may not vote. Since Mr. Olerud, the present mayor, is a representative of the city of Haines he carries a weighted vote which is lost to city voters by his seeming inability to use it. Although to date the Mayors' non-voting has not affected the outcome of borough consideration on any matter, it is quite possible that this could happen in the future.

After reading the statutes it seems apparant that the problem lies in the fact that the mayor is also a member of the assembly. We have concluded, and our conclusion is agreed on by attorneys in the Local Affairs Agency, that the new municipal code

requires that there be a borough mayor, even in Third-class Boroughs, but that the mayor be a separately elected official, who is not a member of the assembly (Section 29.23.130). This official would be elected at large in the Borough and would be the chief administrator for the Borough, but would not vote. In a first or second class Borough the Mayor has a veto power to overrule the assembly, but this power is specifically denied the mayor in a third class Borough. (Section 29.41.020) The Assembly would continue in its present form but would choose a presiding officer to manage assembly meetings. (Section 29.23. 060 (b) )

Our recommendation at this time is that a Borough Mayor be elected in the Haines Borough whenever possible and in the meantime that Mr. Olerud resume voting with the understanding that his office is really that of Presiding Officer of the Assembly rather than the Borough Mayor as contemplated by the municipal code.

We would point out that the Borough Mayor scheme was primarily written into the municipal code for the use of the larger First and Second class Boroughs and may be too much government for this Third Class Borough, which is operating in good order now without a separately elected mayor. If the Borough must elect a mayor, as the statute seems to require then perhaps this presents a good opportunity to once again consider alternate forms of government for this area. The third class Borough has some very good points but this question and others indicate that it is a sort of Legislative afterthought which will continue to present problems which were never considered by the lawmakers when they enacted the municipal code.

received Jan 14/1981
cc: Policy Group

# City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

January 13, 1981

Mr. Steve Van Sant, President
Alaska Assoc. of Assessing Officers
c/o Matanuska-Susitna Borough
Box B
Palmer, Alaska 99645

Re: Chapter 45
Municipal Taxation

Dear Steve:

I have reviewed the above draft and had our Municipal Attorney review it also. The following comments are submitted for your review and pass through to the legislative committee.

P. 119 - Line 13 - "Exclusive for classroom space" - Amongst the various exempted uses, the above single use of any space appears unworkable.

P. 129 - Line 29-30 - Assessor seek production of records? What records?

P. 132 - Line 17 - "Which are consistant with general rules of administrative procedure." It appears to us that this ambiguous wording opens the door to suit by claim of "rules", This section should be specific.

P. 134 - Line 18 - 20%
Line 26 - 10% Should these not be the same?

P. 141 - Line 23 - "His assigns". We have had problems with this one where a person pays $1.00 or $2 for releases from old, old property foreclosed against then claims the property for only $80 - $60 back taxes. We feel this will specifically create problems unless a definite time period placed in this section. It has happened to us in Sitka. It could certainly happen elsewhere! Perhaps the way to handle it would be to add a paragraph "c" between lines 6 & 7 on page 142, to read;

(c) the right of the former owner and his assigns to repurchase the property ceases 10 years after the end of the redemption period.

Page 143 - Line 21 - 15% interest. Paragraph (b) states if a remittance is made by a taxpayer even through error, the Borough must refund at 15% interest. Doesn't this open the door to allow deliberate over-payment to get 15% - that's better than any bank, time C.D., etc. Maybe I'm getting paranoid, but that seems like opening Pandora's Box. We need some sort of limitation clause.

Page 145 - Lines 4-7. Should also include a late filing penalty the same as real/personal property taxes.

Page 145 - Line 10 - Should include a statement--on that or any other property or item owned by the same person. This would make it clear a lien would not be just on specific property taxes not paid on, but could hamper other property. We have had instances where persons specifically attempt to apply taxes to only partial holdings rather than the total obligations.

Thank you for the opportunity to comment.

Sincerely,

Michael Schmidt
Planning Director/Assessor

cc: Fermin Gutierrez
Peter Hallgren
Earley - State Assessor
Tom Cook, Leg. Affairs
mike worley

— real/personal mill rates - bring back citations - can they differ

— relationship between H. R. boroughs and cities - should they be limitations.

Femmer v City of Juneau 9 Ak 315
3rd class borough veto problem
letters from Stephanie Scott, Palmer McCarter

29.24.240. VETO. (p. 60 wk Draft)
(a) the borough mayor may veto any ordinance, resolution or other action of the assembly
"borough" subsequently defined to include 3rd class, making this apply.

29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD. (p 106) "The borough executive has all powers of a borough executive except for the veto power." Does this apply only when executive is acting as president of the school board?

Home Rule Limitations - Bryan Maclean, City Manager, Barrow
Should more sections bind home rule boroughs in their relationship with cities?

per Ted
yes
yes only
No
No

~~29.33.030~~ 29.36.050, p 100 - Assessment & Collection.
~~29.33.110~~ 29.42.050 Board of Adjustment
~~29.53.360~~ 29.45.450 Deed to Borough or City

city should have substantive allowing Bd of Adj binding on H R

Taxes
29.45.010. General property tax. "A tax if levied on real and personal property must be assessed, levied and collected as provided in this chapter."
Change Hb 3 Approved change ...
"A tax if levied on real property, personal property or both must be assessed, levied and collected as provided in this chapter." This may be a substantive change.

29.45.[illegible] [illegible] personal property

SCOMM

#23:21

DRAFT NO. 2

FOR DISCUSSION ONLY

CHAPTER 03. THE UNORGANIZED BOROUGH

Sec. 29.03.010. ESTABLISHMENT. Areas of the state which are not within the boundaries of an organized borough constitute a single unorganized borough.

Sec. 29.03.020. SERVICE AREAS. Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to schools, utilities, land use regulations and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES

****Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city ~~of the first class~~ or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

Sec. 29.06.020 GENERAL LAW. A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.

Sec 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of ~~five~~ four classes:

(1) first class boroughs;

(2) second class boroughs;

(3) ~~third class boroughs;~~ Repeal

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. (a) A second class city may be reclassified as a first class city by holding an election on the question as provided in this subsection, if the Department of Community and Regional Affairs determines from the best figures available that the population of the city has reached 400 permanent residents.

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

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

(2) the council may propose reclassification.

(c) The council shall hold at least one public hearing within the

city on the question. The council shall then evaluate the ability of the city to assume first class status and make its findings public.

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

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

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

.... (g) A second class borough may reclassify as a first class ~~or third class~~ borough, ~~and a third class borough may reclassify as a first class or second class borough~~, in the manner provided by AS 29.36.110 -29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers.

(h) Repeal. ~~At the time of voting on reclassification of a second class~~ borough to third class ~~status, borough voters~~ in conformity with AS 29.36. ~~shall elect an assembly~~ to serve as the combined assembly and school board of the third ~~class borough if reclassification is approved.~~

(i) Repeal. ~~At the time of voting on reclassification of a third class~~ borough ~~to second class or first class status, borough voters shall vote~~ also on ~~the question~~ whether the borough shall upon reclassification retain a combined ~~assembly~~ and school board ~~or a separate assembly and board as~~ otherwise ~~provided for first and second class boroughs. If the majority~~ of votes cast on ~~the question~~ favors retention of the combined ~~assembly~~ and board, ~~the assembly serving at the time of the relassification election~~

continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board.

Repeal

(j) ~~The effective date of reclassification of a borough for which reclassification is approved under (h) of this section is the first day of the borough's fiscal year which begins at least six months after the date~~ on which the reclassification proposition has been approved by the voters.

****Sec. 29.06.050. TRANSITION. ~~Repeal~~.

Haines

ch. effective dates to allow for procedures to be adopted where needed by [illegible]

(a) Third class boroughs existing on the effective date of this Act shall continue as third class boroughs under the established by law prior to the effective date of this Act.

CHAPTER 09. INCORPORATION

Article 1. REQUIREMENTS

Sec. 29.09.010. INCORPORATION OF CITIES. (a) A community which meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community which meets all the standards established in (a) of this section except (a)(1) may incorporate as a second class city.

Sec. 29.09.020. LIMITATIONS ON INCORPORATION OF CITIES. (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.

(b) A community within an organized borough may not incorporate as a city if the services could be provided on an areawide or nonareawide basis by the borough in which it is located or by annexation to an existing city.

Sec. 29.09.030. ORGANIZED BOROUGHS. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

Article 2. PROCEDURES

Sec. 29.09.060. PETITION. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs. The petition shall include the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

(4) [Effective until January 1, 1981] composition and apportionment of the assembly or council; [Effective January 1, 1981] composition and apportionment of the assembly or council;

(5) for a first class borough, a designation of areawide powers to be exercised;

(6) for a second class borough, a designation of areawide and nonareawide powers to be exercised;

(7) maps, documents, and other information required by the Department of Community and Regional Affairs;

(8) for first class city incorporation, the signatures and resident address of 50 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(9) for second class city incorporation, the signature and resident address of 25 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(10) for borough incorporation, the signature and resident address of 15 percent of the permanent resident voters in each first class city and 15 percent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;

(11) for a city, a designation of the powers proposed by the petitioners to be exercised;

(12) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation.

Sec. 29.09.070. REVIEW. The Department of Community and Regional Affairs shall review petitions for content and signatures and shall return deficient petitions for correction and completion.

Sec. 29.09.080. INVESTIGATION. (a) If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

(b) The department may combine petitions for incorporation from the same general area.

(c) The department shall hold at least one public hearing in the area proposed for incorporation.

Sec. 29.09.090. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal.

Sec. 29.09.100. DECISION ON BOROUGH INCORPORATION. (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110. INCORPORATION ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition. Within 30 days after notification, the lieutenant governor shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial officers in the same election. If incorporation is rejected, no officers are elected. The election is held not less than 30 nor more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in the incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each power to be exercised outside cities only is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing outside cities.

(d) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under this section.

Sec.29.09.120. ELECTION OF INITIAL OFFICERS (a) Repealed by Sec. 4 ch. 23 SLA 1976.

(b) Nominations for initial officers are made by petition. The petition is in the form prescribed by the lieutenant governor and includes the name and address of the nominee and a statement of the nominee that he is qualified under the provisions of this title for the office that he seeks. A person may file for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a home rule or first class city. Petitions to nominate officers of a second class city must include the signature and resident address of 10 voters in the area of the proposed city. Petitions to nominate elected municipal officers must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officers are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under (a) - (c) of this section.

(d) The initial elected municipal officials take office on the first Monday following certification of their election.

(e) The initial elected borough assembly and city council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130. INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. Service areas in a newly incorporated borough or city shall be integrated into the borough or city within two years after the date of incorporation. On integration the borough or city succeeds to all the rights, powers, duties, assets and liabilities of the service areas. After integration, the borough assembly or city council may exercise within a former service area all of the rights and powers exercised by the service area at the time of integration, and may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a borough or city as successor to the service area. Upon integration no less than all property in the service area at the time of integration remains subject to taxation to pay the principal of and interest on the bonds. The provisions of this section apply to all organized boroughs whether incorporated or organized before or after September 10, 1972.

Sec. 29.09.140. TRANSITION. (a) The powers and functions exercised by home rule or general law cities and service areas which are succeeded to by a newly incorporated borough or city are exercised by them until the new borough or city assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new borough or city.

(b) The borough or city shall give written notice of its assumption of the powers, duties and other items enumerated in Secs. 130-140 of this chapter, to the city, and service area concerned before the assumption. Borough or city officials shall consult with the officials of the city and service area concerned, and arrange an orderly transfer.

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

Sec. 29.09.150. CHALLENGE OF LEGALITY. No person may challenge the formation of a municipality except within six months of the date of its incorporation.

Article 03. TRANSITIONAL ASSISTANCE

Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to borough or city government and in order to provide for development and interim governmental operations, each borough and city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, other than a unified municipality incorporated under the provisions of (AS 29.85), or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to $10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough and each first class city incorporated or established by reclassification outside an organized borough is entitled to at least $25,000.

(b) Within 30 days after the date of incorporation of a borough or city after September 10, 1972, the Department of Community and Regional Affairs shall determine the number of voters in the borough or city who voted in the incorporation election.

(c) Within 30 days after the completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough or city the total amount of money to which the borough or city is entitled.

CHAPTER 12. ALTERATION OF MUNICIPALITIES

Article 01. CHANGE OF NAME

Sec. 29.12.010. CHANGE OF MUNICIPAL NAME. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Department of Community and Regional Affairs.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order.

Article 02. ANNEXATION AND EXCLUSION

Sec. 29.12.040. LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presen-

tation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.

Sec. 29.12.050. ANNEXATION OF MILITARY RESERVATIONS. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under Sec. 040 of this chapter. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part.

Article 03. MERGER AND CONSOLDIATION

Sec. 29.12.080. METHODS OF MERGER AND CONSOLIDATION. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission, or

(2) the local option method specified in Secs. 090-160 of this chapter .

Sec. 29.12.090. PETITION. (a) Residents of two or more municipalities may file a merger or consolidation petition with the Department of Community and Regional Affairs. The petition must be signed by a number of municipal voters of each municipality equal to at least 25 percent of the number of votes cast in its last regular election.

(b) The petition includes

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information which show that the proposed municipality meets the standards for municipal incorporation .

Sec. 29.12.100. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.110. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.120. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the merger or consolidation.

(b) The Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the merger or consolidation petition, unless officials of the municipalities agree to a single hearing.

Sec. 29.12.130. DECISION. If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets these standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition. The decision may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition. Within 30 days after notification, the lieutenant governor shall order an election within the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election is held not less than 30 nor more than 90 days after the election order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 -15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within 10 days, set a date for election of officers of the new municipality under AS 29.09.120. The election date is not less than 60 nor more than 90 days after the election order. This date is the effective date for the merger or consolidation.

Sec. 29.12.150. ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the others.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

ec. 29.12.160. ORDINANCES. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality.

Article 04. UNIFICATION OF LOCAL GOVERNMENTS

Sec. 29.12.190. UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.12.200. UNIFICATION TO BE PROPOSED BY PETITION. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition.

Sec. 29.12.210. PETITION REQUIREMENTS. (a) The petition shall read: "PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law: 'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law? Yes [] No []'

| Signature | Address | Inside First Class or Home Rule City | Outside First Class or Home Rule City |
|---|---|---|---|

(b) The petition shall be signed by at least

(1) that number of qualified voters of the borough living outside all first class and home rule cities in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election; and

(2) that number of qualified voters residing in each first class and home rule city located in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election in each city.

Sec. 29.12.220. REVIEW OF PETITION. Upon receipt of a petition, the borough assembly shall review the petition within 15 days after its receipt to determine whether it complies with Sec. 200 of this chapter. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

Sec. 29.12.230 CALL FOR CHARTER COMMISSION NOMINATIONS. Once it is determined by the borough assembly that a petition meets the requirements of Sec. 200 of this chapter, or the assembly by its resolution proposes an election on formation of a charter commission to propose a unification charter, the assembly shall issue a call for the nomination of charter commission candidates, specifying the filing deadline and outlining the procedure described for making nominations under Sec. 240 of this chapter.

Sec. 29.12.240. NOMINATION OF CHARTER COMMISSION CANDIDATES. (a) Charter commission candidates shall be nominated by petition signed by at least 50 qualified voters of the area from which the candidate seeks election or by a number of qualified voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough.

Sec. 29.12.250. QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least one year immediately preceding the date his nomination petition is filed with the borough clerk.

****Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough; or,

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

Sec. 29.12.270. ELECTION. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution

(b) The ballot on the question of unification shall be worded exactly as in Sec. 210(a) of this chapter.

(c) The election of charter commission members shall take place at the same time as the election on the question of unification.

(d) All costs incurred in conducting an election under this chapter shall be paid by the borough.

Sec. 29.12.280. REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION. (a) The votes on unification shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities of the borough. The other classification shall consist of all votes cast in the remaining areas of the borough. In order for unification to be approved, it is necessary that a majority of the votes in each classification favor unification.

(b) If unification is approved, those charter commission candidates who received the highest number of votes from their respective areas shall serve as members of the commission.

Sec. 29.12.290. CHARTER COMMISSION ORGANIZATION AND PROCEDURE. (a) The charter commission authorized by this chapter shall hold its first meeting within 30 days of the date of certification of its election. The commission shall elect from among its members a chairman and a deputy chairman

(b) A majority of the total membership of the charter commission constitutes a quorum. No decision of the commission is valid or binding unless approved by that number of members necessary to constitute a quorum.

(c) The charter commission may elect other officers from among its membership, adopt rules governing its procedures and hire and discharge commission employees. Rules adopted must conform with the provisions of this chapter.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and shall be available for public inspection at the borough office.

(e) Except as provided in AS 29.12.340(e), vacancies on the charter commission shall be filled by a majority vote of the commission . The person appointed to fill a vacancy must be a qualified voter of the same area as the person whom he succeeds and must have been a qualified voter of that area for at least one year immediately preceding the date of his appointment.

(f) The borough assembly may grant a per diem allowance to the commission members and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by this chapter.

(g) Costs, fees, and other expenses incurred by the charter commission are a debt of the borough and shall be paid upon proper verification.

Sec. 29.12.300. CHARTER PREPARATION. (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in AS 29.12.380. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to AS 29.12.360;

(2) provisions for

(A) the establishment of service areas; and

(B) the establishment of districts or sections for the election of members of the legislative body of the unified municipality, if election of members of the legislative body is not areawide, and procedures by which to reapportion the election districts or sections;

(C) reapportionment of the sections, if established;

(3) provision for nonpartisan government and provision for the selection, organization, authority and responsibilities of the governing body and its executive and administrator;

(4) the transfer or other disposition of property and other rights, claims, assets and franchises of the local government to be unified under the charter;

(5) provision for exercise of the rights of initiative and referendum as required by AS 29.15.050;

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by AS 29.12.340, is effective;

(8) designation of the new municipality's official name, subject to the provisions of (b) of this section;

(9) other charter provisions which the charter commission elects to include and which may be included in a home rule charter under this chapter and the state constitution.

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law.

Sec. 29.12.310. PUBLIC HEARINGS. Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter commission whenever and wherever it believes necessary and appropriate.

Sec. 29.12.320. FILING OF PROPOSED CHARTER. Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy with signatures affixed shall also be filed with the clerk of each city within the borough.

Sec. 29.12.330. PUBLICATION AND POSTING OF PROPOSED CHARTER. Within 10 days after filing the proposed charter, the borough clerk shall have it published once in at least one newspaper having general circulation distributed within the borough, if there is a newspaper having general circulation distributed within the borough. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places within each city of the borough and each area outside cities. Copies of the proposed charter shall be made available by the borough assembly to the public at both the office of the borough clerk and the office of the clerk of each city within the borough. The clerk shall publish notice by radio and television of the publication, posting, and availability of the proposed charter in a manner intended to apprise the entire borough population of the existence of the proposed charter.

Sec. 29.12.340. ELECTION ON CHARTER. (a) The proposed charter adopted by the charter commission shall be submitted to the voters for ratification or rejection at the borough election specified in AS 29.12.300. The borough clerk shall prepare the ballots for use in the election and shall give published notice of and otherwise conduct the election in the manner in which regular municipal elections are conducted. In addition, the clerk shall publish notice of the election by radio and television in a manner intended to apprise the entire borough population of the election.

(b) A person who is a qualified voter of the borough may vote in the election on the proposed charter.

(c) If a majority of the votes cast in the area of the borough outside all first class and home rule cities and a majority of the votes cast in the remaining area of the borough, composed of all first class and home rule cities, are cast in favor of the proposed charter, the charter is ratified. If the charter is ratified, two copies of the charter shall be filed with each of the following authorities:

(1) lieutenant governor;

(2) commissioner of the Department of Community and Regional Affairs;

(3) district recorder for the area of the borough;

(4) clerk of the borough;

(5) clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a proposed charter to the voters at a general or special borough election called by the borough and held within one year of the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved.

(e) If after the rejection of the first proposed charter, more than one-half of the charter commission members resign from the commission , the borough assembly shall appoint new members to fill the vacancies in accordance with AS 29.12.160(e).

Sec. 29.12.350. EFFECT OF THE CHARTER AFTER RATIFICATION. Upon ratification, the charter of a unified municipality organized under AS 29.12.190 - 390 operates to dissolve all local governments within the area of unification in accordance with the charter.

Sec. 29.12.360. ASSETS AND LIABILITIES. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness or other debt incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by ordinance if the governing body determines that the asset for which the bonded indebtedness or other debt was incurred was used for the benefit of the larger area before unification, or is so used after unification. However, preunification bonded indebtedness or other debt for sewage col-

lection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt.

Sec. 29.12.370. ORDINANCES. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body.

Sec. 29.12.380. RIGHT TO STATE AND FEDERAL FUNDS PRESERVED. All provisior of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under AS 29.12.190 - 29.12.390.

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all powers

(1) not prohibited it by law or charter;

(2) granted to ~~organized~~ home rule boroughs, ~~and first class cities~~.

Article 05. DISSOLUTION

Sec. 29.12.420. METHODS OF DISSOLUTION. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.12.430 - 29.12.500

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the

Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

Sec. 29.12.430. PETITION. (a) Municipal residents may file a dissolution petition with the Department of Community and Regional Affairs in the form prescribed by the department. The petition must be signed by a number of municipal voters equal to at least 25 percent of the number of votes cast in the last regular municipal election.

(b) The petition includes

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution.

Sec. 29.12.440. STANDARDS. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

(1) it is free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by ch. 09 of this title, or it ceases to use each and every one of its mandatory powers.

(b) A home rule or general law city in a borough may petition for dissolution if the borough consents to assume the city's rights, powers, duties, assets and liabilities. The consent must be ratified by a majority of borough voters voting on the question.

Sec. 29.12.450. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.460. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.470. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be dissolved.

Sec. 29.12.480. DECISION. If the Local Boundary Commission determines that the municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

Sec. 29.12.490. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a dissolution petition. Within 30 days after notification, the lieutenant governor shall order an election within the municipality to determine whether the voters desire dissolution. The election is at least 30 and not more than 90 days after the election order.

(b) A person who is a qualified voter of the municipality may vote in the dissolution election.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If dissolution is approved, he shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.12.500. SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities as provided in AS 29.09.130-29.09.140.

CHAPTER 15. HOME RULE MUNICIPALITIES

Article 1. CHARTERS

Sec. 29.15.010. MUNICIPAL CHARTER ADOPTION. A first class municipality or ~~second class borough~~ may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec 29.15.020. NOMINATION. (a) Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

**** (b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

Sec. 29.15.030. ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission.

Sec. 29.15.040. PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be

signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter.

Sec. 29.15.050 INITIATIVE AND REFERENDUM. ****(a) A municipal charter shall provide procedures for initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 percent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by Sec. 7, art. XI of the state constitution.

Sec. 29.15.060. CHARTER ELECTION. The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter.

Sec. 29.15.070. CHARTER ADOPTION. (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

(1) lieutenant governor - two copies;

(2) Department of Community and Regional Affairs - two copies;

(3) district recorder - one copy;

(4) municipal clerk - one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

Sec. 29.15.080. CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter ~~or by initiative referendum as provided in AS 29.30.090-29.30.180~~, except that ~~no amendment shall be effective unless~~ ratified by the voters.

Article 2 HOME RULE LIMITATIONS

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 Borough Transition

(2) AS 29.12.010 Municipal Name Change

(3) AS 29.12.040 Annexation and Exclusion

(4) AS 29.12.080 - 29.12.160 Merger and Consolidation

(5) AS 29.12.420 - 29.12.500 Dissolution

(6) AS 29.15.080 ~~Charter Amendment~~

(7) AS 29.24.010 Conflict of Interest

(8) AS 29.24.020 Meetings Public

(9) (Effective until January 1, 1981) AS 29.23.020 - 29.23.050 Borough Assembly Representation

(Effective January 1, 1981) AS 29.24.060; 29.24.080 - 29.24.140 (29.23.021; 29.23.025 - 29.23.050) Borough assembly composition and Apportionment; Borough Assembly Members

(~~10~~) AS 29.24.150(c) Expulsion of Borough Assemblymen

(~~11~~) AS 29.24.200(~~f~~) Removal of Borough Mayor from Office

(~~12~~) AS 29.24.290(b) Expulsion of City Councilman from Office

**** (13) AS 29.24.340(a) Repeal

(~~14~~) AS 29.24.350 Removal of Mayor from Office

(15) AS 29.24.680 Prohibitions Respecting Appointment and Removal of Personnel

(~~16~~) AS 29.~~.4~~.700 Municipal Reports

(17) AS 29.27.010(a)(12) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 Codification

(19) AS 29.30.010, 29.30.030(b) - 29.30.040 Municipal Elections

(~~20~~) AS 29.30.060(f) Expulsion, Removal from Office

(21) AS 29.30.210 - 29.30.330 Recall

(22) AS 29.33.020 Extraterritorial Jurisdiction

(23) AS 29.33.030 Eminent Domain

(24) AS 29.33.080 Garbage and Solid Waste Services

(25) AS 29.33.090(b) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090(c) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100 - 29.33.160 Utilities

**** (28) AS 29.33.220 Repeal

(29) AS 29.33.230 Post Audit

(30) AS 29.36.010(b) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020(a) Responsibility for education on Military Reservations

(32) AS 29.36.130(c) Acquisition of Additional Areawide Powers

(33) AS 29.39.020 - 29.39.060 Powers of Cities Outside Boroughs

~~(34) AS 29.42.040(d)~~ Zoning of State Land for Hom site Entry (Repeal)

~~(35) AS 29.42.080~~(b) Applicability of Local (Repeal) Platting Regulations to State Land in a Municipality

(36) AS 29.45.010 - 29.45.530 Borough and City Property Taxes

~~(37) AS 29.45.020~~

~~(38) AS 29.45.580~~(d) Interest on Sales Tax

(39) AS 29.48.090 Exemption from Special Assessment

~~(40) AS 29.51.420~~ - 29.51.430 Bonded Debt for School Construction (Repeal)

(41) AS 29.51.210(b) Security for Bonds

~~(42) AS 29.51.390~~ Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. Municipal Tax Resource Equalization

(44) AS 29.62. State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 Adverse Possession

(46) AS 29.71.020 Taxation of Municipalities

# CHAPTER 18. DEVELOPMENT CITIES

**** Repeal.

CHAPTER 21. CAPITAL CITY

Sec. 29.21.010. INCORPORATION. There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city.

Sec. 29.21.020. BOUNDARIES. The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state.

Sec. 29.21.030. CITY COUNCIL. (a) Until council members elected by the residents of the capital city take office as provided in AS 29.21.060 the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governor. The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in AS 29.21.160 the successors of the initial appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance.

Sec. 29.21.040. FILLING A VACANCY. If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacement who shall serve for the unexpired portion of the term.

Sec. 29.21.050. APPOINTMENT OF CITY OFFICIALS. Until a mayor is elected in accordance with AS 29.21.060, the council shall appoint a city manager for the capital city to serve at the pleasure of the council. The city manager may not be a council member.

Sec. 29.21.060. TRANSITION. (a) When the capital city attains a population of 400 permanent residents, as certified by the lieutenant governor based on the best information available, the lieutenant governor shall notify the council of this determination. The lieutenant governor shall specify an election date which shall be the first Tuesday of October following the notification, except that if it is less than six months from the date of the certification to the first Tuesday of October then the election date shall be the first Tuesday of October of the year following. The elected members shall take office on the Monday following the election.

(b) After the lieutenant governor has specified the election date, the council shall make arrangements for an election at which five council members and a mayor shall be elected in the manner prescribed by ordinance and law. The expenses of the election shall be borne by the state. The council of the capital city shall have six members. The governor shall designate

one council member holding office on the date of the election to remain a member of the council for a single three-year term commencing on the date the elected council members take office. The successors to the appointed council members shall be elected by the residents, except that if the appointed council member leaves office during the three years, the governor may appoint a successor. The terms of all other appointed or designated council members expire when the elected council members take office. The term of elected council members is as provided in AS 29.24.280 except that three of the members are elected for an initial term of one year.

*Sec. 29.21.070. PLANNING AND LAND USE REGULATION AUTHORITY. The general development plan and specific development plans constitute the land use plan for the capital city area. When a parcel of land has been developed in accordance with the applicable specific development plan, that parcel becomes subject to all planning, zoning, subdivision, building code or other similar ordinances of the Matanuska-Susitna Borough.

Sec. 29.21.080. TRANSFER OF UTILITIES TO THE CAPITAL CITY. The development corporation, in cooperation with the capital city, shall arrange for and agree to an orderly schedule for transferring to the capital city ownership of, and financial and operational responsibility for utilities and any other facilities which the development corporation considers to be integral parts of the capital city infrastructure. Before January 1, 1985, the development corporation and the council of the capital city shall jointly retain independent consultants to study and determine an orderly schedule for transfer of these utilities and facilities to the capital city. The study shall consider the capabilities of the capital city and its existing and anticipated residents to finance the cost of these utilities and other facilities and their operating expenses. The consultants shall propose a recommended schedule for and terms of transfer which are commensurate with the capital city's existing and anticipated population, tax base and any other factors relating to its capability to finance and operate these facilities as they consider appropriate. The development corporation shall, after considering the consultants' report, propose a schedule of and terms and conditions of the transfer to the capital city, which shall, upon review and approval by the council, be included in an agreement between the development corporation and the capital city. If the development corporation and the capital city are unable to agree within six months after the development corporation submits its proposal, the development corporation shall submit the proposal to the Legislative Budget and Audit Committee

which shall consider the proposal, and if the committee considers it appropriate to do so, shall recommend to the legislature legislation it considers desirable for the disposition of the utilities and other facilities. If the legislature does not enact legislation regarding the disposition within one year after the proposal is submitted to the Legislative Budget and Audit Committee, the development corporation may at any time thereafter sell or dispose of the utilities and facilities or any of them to a private person or entity or government body, or continue to operate them.

Sec. 29.21.090. DEFINITIONS. In AS 29.21.010 - 29.21.090, unless the context requires otherwise,

(1) "capital city area" means the area described in AS 29.21.020

(2) "capital city " means the municipality incorporated by this chapter;

(3) "development corporation" means the Alaska Capital City Development Corporation;

(4) "general development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to the general development plan;

(5) "specific development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to each specific development plan.

Sec. 29.21.100. SHORT TITLE. AS 29.21.010 - 100 of this chapter may be cited as the Capital City Incorporation Act.

CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES

Article 1. CONFLICT OF INTERESTS, PUBLIC MEETINGS

****Sec. 29.24.010. CONFLICT OF INTEREST. Each home rule and general law municipality shall adopt a conflicts-of-interest ordinance which provides that a member of a legislative body shall declare a substantial financial interest he has in an official action and ask to be excused from a vote on the matter. The presiding officer shall rule on the question. His decision may be overidden by the majority vote of the governing body.

Sec. 29.24.020. MEETINGS PUBLIC. Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

Article 2. ~~BOROUGH ASSEMBLY~~ governing Bodies

****Sec. 29.24.050. (Sec. 29.23.010.) GENERAL POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

~~29.24.125 insert~~

Sec. 29.24.060. ASSEMBLY COMPOSITION AND APPORTIONMENT. [Effective January 1, 1981].

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

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

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

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

Sec.29.24.070. COMPOSITION AND FORM OF REPRESENTATION. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.24.080.

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

Sec. 29.24.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.24.060. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.24.070(b)(2) or (b)(3) the assembly shall submit with the proposition of a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.24.060 the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060.

At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registerd voters who are residents of the borough request the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.24.060, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.24.060 the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.090. AP'ORTIONMENT APPEALS. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.24.060 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registeied voters who are residents of the borough may submit a petition to the commissioner of community and regional affairs

requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.24.060 or whether a decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under AS 29.24.080(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community and regional affairs to review a decision of the borough assembly under AS 29.24.080(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.24.060, or if he determines that the decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is not correct, the commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.24.060 and submit the ordinance to the voters.

(d) When the borough assembly has been directed by the commissioner of community and regional affairs to prepare a reapportionment ordinance under (c) of this section, the borough assembly shall, within two months of its receipt of the commissioner's order, adopt an ordinance providing for reapportionment. The borough assembly shall submit an

ordinance adopted under this subsection to the voters at a regular election or special election held within 60 days of the date of adoption of the reapportionment ordinance.

(e) If at the end of the time period provided under (d) of this seciton an ordinance providing for reapportionment has not been approved by the voters, the commissioner of community and regional affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.100. JUDICIAL REVIEW AND RELIEF. (a) The commissioner of community and regional affairs may request the superior court to enforce a reapportionment order issued under AS 29.24.090(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.24.080(a);

(2) a determination by the borough assembly under AS 29.24.080 that the standards of AS 29.24.060 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.24.080(d);

(4) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(c);

(5) a reapportionment ordinance approved by the voters under AS 29.24.090(d); and

(6) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(e);

Sec. 29.24.110 EFFECTIVE DATE OF APPORTIONMENT. (a) A change in assembly apportionment or composition under AS 29.23.080 or AS 29.24.090 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.24.080(a), AS 29.24.080(e), or AS 29.24.090(d); or

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(d).

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

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

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(e).

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

Sec. 29.24.120. APPLICABLITY OF APPORTIONMENT PROVISIONS. The provisions of AS 29.24.080-29.24.110 do not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390;

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

****Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The

council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

Delete Repeal.

Sec. 29.24.130. ~~REGULAR~~ TERM OF OFFICE. (a) Assemblymen are selected for three-year terms and until their successors are selected and have qualified, unless different terms not exceeding four years are prescribed by borough charter or ordinance. Except when otherwise required by a change of composition or apportionment, if the term of an assemblyman is changed by charter or ordinance, the term of an assemblyman holding office at the time the change takes effect is not affected by that change.

(b) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by borough charter or ordinance.

(c) This section applies to home rule and general law boroughs.

****Sec. 29.24.140 QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the council. A member of the assembly who ceases to be a qualified voter immediately forfeits his office. A member of the council who ceases to be a qualfied city voter immediately forfeits his office.

(b) A governing body may by ordinance establish a durational residency requirement for its members not to exceed three years.

(c) An assembly or council member who represents an area less than that of the total borough or city and who becomes a resident of another area within the municipality may continue to serve until the next regular election unless provided otherwise by ordinance.

(d) A municipality may by ordinance establish district residency requirements for members of its governing body.

****Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three-year terms and until their successors have qualified unless different terms not exceeding four years are prescribed by charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a governing body is changed by charter or ordinance the term of an official holding office at the time the change becomes effective is not affected.

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

****Sec. 29.24.150. PROCEDURES OF GOVERNING BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) A municipal governing body shall hold at least one regular meeting every month, unless otherwise provided by ordinance. A special meeting may be held at the call of the presiding officer or at least one-third of the members provided a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held. A waiver shall be made a part of the journal for the meeting.

(c) A majority of the total membership of a governing body authorized by law shall constitute a quorum. A member disqualifed by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(d) Actions of a governing body are adopted by a majority of the total membership of the body. All members present shall vote on every question unless they are required to abstain from voting on a question by law. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it is necessary only to so state.

(e) A governing body shall maintain a journal of its official proceedings which shall be a public record.

(f) A governing body may, consistent with law or charter, determine by ordinance its own rules of procedure and order of business.

****Sec. 29.24.160. DEPARTMENTS. Repeal.

****Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor and school board. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor or school board, vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent from the municipality for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office as determined by two-thirds vote of the governing body;

(5) if a member of the governing body, misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 ~~as a corrupt practice~~ and two-thirds of the members of the governing body concur in expelling him;

(8) no longer physically resides in the municipality and the governing body by two-thirds vote declares the seat vacant.

**Sec. 29.24.175. FILLING A VACANCY. (a) If a vacancy occurs in a governing body, the remaining members shall within 30 days, unless a different period is provided by ordinance, appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to service the balance of the term. If less than 30 days remain in a term, a vacancy shall not be filled.

(b) Notwithstanding subsection (a), if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall within seven days appoint a number of qualified persons to constitute a quorum.

Article 3. BOROUGH EXECUTIVE AND ADMINISTRATOR

****Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a municipality is vested in a mayor elected by the voters or by the governing body as provided in this article.

(b) The mayor shall act as ceremonial head of government, execute official documents upon authorization of the governing body, and is responsible for additional duties and powers prescribed by this chapter.

****Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a borough or first class city shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor of a borough or first class city begins on the first Monday following certification of his election.

(b) The mayor of a second class city is elected by and from the council and serves until a successor is elected and has qualified. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately. The mayor of a second class city shall serve a one-year term unless a longer term is provided by ordinance, except that the mayor of a second class city may serve only while he is a member of the council regardless of the term established for the office of mayor.

(c) The governing body may not limit the number of terms a mayor may serve.

****Sec. 29.24.206. QUALFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter of a borough or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor in that city.

(b) Residency requirements for the office of mayor not exceeding three years may be prescribed by ordinance.

****Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same powers and duties as those of the manager.

(b) The mayor may take part in the discussion of all matters before the governing body.

(c) The mayor may not vote on any matter before the governing body, except that the mayor of a first class city may vote in the case of a tie and the mayor of a second class city may vote on all matters as a council member.

Sec. 29.24.220. EXECUTIVE ABSENCE. The borough mayor, subject to assembly approval, shall designate a person to act as mayor during the mayor's temporary absence or disability. If a manager plan has been adopted, the assembly shall designate by resolution a borough administrative officer to act as manager during his absence or disability.

Delete

Sec. 29.24.230. ASSEMBLY PARTICIPATION. The borough mayor may take part in the discussion of all matters before the assembly but may not vote.

****Sec. 29.24.240. VETO. (a) Except as provided in subsections (c) and (d), the mayor may veto any ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items.

(b) A veto must be exercised before the next regular meeting of the governing body and must be accompanied by a written explanation of the reasons for that action. A veto may be overridden by vote of two-thirds of the authorized membership of the governing body within 21 days following exercise of the veto or at the next regular meeting, whichever is later.

(c) The veto does not extend to

(1) appropriation items in a school budget ordinance;

(2) actions of the board of equalization or the board of adjustment;

(3) adoption or repeal of the manager form of government.

(d) The mayor of a third class borough and the mayor of a second class city has no veto power.

****Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) The governing body shall, upon two-thirds concurring vote, declare the office of mayor vacant only when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) if, as a member of the assembly or council, he misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office;

(7) is convicted of a felony or misdemeanor described in AS 15.56 ~~as a corrupt~~ practice; or (ok this reference) we have corrupt practices

(8) no longer physically resides in the municipality.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occuring six months before a regular election shall be filled by the governing body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the governing body is chosen, he shall resign his seat on the assembly or council. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.

(c) Notwithstanding (b) of this section, in a second class city, the office of mayor is filled by and from the council and retains his seat on the council.

Article 4. CITY COUNCIL Out (all article) Repeal

Sec. 29.24.280. COMPOSITION, ELIGIBILITY, ELECTION AND TERM. (a) Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

(b) A city voter is eligible to hold office as a member of the council. The council may by ordinance establish residence requirements for council members not exceeding three years. A council member who ceases to be eligible to be a city voter immediately forfeits that office.

(c) Councilmen are selected for three-year terms and until their successors are elected and have qualified. The regular term of office begins on the first Monday following certification of the election. The council may

provide by ordinance for different terms not to exceed four years, except that the current term of incumbent councilmen may not be altered.

Sec. 29.24.290. PROCEDURE. (a) The council shall meet at least once every month, unless otherwise provided by ordinance. Special meetings may be held on the call of the mayor or two councilmen upon not less than 24 hours written or oral notice communicated to each member. In an emergency, a special meeting called on less than 24 hours notice is a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be made either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The council is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The council shall consider that conviction during its first meeting following final determination of the conviction.

(c) Four councilmen constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

(d) The final vote on each ordinance, resolution, or substantive motion is a recorded roll call vote. All councilmen present shall vote unless the council, for special reasons, permits a member to abstain.

Sec. 29.24.300. FILLING A VACANCY. If a vacancy occurs in the council, the council by vote of a majority of its remaining members shall designate a person to fill the vacancy until the next regular election, and until a successor is elected and has qualified.

Article 5. CITY EXECUTIVE AND ADMINISTRATOR

****Sec. 29.24.330. Repeal

****Sec. 29.24.340. Repeal.

****Sec. 29.24.350. Repeal

****Sec. 29.24.360. Repeal.

****Sec. 29.24.370. Repeal.

****Sec. 29.24.380. Repeal.

****Sec. 29.24.390. Repeal.

Article 6. SCHOOL BOARDS

****Sec. 29.24.240. SCHOOL BOARDS. (a) Each municipal school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large unless a different method of election has been approved by the voters in a regular election.

(b) Nothwithstanding (a) of this section, assembly members in a third class borough serve as the school board and the mayor is president of the school board.

****Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. (a) The governing body may, by ordinance, establish advisory, ~~administrative, technical~~, or quasi-judicial boards and commissions.

(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the governing body.

Article 7. UTILITY BOARDS

Sec. 29.24.450. UTILITY BOARDS. (a) The ~~assembly or council~~ of a municipality operating a public utility may provide by ordinance for a managing board of five members and define the board's powers and duties.

(b) As determined by ordinance, members of the board are appointed by the municipal executive and confirmed by the ~~assembly or council~~ governing body or are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. The term of a utility board member is two years and until a successor is selected and has qualified. However, the ~~assembly or council~~ governing body may by ordinance provide for a different term not to exceed four years and not altering the current term of an elected incumbent.

(c) Vacancies in the board are filled by the municipal executive. Executive appointments shall be confirmed by the ~~assembly or council~~ governing body. A person selected to fill a vacancy on a utility board serves until the expiration of the term and until a successor is elected and has qualified.

(d) Unless otherwise provided by ordinance, the board shall

(1) choose its chairman and secretary;

(2) appoint the manager of the public utility for a term not longer than five years and set his salary;

(3) formulate and enforce the general rules and policies of the utility.

Article 8. OTHER OFFICERS AND EMPLOYEES

****Sec. 29.24.480. APPOINTMENT OF OFFICERS. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative official. Unless otherwise provided by ordinance, officials described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative official, must be confirmed by the governing body.

Sec. 29.24.490. MUNICIPAL ATTORNEY. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

* Sec. 29.24.500. MUNICIPAL CLERK. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the ~~assembly or the council~~ and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

* (b) The ~~assembly or council~~ may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

****Sec. 29.24.510. MUNICIPAL TREASURER. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the governing body directs.

****Sec. 29.24.515. DEPARTMENTS. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

Delete Repeal.

Sec. 29.24.520. APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS. (a) Notwithstanding AS 39.05.100 or a provision of law relating to age, the municipal appointing authority for a municipal board or commission may appoint a 17-21 year old municipal resident to the board or commission if recommended by the commission, established in AS 29.68.020 of this chapter.

(b) A young person recommended by the commission may be appointed to a municipal board or commission having special qualifications for membership if the proposed nominee, except for his age, meets the required qualifications set by law.

(c) An individual appointed to a municipal board or commission under this section is entitled to the rights, privileges and responsibilities of other members, and his appointment is subject to confirmation by the governing body when required by law.

(d) No additional seat on a municipal board or commission is created by virtue of AS 29.68.

****Sec. 29.24.530. PERSONNEL SYSTEM. (a) Except as provided by (b) of this section, all appointments and promotions of municipal employees are made on the basis of merit. The governing body may provide for a ~~confidential or managerial~~ personnel system and classified service.

(b) By ordinance the governing body may designate positions which are wholly or partially exempt from the classified service filled by persons who serve at the pleasure of their appointing authority and whose terms of employment are determined by their appointing authority.

Article 9. ADOPTION OR REPEAL OF MANAGER PLAN

Sec. 29.24.550. APPLICATION. A municipality may adopt a manager plan of government.

Sec. 29.24.560. PETITION. Adoption of a manager plan may be initated either by petition or upon motion of the ~~assembly or council~~. A petition for the adoption of a manager plan is submitted to the ~~assembly or council~~.

The petition must be signed by a number of municipal voters equal to the following percent of the votes cast at the preceding regular election:

(1) 25 percent when the municipality has fewer than 7,500 persons;

(2) 15 percent when the municipality has 7,500 persons or more.

****Sec. 29.24.570. ELECTION. Upon receipt of the petition or upon its own motion, the governing body shall provide by ordinance or resolution for a vote on the question at the next regular or special election.

Sec. 29.24.580. ADOPTION. (a) If the manager plan is approved, the ~~assembly or council~~ shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The ~~assembly or council~~ shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

****Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the governing body may at any time appoint one of its members or other elected municipal official as manager.

Sec. 29.24.600. TERM. Subject to the contract of employment, the manager holds office at the pleasure of the ~~assembly or council~~.

Sec. 29.24.610. APPOINTMENT OF TEMPORARY OR NEW MANAGER. In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office becomes vacant, the assembly or council shall appoint a new manager.

****Sec. 29.24.620. REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. Within 60 days after repeal, the governing body shall enact provisions for the reorganization of the municipal executive and administrative functions.

****Sec. 29.24.630. POWERS AND DUTIES OF A MANAGER. As chief administrator the manager shall

(1) appoint, suspend, or remove municipal employees and administrative officials, escept as provided otherwise in this title and AS 14.14.065; he may hire necessary administrative assistants and may authorize an administrative official to appoint suspend, or remove subordinates;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program adopted;

(4) make monthly financial reports and other reports on municipal finances and operations as required by the governing body;

(5) exercise care and custody over all real and personal property of the municipality except as provided otherwise in AS 29.36.040;

(6) perform other duties required by law or by action of the governing body; and

(7) serve as personnel officer unless the governing body authorizes him to appoint a personnel officer.

****Sec. 29.24.640. INTERGOVERNMENT APPOINTMENTS. A borough adopting a manager plan, may by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in this chapter. Nothing in this subsection affects the authority of the governing body to provide for other dual officeholding if the dual offices held are compatible, or otherwise to appoint officials and employees in accordance with law.

Article 10. MISCELLANEOUS PROVISIONS

*Sec. 29.24.650. OATHS OF OFFICE. Municipal officials, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk.

*Sec. 29.24.660. BONDING. The administrator and the other municipal officials or employees which the ~~assembly or council~~ may designate shall give bond in the amount and with the surety prescribed by the ~~assembly or council~~. Premiums on bonds are paid by the municipality.

****Sec. 29.24.670. SALARIES OF ELECTED OFFICIALS. The governing body shall by ordinance provide a method of determining the salaries of elected officials. The salary of the mayor may not be reduced during his term of office unless during his term a manager plan is adopted. An elected official may not receive any other compensation for service to the municipality unless otherwise provided by ordinance. Per diem payments or reimbursements for expenses are not compensation under this section.

****Sec. 29.24.680. PROHIBITIONS. (a) Repeal.

(b) Repeal.

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed.

(d) For purposes of this section a school district employee is not a municipal employee.

Sec. 29.24.690. PERSONNEL SYSTEM. All appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system.

Sec. 29.24.700. REPORTS. (a) ~~Home rule and general law~~ municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) repealed.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, toegther with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

Sec. 29.24.710. VACANCIES. An elected municipal office is vacated under the following conditions and upon the declaration of vacancy by the assembly or council. The assembly or council shall declare an elective office vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) is physically absent from the municipality for a 90-day period unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) is removed from office;

(6) misses three consecutive regular meetings unless excused; or

(7) is convicted of a felony or of an offense involving a violation of his oath of office.

CHAPTER 27. MUNICIPAL ENACTMENTS.

Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCES. (a) In addition to other actions which this title requires to be by ordinance, the ~~assemb~~ly ~~or council~~ of a municipality shall use ordinances to

(1) establish, alter or abolish municipal departments;

**** (2) Repeal.

(3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;

(4) provide for the levying of taxes;

**** (5) make appropriations except supplemental appropriations or transfer of appropriations;

(6) grant, renew, or extend a franchise;

**** (7) Repeal.

**** (8) adopt, modify or repeal the comprehensive plan, land use ~~regulations~~ and subdivision ~~ordinances~~, building and housing codes, and the official map;

(9) approve the transfer of a power to a borough from a city;

(10) designate the borough seat;

(11) provide for the retention or sale of tax-foreclosed property.

(12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

(b) This section grants no authority but requires the ~~assembly or council~~ to use ordinances in exercising certain of its powers.

Sec. 29.27.020. FORM OF ORDINANCES. Repeal.

****Sec. 29.27.030. ORDINANCE PROCEDURE. (a) Ordinances are introduced in writing in the form required by the assembly or council.

(b) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the ~~assembly or council~~ or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance ~~and its amendments~~ is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The assembly or council shall hear all interested persons wishing to be heard. After the hearing, the ~~assembly~~ or council shall consider the ordinance and may adopt it with or without amendment. The ~~assembly or council~~ shall print and make available copies of adopted ordinances.

(c) Ordinances take effect upon adoption or at a later date specified in the ordinance.

Sec. 29.27.040. EMERGENCY ORDINANCES. (a) To meet a public emergency the assembly or council may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the ~~assembly~~ or council that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The ~~assembly~~ must print and make available copies of adopted emergency ordinances.

(b) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility for its services.

(c) Emergency ordinances are effective for 60 days.

****Sec. 29.27.050. CODES OF REGULATION. The ~~assembly or council~~ may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adopting at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The ~~assembly or council~~ shall provide for the adopted code to be ~~sold or~~ made available ~~at no charge~~ to the public.

Sec. 29.27.060. CODIFICATION. (a) Each ordinance after adoption shall be codified.

**** (b) Within three years after incorporation of the municipality, the municipal clerk or his designee shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

(c) In (a) of this section, "codified" means

(1) the ordinance has been given a serial number or other permanent identifying number and, bearing a notation of the date of adoption and the designation of the adopting authority, it has been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision which establishes a rule of conduct or behavior and which is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

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

Sec. 29.27.070. RESOLUTIONS. The ~~assembly or council~~ shall provide for the maintenance of a permanent file of resolutions that have been adopted.

****Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the ~~assembly or council~~ governing body may prescribe ~~punishment~~ penalties not to exceed ~~the penalty~~ those imposed for a class B misdemeanor, ~~By ordinance~~ and may require mandatory, nonsuspendable imprisonment not to exceed five days, ~~may be imposed for violation of an ordinance~~.

~~The municipality may be entitled to~~ (b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or a threatened violation, the superior court ~~injunction~~ shall ~~be~~ grant~~ed~~ an injunction. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The ~~punishment~~ penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost, ~~or at no charge~~.

CHAPTER 30. ELECTIONS.

ARTICLE 1. REGULAR AND SPECIAL ELECTIONS.

****Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Sec. 29.30.030. ELECTION DATES. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

(b) The assembly or council may call a special election upon at least 20 days notice.

Sec. 29.30.040. VOTER QUALIFICATION. A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities.

****Sec 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

Sec. 29.30.060. ELECTION CONTEST AND APPEAL. (a) The ~~assembly or~~ council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the ~~assembly or council~~, by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the ~~assembly or~~ council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the ~~assembly or council~~ and has commenced, within 10 days after the ~~assembly or council~~ has finally declared the election results, an action in the

superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.24.150(c), of a member of a city council under AS 29.24.290(b) of a borough mayor under AS 29.24.200(f) or of a city mayor under AS 29.24.350 is final and is not subject to judicial review.

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ARTICLE 2. INITIATIVE AND REFERENDUM.

Sec. 29.30.090. RESERVATION OF POWERS. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by Sec. 7, art. XI, of the state constitution.

****Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

Sec. 29.30.100. PETITION. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election.

****Sec. 29.30.110. CONTENTS OF PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, (7) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition.

The statement provided under AS 29.30.110(a)(7) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 9.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

* Sec. 29.30.140. PROTEST. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting to the assembly or council which shall hear and decide the protest.

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

****Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the ~~assembly or council~~ shall hold a special election within 75 days, but not sooner that 45 days after certification. This should be treated differently from recall or referendum requiring a special election because it does not deal with initiative

(b) If the ~~assembly or council~~ adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

****Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of certification of a petition, the ~~assembly or council~~ shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the ~~assembly or council~~ may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the ~~assembly or council~~ repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

****Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the ~~assembly or council~~ after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted ~~by the assembly or council~~ for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

ARTICLE 3. RECALL.

****Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

Sec. 29.30.220. GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

****Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signatures and residence addresses of at least ten municipal voters who will sponsor the petition;

(2) The address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularily.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

****Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) The name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be,

(7) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by a number of voters residing within the municipality equal to 35 percent of the number of votes cast at the last regular election for that office held prior to the issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by a number of the voters residing within the district equal to 35 percent of the number of votes cast at the last regular election for that office held prior to the issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficent, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an

adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

****Sec. 29.30.260. NEW RECALL PETITION. ~~The rejection of a recall petition for any reason does not preclude the filing of a new petition.~~ However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall immediately submit it to the assembly or council.

****Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the governing body, the governing body shall submit the recall at that election.

(b) If no regular election occurs within 75 days the governing body shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the governing body.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The governing body may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

****Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

****Sec. 29.30.300. ELECTION ~~PROCEDURE~~. Procedures for conducting a recall election are those of a regular ~~municipal election if the question~~ is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question ~~is~~ submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote on the question is required to recall an officer.

Sec. 29.30.320. EFFECT. If an incumbent is not recalled at the ~~recall~~ election, ~~a~~ petition to recall the same incumbent may not be filed sooner than six months after the recall election.

****Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body, the governing body, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the governing body are recalled, the governor shall appoint at least three qualified persons to the governing body. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the governing body are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the governing body may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

CHAPTER 33. POWERS AND DUTIES APPLICABLE TO.
HOME RULE AND GENERAL LAW MUNICIPALITIES.
ARTICLE 1. GENERAL POWERS.

Sec. 29.33.010. GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

**** (7) to levy taxes and special assessments, and impose liens for their enforcement;

(8) to enforce ordinances and to prescribe penalties for violations;

**** (9) to acquire, manage, control, use and dispose of real and personal property, irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under AS 29.36.270(f).

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

Sec. 29.33.010(1) COMBINING OFFICES. The assembly or council may combine two or more appointive or administrative offices.

Sec. 29.33.020. EXTRATERRITORIAL JURISIDICTION. ****(a) A municipality may, to the extent otherwise authorized by law, provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, transportation facilities, airports, utility services, solid and septic waste disposal, and wharves, harbors and other marine facilities outside its boundaries, subject to AS 29.36.010 and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030. EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250 - 09.55.460.

Sec. 29.33.040. EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President or governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.36.100.

(c) AS 29.36.170 - 29.36.200 are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the Governor or President, but these powers may be extended for an additional period of not more than three years.

ARTICLE 2. FACILITIES, SERVICES AND REGULATION.

Sec. 29.33.070. MUNICIPAL FACILITIES AND SERVICES.

****(a) To the extent that a municipality may exercise the powers necessary to provide the service or facility and subject to other provisions of law a municipality may exercise the powers necessary to provide the following:

(1) streets and sidewalks;

(2) sewers and sewage treatment facilities;

(3) harbors, wharves, and other marine facilities;

(4) watercourse and flood control facilities;

(5) health services and hospital facilities;

(6) cemeteries;

(7) police protection and jail facilities;

(8) cold storage plants;

(9) telephone systems;

(10) light, power and heat;

(11) water;

(12) transportation systems;

(13) community centers;

(14) libraries, visual or performing arts centers, or museums;

(15) recreation facilities;

(16) airport and aviation facilities;

(17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 of this chapter;

(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;

(19) parking and parking facilities;

(20) housing and urban renewal, rehabilitation and development;

(21) preservation, maintenance and protection of historic sites, buildings and monuments;

**** (22) Repeal.

(23) emergency medical services and facilities.

**** (24) provide any other facility or service necessary to carry out a public purpose.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec.20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.080. GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance; award contracts for

collection and disposal, or provide for the ollection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

Keep (b)

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by Sec. 6 ch 76 SLA 1973.

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

Sec. 29.33.090. REGULATORY POWERS. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

**** (4) Repeal.

(5) licensing, impounding and disposition of animals;

**** (6) Repeal.

**** (7) Repeal.

**** (8) Repeal.

**** (9) Repeal.

(10) alcoholic beverages as provided by AS 04.15.070;

(11) recreational devices as provided by AS 05.20.100;

**** (12) Repeal.

**** (13) Repeal.

**** (14) building, housing and related codes, which may be provided by cities within boroughs or, in the manner required in (b) of this section, by first or second class boroughs in the area outside cities or areawide;

(15) condemnation and abatement of public nuisances and hazards;

**** (16) Repeal.

(17) water pollution control;

(18) air pollution control as provided in AS 46.03.140 - 46.03.230;

**** (19) to the extent not otherwise prohibited, any activity affecting the general health, safety, well-being and welfare of its inhabitants;

(20) licensing of day care facilities.

**** (21) muni pally owned utilities to the extent not prohibited by AS 42.05.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec. 20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (15), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

****Sec. 29.33.100. MUNICIPALLY-OWNED UTILTIES. Repeal.

Sec. 29.33.110. FRANCHISES AND PERMITS. ****(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, and may permit them the use of streets and other public places under regulations prescribed by ordinance.

**** (b) No exclusive franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least a majority of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The

ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission. 42.05.241 ← in 42.05.241

Sec. 29.33.120. PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a ~~municipally owned~~ utility not regulated under AS. 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

****Sec. 29.33.130. HEARING FOR REGULATION OF UTILITIES RATES. Repeal.

****Sec. 29.33.140. RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. Repeal.

****Sec. 29.33.150. FURTHER PROCEEDINGS. Repeal.

****Sec. 29.33.160. APPLICATION. Repeal.

ARTICLE 3. FISCAL DUTIES.

****Sec. 29.33.190. CENTRALIZED PURCHASING. Repeal.

Sec. 29.33.200. MUNICIPAL PROPERTIES. ****(a) Repeal.

**** (b) Repeal.

**** (c) Repeal.

**** (d) The ~~assembly or~~ council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality. Each ~~transaction disposing~~ disposal of land or an interest in land which is not subject to a competitive process shall be by ordinance.

**** (e) Repeal.

**** (f) Repeal.

Sec. 29.33.210. BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

**** (b) Repeal.

(c) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

**** (d) Repeal.

****Sec. 29.33.220. EXPENDITURE OF BOROUGH REVENUES. Repeal Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to a unified municipality.

Sec. 29.33.230. POST AUDIT. The ~~assembly or council~~ shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the ~~assembly or council~~

shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

ARTICLE 4. CONSTRUCTION OF POWERS.

Sec. 29.33.260. GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.270. EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.280. ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES.

ARTICLE 1. SCOPE.

Sec. 29.36.010. SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

ARTICLE 2. MANDATORY AREAWIDE POWERS AND DUTIES.

Sec. 29.36.040. EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.050. ASSESSMENT AND COLLECTION OF TAXES. Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 45 of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

****Sec. 29.36.060. PLANNING, PLATTING, AND ~~ZONING~~.

ARTICLE 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS.

Sec. 29.36.090. ADDITIONAL AREAWIDE POWERS. First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.33.080 and 29.33.090.

Sec. 29.36.100. TRANSFER BY CITY. (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities.

Sec. 29.36.110. PETITION FOR POWER. An election on the question of adding an areawide power may be initiated in two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the borough at the preceding regular election may file a petition with the assembly, or

(2) the assembly may propose the acquisition of the power.

Sec. 29.36.120. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.130. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications.

One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This section applies to home rule and general law cities.

ARTICLE 4. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES.

Sec. 29.36.160. FIRST CLASS BOROUGH. The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. SECOND CLASS BOROUGH. (a) The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

****(b) A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080;

(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

**** (8) Tax, spend, and regulate for the purpose of promoting economic development.

Sec. 29.36.180. ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the area outside cities at the preceding regular election may file a petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

ARTICLE 5. POWERS OF THIRD CLASS BOROUGHS.

Sec. 29.36.230. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and ~~zoning~~ in accordance with AS 29.42.010 - 29.42.150 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided

by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200 - 29.51.510

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD. Repeal.

ARTICLE 6. SERVICE AREAS.

Sec. 29.36.270. SERVICE AREAS. ****(a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. (b) In a first class borough the assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of

this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election, or if no voters reside within the area, all owners of real property within the service area must consent in writing to the exercise of the power.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

Typo (we dropped (c) and (d))

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS.

Sec. 29.39.010. ADDITIONAL POWERS. In addition to the powers granted by ch. 48 of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 of this title for boroughs.

Sec. 29.39.030. DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.39.040. EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 for boroughs.

****Sec. 29.39.050. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside boroughs shall, and second class cities outside boroughs may, provide for planning, platting and land use regulation within their boundaries as provided by AS 29.42.010 - 29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may provide for planning, platting and land use regulation, as provided by AS 29.42.010 - 29.42.150 for boroughs.

****Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

****Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

****Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

CHAPTER 42. PLANNING, PLATTING, AND LAND USE REGULATION

****Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

Sec. 29 42.020. PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

**** (b) In addition to the responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

Sec. 29.42.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

**** (b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary.

****Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, or for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

****Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

****Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the board of adjustment, hearing officer or other body. A proceeding under this section has preference over all other civil actions and proceedings.

****Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting board necessary for other public uses.

(b) The assembly by ordinance shall establish a platting authority to administer subdivision regulations adopted by the borough and perform other duties. The platting authority may consist of members of the planning commission or of other ~~municipal bodies, boards, and commissions~~.

****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

****Sec. 29.42.090. PROCEDURE. (a) The platting authority shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the platting authority fails to act, the plat is considered approved and a certificate of approval shall be issued by the platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the platting authority. The platting authority shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting authority shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

****Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

Sec. 29.42.110. INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

****Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Nothwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

****Sec. 29.42.120. PENALTIES. Repeal.

****Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting authority upon petition of the state, the municipality, a public utility, or the owners of a majority

of the land affected by the alteration or replat. No platted street may be vacated, except upon petition of the state, municipality, or a public utility, or owners of the majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

*Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The platting authority shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The platting authority shall also mail a copy of the notice to each affected property owner not signing the petition.

*Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting authority shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

*Sec. 29.42.160. RECORDING. If the alteration or replat is approved, the revised plat must be recorded by the platting authority and is thereafter the lawful plat.

Sec. 29.42.170. TITLE TO VACATED AREA. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

***Sec. 29.42.180. DELEGATIONS. Repeal.

****Sec. 29.42.190. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or with an ordinance adopted under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chpater is guilty of a misdemeanor, ~~and may be punished by a fine not to exceed $1,000.~~

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or threatened violation, the injunction shall ~~be granted.~~

(c) Every day upon which an unlawful act or condition continues shall constitute a separate violation.

CHAPTER 45. MUNICIPAL TAXATION

Article 1. MUNICIPAL PROPERTY TAX

flag for policy group

****Sec. 29.45.010. GENERAL PROPERTY TAX. A general law or home rule borough other than a unified municipality, may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A tax if levied on real property, personal property, or both must be assessed, levied and collected as provided in this chapter.

****Sec. 29.45.020. TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, or both, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE
(AS 14.17) $

STATE AID FOR RETIREMENT OF SCHOOL CONSTRUC-
TION DEBT (AS 43.18.100) $

MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE
(AS 29.88) $

STATE AID FOR MISCELLANEOUS MUNICIPAL
SERVICES (AS 29.89) $

TOTAL AID $

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

**** (1) municipal, state or federally owned property, except that a private leasehold, contract or other interest in the property shall be taxable to the extent of those interests;

**** (2) household furniture of the head of a family or household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

**** (4) property of a nonbusiness organization or its auxiliary composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

**** (3) Repeal.

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 and 44.62.570.

**** (f) No exemption may be granted under (e) of this section except upon written application

for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 or a date provided by ordinance which is not later than March 31, of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 or a date provided by ordinance which is not later than March 31, of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under AS 29.53.025(a).

(h) Except as provided in (g) of this section, nothing in (e) - (i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

(i) In (e) - (i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Sec. 29.45.040. PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental

receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

**** (1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage.

(2) classify and exempt from taxation

**** (A) Repeal.

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the

conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

(1) a home rule or first or second class borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or

partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is direcly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later.

****Sec. 29.45.060. MINING CLAIMS. Repeal.

Sec. 29.45.070. FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be

assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file

for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. TAX LIMITATION. (a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

**** (b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of

residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsectic population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsec ion the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Sec. 29.45.110. NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. FULL AND TRUE VALUE. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and Secs. 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Sec. 29.45.130. RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

**** (b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the investigation. The assessor may seek a court order to compel entry and production of records.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.

****Sec. 29.45.150. STATEMENT. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a class B misdemeanor.

Sec. 29.45.160. REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to

be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. ASSESSMENT NOTICE. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Sec. 29.45.190. CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

****Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the assembly, municipal residents, or a combination of assembly members and residents. The assembly shall be ordinance establish the qualifications for membership.

(b) The board is governed in its proceedings by rules adopted by ordinance which are consistent with general rules of administrative procedure. The board may alter an assessment of a lot or parcel only pursuant to an appeal filed as the the particular lot or parcel.

(c) Notwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law shall be appealed directly to the superior court.

Sec. 29.45.220. HEARING. (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

**** (c) The only grounds for adjustment are proof of unequal, excessive, improper, or undervaluation based on facts which are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(d) The board shall certify its actions to the assessor within seven days.

**** (e) Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

**** (f) An appellant or the assessor may appeal the board's determination to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

Sec. 29.45.230. SUPPLEMENTARY ASSESSMENT ROLLS. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll.

Sec. 29.45.240. TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

**** (e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law, or a disaster declared by the governor under AS 26.23.010 26.23.110.

Sec. 29.45.250. TAX LEVY AND RATE. ****(a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of a general ordinance. The rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Sec. 29.45.260. RATES OF PENALTY AND INTEREST. ****(a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 20 percent may be added to all delinquent taxes, and interest at the rate of 15 percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments penalty and interest on an unpaid installment accrues from the date the installment becomes due.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

**** (c) Repeal.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

**** (b) Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice is given by posting or publication. The siezure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty and interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. If the property is sold for more money than is needed to satisfy the tax, upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

**** (b) If the tax on property described in AS 29.45.080 or on a taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the superior court for judgment;

(2) publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed within the borough or, if there is no newspaper of general circulation distributed within the borough, post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appear on the list a notice advising of the foreclosure proceeding in which a petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspectic at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitute and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeals as provided in AS 29.33.130(e).

Sec. 29.45.370. ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

**** (b) Repeal.

****Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough releases the judgment obtained under AS 29.45.380. The clerk or his designee shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk or his designee shall collect the recording fee at

the time or redemption and shall file the certificate with the record as part of the judgment roll.

Sec. 29.45.420. ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. EXPIRATION. ****(a) At least 30 days before the expiration of the redemption period the clerk or his designee shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be

sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

**** (b) Conveyance gives the borough or the city clear title except for prior recorded tax liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

**** (d) No deed is invalid for irregularities, omissions or defects in the proceedings under this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person having an interest in the property is forever barred.

Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of

this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist. The ordinance shall contain the information required in (a) of this section.

**** (c) The clerk or his designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the last record owner of the property as his name appears on the assessment rolls of the municipality.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale,

including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350(a) of this chapter.

(b) After adoption of an ordinance providing for the retention of a parcel of tax-foreclosed property by the municipality for a public purpose, the right of the former record owner to repurchase the property ceases.

Sec. 29.45.480. PROCEEDS OF TAX SALE. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under Sec. 350(a) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.490. PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

****Sec. 29.45.510. REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, or, if in the absence of suit, it becomes obvious to the assembly that judgment for recovery of the taxes would be obtained if legal proceedings were brough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at 15 percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

(c) The assembly may correct manifest clerical errors at anytime.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter.

The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.540. LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

**** Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition for second class city incorporation may request that a property tax proposal be placed in the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails.

ARTICLE 4. BOROUGH SALES AND USE TAX

Sec. 29.45.570. SALES AND USE TAX. ****(a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the

extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

**** (d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

**** (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION. ****(a) A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question at a regular or special election.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. POWER OF LEVY. (a) Cities within a borough which levies and collects sales or use taxes ~~for areawide borough functions~~ may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

CHAPTER 48. SPECIAL ASSESSMENTS

****Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The governing body may assess against the property of a state or federal governmental unit and private real property benefited all or a portion of the cost of acquiring, installing or constructing capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an improvement refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the governing body of the owners of one-half in value of the property to be benefited or

(2) the governing body.

Sec. 29.48.020. PROCEDURE. ****(a) The governing body may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvments, including and subject to the following:

**** (1) a procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

**** (4) a resolution or ordinance of the governing body determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

**** (6) published notice of each public hearing required by this section and mailing notice to each record owner of real property within the special assessment district;

**** (7) a resolution or ordinance confirming the special assessment roll for the local improvement;

* (8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 percent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 percent, except upon approval of not fewer than three-fourths of the governing body.

**** (b) To the extent that the governing body does not prescribe a procedure for special assessments as permitted by this section, the governing body shall comply with the special assessment procedures set out in AS 29.48.030 - 29.48.100.

Sec. 29.48.030. CREATION OF DISTRICT. **** (a) When an improvement proposal has been filed with the municipal clerk and presented to the governing body, it shall find by resolution or ordinance whether (1) the improvement requested is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the governing body are conclusive.

(b) If the governing body approves an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The governing body shall set a time for public hearing on the improvement plan and the period for filing objections to the plan. The governing body shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

****Sec. 29.48.040. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate "unknown owner."

****Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of 60 days after publication of notice. The governing body may by resolution or ordinance approve the plan and order the improvement subject to the limitation of (b) of this section.

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the governing body may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 percent. A revised plan shall be approved and adopted as an original plan in accordance with AS 29.48.030.

Sec. 29.48.060. ASSESSMENT ROLL. ****(a) At any time after project approval, the governing body shall assess the authorized percentage of the cost against property within the district in proportion to benefit received.

**** (b) The special assessment roll shall contain property descriptions, names of record owners and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing.

****Sec. 29.48.070. HEARING AND SETTLEMENT. After the public hearing, the governing body shall correct errors and any inequalities in the roll. If an assessment is increased, a new hearing shall be set and notice mailed, except that a new hearing and notice is not required of all record owners of property subject to the increased assessment consent in writing to the increase. Objections to the increased assessment shall be limited to record

owners of property on which the assessment was increased. When the roll is corrected, it shall be confirmed by resolution or ordinance of the governing body.

Sec. 29.48.080. PAYMENT. ****(a) The governing body shall fix times of payment, penalty on delinquent payments and the rate of interest on the unpaid balance of the assessment. Payment may be in one sum or by installments. If payment is to be in one sum, payment may not be required sooner than 60 days after mailing of the assessment statement. The entire assessment may be prepaid without interest or penalty within 30 days after mailing of the assessment statement; and thereafter the assessment may be prepaid in whole or in part with interest to the payment date.

**** (b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment, the time of delinquency, and penalties on delinquent payments.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.200-29.53.390 for enforcement of property tax liens.

Sec. 29.48.090. (Sec. 29.63.065.) EXEMPTION. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single-family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if

two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560-44.62.570.

**** (b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

**** (1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed and the time of payment fixed by the governing body. Within one year of the date the assessment roll is confirmed the governing body for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the deparment by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest

which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipalit for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070-34.10.220. The lien becomes immediatel due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

Sec. 29.48.100. REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

****Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment district is created, there may be included in the assessments

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs of all engineering and surveying to be done in connection with creating the district or improvement;

(3) the cost of mailing and publishing of notices;

(4) interest on interim financing;

(5) the cost of legal services and other expenses incurred in the formation of the special assessment district;

(6) the cost of completing the improvement and financing the improvement, including the issuance of any bonds.

(b) The total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

Sec. 29.48.110. OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

****Sec. 29.48.115. INTERIM FINANCING. (a) The governing body may provide by resolution or ordinance for the issuance of notes in payment of the costs of any local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance and shall be redeemed either in cash or bonds for the improvement project.

(b) All notes issued against assessments shall be claims against the assessments which are prior and superior to a right, lien or claim of a surety upon the bond given to the municipality to secure the performance of its contract for a local improvement project or to secure the payment of persons who have performed work or furnished materials under the contract.

(c) The municipal treasurer may accept notes against special assessments upon conditions prescribed by the governing body in payment of

(1) assessments against which the notes were issued in order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of assessments; and

(3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

**** (c) Before the governing body may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund.

CHAPTER 51. MUNICIPAL DEBT.

ARTICLE 1. REVENUE ANTICIPATION NOTES.

Sec. 29.51.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

Sec. 29.51.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

Sec. 29.51.030. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New

notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

Sec. 29.51.040. PRIORITY OF REPAYMENT. The payment of the principal and interest on revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

****Sec. 29.51.050. Repeal.

ARTICLE 2. BOND ANTICIPATION NOTES.

Sec. 29.51.080. BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance.

Sec. 29.51.090. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

Sec. 29.51.100. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue.

Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

Sec. 29.51.110. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

Sec. 29.51.120. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

Sec. 29.51.130. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

Sec. 29.51.140. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

****Sec. 29.51.150. Repeal.

ARTICLE 3. GENERAL OBLIGATION BONDS.

Sec. 29.51.180. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

Sec. 29.51.190. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

****Sec. 29.51.200. Repeal.

Sec. 29.51.210. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

Sec. 29.51.240. REVENUE BONDS. ****(a) A municipality may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenue of the public enterprise or corporation.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage

loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

**** (c) Repeal.

Sec. 29.51.250. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance.

Sec. 29.51.260. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.270. Repeal.

****Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

ARTICLE 5. REFUNDING BONDS.

Sec. 29.51.300. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance for the issuance of general obligation or revenue refunding bonds.

Sec. 29.51.310. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

Sec. 29.51.320. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

Sec. 29.51.330. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to Sec. 180 of this chapter. Revenue refunding bonds are payable according to Sec. 220 of this chapter.

****Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation or revenue refunding bonds may, at the discretion of the governing body, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

****Sec. 29.51.350. OTHER MUNICIPAL FINANCING. (a) A municipality may authorize by ordinance or resolution the issuance of revenue bonds to finance any project which serves a public purpose, and the bonds shall be secured and payable solely from the revenue and property of the project.

(b) Bonds issued under this section are not a debt or liability of the municipality and do not create or constitute an indebtedness, liability or obligation of the municipality nor do they constitute a pledge of faith, credit or taxing power of the municipality. Each bond must contain on its face a statement that the principal and interest on the bond are payable solely from the revenues and property of the project being financed, that the municipality is not obligated to pay the principal or the interest on the bonds except from those sources, and that neither the faith and credit nor the taxing power of the municipality is pledged to the payment of principal or interest on the bond.

(c) A municipality may

(1) loan the proceeds of the bonds issued under this section;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the project being financed;

(3) enter into covenants and agreements concerning bonds issued under this section which the municipality determines to be desirable;

(4) provide for any matter which effects the security of the bonds.

(d) In this section

(1) "bonds" means bonds, notes, or other evidence of indebtedness;

(2) "project" includes but is not limited to commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism, and medical projects and programs.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

****Sec. 29.51.370. SALE. Bonds and notes issued under this chapter may be sold at either public or private sale by the municipality in the manner and at the price it determines.

****Sec. 29.51.375. FORMS AND TERMS. The governing body may by ordinance or resolution fix the date, denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and other requirements for issuing bonds or notes. If an official whose signature appears on the bonds or coupons ceases to be an official before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.380. INTEREST RATE. The interest rate payable on a bond or note shall be determined by the governing body and is not subject to the usury rate limitations of AS 45.45.010.

****Sec. 29.51.390. Repeal.

Sec. 29.51.400. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

****Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a nonareawide basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and only the full faith and credit of the area voting on the indebtedness is pledged for the payment of the debt.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

****Sec. 29.51.420. Repeal.

****Sec. 29.51.430. Repeal.

****Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

CHAPTER 62. STATE PROGRAMS

No change.

CHAPTER 65. GENERAL GRANT LAND

No change.

CHAPTER 68. MUNICIPAL PROGRAMS

ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT

Repeal.

ARTICLE 2. HISTORICAL DISTRICTS.

No change.

CHAPTER 71. GENERAL PROVISIONS

No change.

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Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or, for a second class city, reclassified after January 1, 1981 is entitled to an organization grant of $150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organization grant.

EXPLANATION: Since no new municipality formed is likely to contain a great enough population to qualify for a grant over the minimum, the provision tying population to the amount of the grant has been eliminated in favor of a flat amount. The amount of the grant has been raised from $25,000 to $150,000 in recognition of the fact that setting up a government has become an expensive proposition and to encourage the formation of local governments despite this expense. In addition, a second class city will qualify to receive that grant as well as a city within an organized borough, whereas the existing law ties the amount of a grant to a second class city and to a first class city in an organized borough to its population. This change encourages the formation of local governments in rural areas where the population may be small. The formation of a city is expensive regardless of the size of the population. It is felt that the grant should be used to cover any initial government operation, so the terms "development and interim" were eliminated as unduly restrictive. The increased grant will be available only to a municipality formed after January 1, 1981.

Sec. 29.30.040. VOTER QUALIFICATION. (a) A person may vote if he meets the requirements of AS 15.05.010 - 15.05.040, has been a resident of the municipality for 30 days immediately preceding the election, is registered to vote in state elections and is not disqualified under article V of the state constitution.

(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of the precinct, district, or service area in which he votes.

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

EXPLANATION: A reference has been provided to the voter qualification requirements for state elections. A municipality has been granted the flexibility of imposing a requirement that a person be a resident of the area in which he votes to avoid the possiblity of people voting on nonareawide matters who will not have to live with the outcome of the vote.

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Sec. 29.30.210. RECALL. An application for a petition for the recall of a mayor or a member of the assembly, council, or school board may be filed with the municipal clerk after the official has served six months of the term for which elected or appointed.

EXPLANATION. This section lists the municipal officials which may be recalled rather than providing for the recall of an elected official in order to avoid the possibility of recalling service area board members who may be elected officials. It clarifies the dates to be used in determining when the six month period has run and includes the possibility of recalling officials who are appointed to elected positions.

Sec. 29.30.330. SUCCESSORS. (a) If one or more officials is recalled from an assembly or council, the assembly or council, by the affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If one or more officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(d) A person appointed under (a) - (c) of this section shall serve until a successor is elected and takes office.

(e) If an official is recalled the clerk shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date of certification of the recall election, except that if a regular or special election occurs within 75 days of the certification of the recall election and the certification occurs at least 20 days prior to the latest date upon which first notice of the election must be published, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section; provided, nominations may be filed until the later of seven days before the latest date upon which first notice of the election must be published or the deadline for the filing of nominations for regular elections. Nominations may not be filed before the certification of the recall election.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Section (e) was changed to take into account times required for election notice and nominations.

LEGISLATIVE AFFAIRS AGENCY **MEMORANDUM**

19 November 1980

TO: TECHNICAL GROUP

FROM: Melissa Fouse
Secretary, Title 29 Commission

John Messenger has once again kindly consented to let us use his conference room for our meeting. The dates of the meeting are the 4th, 5th and tentatively the 6th of December, 1980. The address of John's office is 420 "L" Street, Suite 404, Anchorage.

LAA 15

# STATE OF ALASKA
# THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

POUCH V STATE CAPITOL
JUNEAU, ALASKA

M E M O R A N D U M 19 November 1980

TO: Title 29 Technical Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

SUBJECT: Changes to Drafts Suggested by the Policy Group

Here are revisions to the drafts proposed by the Technical Committee incorporating changes suggested by the Policy Group during their meeting held on November 10th and 11th. In addition to these revisions, two sections are being held by the Policy Group for further review: AS 29.09.180 (Organization Grants), and AS 29.30.040 (Voter Qualifications).

I would appreciate any comments which you may have regarding these revisions. I am planning on sending copies of the revisions to the Policy Group early in December.

TBC:maf

Enclosures

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough, or;

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

EXPLANATION: Subsection (a) has been altered so that second class cities are included within the area outside cities for purposes of selecting representatives on the charter commission. This was done so that first class and home rule cities, with their greater concentrations of population, have less chance of overwhelming the rest of the borough. Subsection (b) has been added to avoid the expense and inconvenience of an election in the question of unification if not enough nominations of commission members are received. It is felt that failure to nominate a sufficient number of commission candidates indicates a general lack of interest in the question of unification.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. The following language was deleted as a duplication of AS 29.30.040: "The municipality may not alter voter qualification requirements of this title." Subsection (b), making this applicable to home rule municipalities, was deleted.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This requirement has been altered to apply to certain offices only and liberalized to allow a municipality to provide otherwise by ordinance. The provisions specifying when a runoff must be held and notice requirements are no longer mandatory. In addition, the procedure set out in (c), for the benefit of a municipality which desires specific procedural guidance, has been changed to provide three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoff elections.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

EXPLANATION: This is a new section. The first part is modeled after section two of the initiative article in the state constitution. Sponsors of a petition would be required to register with the clerk. The clerk would review an initiative for substantive legality, with his decision subject to immediate appeal. This allows for a judicial determination of the legality of an initiative prior to incurring the expense of an election on it.

Sec. 29.30.110. PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition. The statement provided under AS 29.30.110(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: The 60 day signature gathering period is carried forward. While the possibility of an initiative or referendum on a matter which affects only a service area is not eliminated, such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body. Additional changes require rejection of a signature not accompanied by a legible residence address and allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures the sponsors have only 10 days to gather the signatures. They may not use signatures which were gathered prior to the first filing but not submitted, and they may not use signatures gathered during the period in which the clerk is checking the petition.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If the assembly or council adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

EXPLANATION: The changes allow for the submission of an initiative measure to the voters within 75 days after certification of a petition rather than requiring that the vote be delayed until the next regular election. The 45 day requirement was added to insure that a petition certified after the legal notices of a regular election were published does not complicate the election. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer may reject a petition. An areawide vote is required whether the matter initiated is areawide or nonareawide because a service area should not be allowed to become autonomous.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

EXPLANATION: The ability to suspend an ordinance or resolution which has taken effect when a petition is filed within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as that is covered under AS 29.13.080. All questions are submitted to an areawide vote.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition process.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

EXPLANATION: The possibility of recalling an official who has been appointed to an elective position has been added. The date to be used in determining when the six month period has run has been clarified.

(b) The grounds for recall shall be limited to lack of fitness, incompetency, respect of duties and corruption.

change (b) to (c) proposed by Rono

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signature and residence addresses of at least 10 municipal voters who will sponsor the petition;

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

EXPLANATION: This is a new section which describes the requirements for an application for recall petition.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) the name of the official sought to be recalled;

(2) the statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section sets out requirements similar to those relating to the content of initiative and referendum petitions. Requiring the clerk to prepare the petition and supply copies insures that each copy is complete and legible. A petition must be filed within 60 days after the petition is issued rather than 60 days after the date of the earliest signature on the petition.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by 35 percent of the voters residing within the municipality based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by 35 percent of the voters residing within the district based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: Which election to be used as a standard for determining the number of signatures required is clarified. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that this number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.260. NEW RECALL PETITION. The rejection of a recall petition for any reason does not preclude the filing of a new petition. However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficient signatures alone triggers the waiting period.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election occurs within 75 days the assembly or council shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The assembly or council may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

EXPLANATION: The 45 day requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

EXPLANATION: This section makes reference to the fact that each statement is limited to 200 words or less and provides that the statement of the official if published before the election will appear on the ballot.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the assembly or council, the assembly or council, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the assembly or council are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the assembly or council, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Subsections (f) and (g) were changed to take into account time periods required for election notice and nominations.

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CHAPTER 03. THE UNORGANIZED BOROUGH

Sec. 29.03.010. ESTABLISHMENT. Areas of the state which are not within the boundaries of an organized borough constitute a single unorganized borough.

Sec. 29.03.020. SERVICE AREAS. Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to schools, utilities, land use regulations and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

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SCOMM

#23:24

CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES

****Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city [of the first class delete] or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

Sec. 29.06.020 GENERAL LAW. A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.

Sec 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of five classes:

(1) first class boroughs;

(2) second class boroughs;

[(3) third class boroughs; delete]

(3) first class cities;

(4) second class cities.

Sec. 29.06.040. RECLASSIFICATION. (a) A second class city may be reclassified as a first class city by holding an election on the question as provided in this subsection, if the Department of Community and Regional Affairs determines from the best figures available that the population of the city has reached 400 permanent residents.

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

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

(2) the council may propose reclassification.

(c) The council shall hold at least one public hearing within the

take out ref to 3rd class.

city on the question. The council shall then evaluate the ability of the city to assume first class status and make its findings public.

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

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

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

(g) A second class borough may reclassify as a first class or third class borough, and a third class borough may reclassify as a first class or second class borough, in the manner provided by AS 29.36.110 -29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers.

(h) At the time of voting on reclassification of a second class borough to third class status, borough voters in conformity with AS 29.36. shall elect an assembly to serve as the combined assembly and school board of the third class borough if reclassification is approved.

to years.

(i) At the time of voting on reclassification of a third class borough to second class or first class status, borough voters shall vote also on the question whether the borough shall upon reclassification retain a combined assembly and school board or a separate assembly and board as otherwise provided for first and second class boroughs. If the majority of votes cast on the question favors retention of the combined assembly and board, the assembly serving at the time of the relassification election

continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board.

(j) The effective date of reclassification of a borough for which reclassification is approved under (h) of this section is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification proposition has been approved by the voters.

****Sec. 29.06.050. TRANSITION. Repeal.

Proofed 12-30

CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES

****Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city of the first class or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

Sec. 29.06.020. GENERAL LAW. A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.

Sec 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of five classes:

(1) first class boroughs;

(2) second class boroughs;

(3) third class boroughs;

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. (a) A second class city may be reclassified as a first class city by holding an election on the question as provided in this subsection, if the Department of Community and Regional Affairs determines from the best figures available that the population of the city has reached 400 permanent residents.

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

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

(2) the council may propose reclassification.

(c) The council shall hold at least one public hearing within the

city on the question. The council shall then evaluate the ability of the city to assume first class status and make its findings public.

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

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

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

(g) A second class borough may reclassify as a first class or third class borough, and a third class borough may reclassify as a first class or second class borough, in the manner provided by AS 29.36.110 -29.36.130 ~~(AS 29.33.270-29.33.290)~~ for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers.

(h) At the time of voting on reclassification of a second class borough to third class status, borough voters in conformity with AS 29.36. ~~(AS 29.41)~~ shall elect an assembly to serve as the combined assembly and school board of the third class borough if reclassification is approved.

(i) At the time of voting on reclassification of a third class borough to second class or first class status, borough voters shall vote also on the question whether the borough shall upon reclassification retain a combined assembly and school board or a separate assembly and board as otherwise provided for first and second class boroughs. If the majority of votes cast on the question favors retention of the combined assembly and board, the assembly serving at the time of the relassification election

continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board.

(j) The effective date of reclassification of a borough for which reclassification is approved under (h) of this section is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification proposition has been approved by the voters.

****Sec. 29.06.050. TRANSITION. Repeal.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and a political subdivision. It is a city of the first class or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

EXPLANATION: A reference to unified municipalities along with a cross-reference to provisions dealing with the organization of unified municipalities has been included so that this section will provide a complete definition of home rule. No substantive change.

OK

Branson
Moves to accept All changes
Seconded

Sec. 29.06.050. Repeal

EXPLANATION: This section deals with the transition period following the 1972 revision of the Municipal Code and is of no effect. The reclassification of municipalities to conform t provisions of the 1972 Code were to have been essentially completed within two years of September 10, 1972.

Discussion
Sugg. by TECH new transition section be written after all else drafted.

OK

CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES

(CHAPTER 08. CLASSIFICATION OF MUNICIPALITIES)

Sec. 29.06.010. (Sec. 29.08.010.) HOME RULE. A home rule municipality is a municipal corporation and political subdivision and is a city of the first class or an organized borough which has adopted a home rule charter. It has all legislative powers not prohibited by law or charter.

Sec. 29.06.020. (Sec. 29.08.020.) GENERAL LAW. A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.

Sec 29.06.030. (Sec. 29.08.030.) CLASSES OF GENERAL LAW. General law municipalities are of five classes:

(1) first class boroughs;

(2) second class boroughs;

(3) third class boroughs;

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. (Sec. 29.08.040.) RECLASSIFICATION. (a) A second class city may be reclassified as a first class city by holding an election on the question as provided in this subsection, if the Department of Community and Regional Affairs determines from the best figures available that the population of the city has reached 400 permanent residents.

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

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

(2) the council may propose reclassification.

(c) The council shall hold at least one public hearing within the

city on the question. The council shall then evaluate the ability of the city to assume first class status and make its findings public.

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

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

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

(g) A second class borough may reclassify as a first class or third class borough, and a third class borough may reclassify as a first class or second class borough, in the manner provided by AS 29.36.110 -29.36.130 (AS 29.33.270-29.33.290) for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers.

(h) At the time of voting on reclassification of a second class borough to third class status, borough voters in conformity with AS 29.36. (AS 29.41) shall elect an assembly to serve as the combined assembly and school board of the third class borough if reclassification is approved.

(i) At the time of voting on reclassification of a third class borough to second class or first class status, borough voters shall vote also on the question whether the borough shall upon reclassification retain a combined assembly and school board or a separate assembly and board as otherwise provided for first and second class boroughs. If the majority of votes cast on the question favors retention of the combined assembly and board, the assembly serving at the time of the relassification election

continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board.

(j) The effective date of reclassification of a borough for which reclassification is approved under (h) of this section is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification proposition has been approved by the voters.

Sec. 29.06.050. (Sec.29.08.050.) TRANSITION. (a) On September 10, 1972, the current classification of existing home rule cities and of first class cities having 400 or more permanent residents is not affected by this Act. Second and third class cities incorporated before September 10, 1972 and having 400 or more permanent residents are reclassified as first class cities. The city council shall certify by resolution the number of permanent residents within the city. Upon the failure to certify, the Local Boundary Commission shall hold a public hearing and make a determination as to classification as provided in (c) of this section.

(b) On September 10, 1972, fourth class cities incorporated before that date are reclassified as second class cities subject to reclassification under Sec. 40 of this chapter

(c) The Local Boundary Commission shall, within two years of September 10, 1972, hold a public hearing in each city which was first, second, or third class before that date and whose population is under 400

permanent residents. The commission shall determine in each case whether the city should be classified as first or second class under the new classification. The commission's decision must be published at least once. Unless objections are filed with the Local Boundary Commission by at least five percent of the permanent residents of the city within 60 days, the classification recommended by the commission becomes effective on the 61st day. If objections are filed by at least five percent of the permanent residents of the city, the commission shall submit its recommendation to the legislature in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

SCOMM

#23:25

CHAPTER 09. INCORPORATION

Article 1. REQUIREMENTS

Sec. 29.09.010. INCORPORATION OF CITIES. (a) A community which meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community which meets all the standards established in (a) of this section except (a)(1) may incorporate as a second class city.

Sec. 29.09.020. LIMITATIONS ON INCORPORATION OF CITIES. (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.

(b) A community within an organized borough may not incorporate as a city if the services could be provided on an areawide or nonareawide basis by the borough in which it is located or by annexation to an existing city.

Sec. 29.09.030. ORGANIZED BOROUGHS. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

Article 2. PROCEDURES

Sec. 29.09.060. PETITION. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs. The petition shall include the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

(4) ~~[Effective until January 1, 1981] composition and apportionment of the assembly or council;~~ [Effective January 1, 1981] composition and apportionment of the assembly or council governing body;

(5) for a first class borough, a designation of areawide powers to be exercised;

(6) for a second class borough, a designation of areawide and nonareawide powers to be exercised.

(7) maps, documents, and other information required by the Department of Community and Regional Affairs;

(8) for first class city incorporation, the signatures and resident address of 50 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(9) for second class city incorporation, the signature and resident address of 25 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(10) for borough incorporation, the signature and resident address of 15 percent of the permanent resident voters in each first class city and 15 percent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;

(11) for a city, a designation of the powers proposed by the petitioners to be exercised;

(12) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation.

Sec. 29.09.070. REVIEW. The Department of Community and Regional Affairs shall review petitions for content and signatures and shall return deficient petitions for correction and completion.

Sec. 29.09.080. INVESTIGATION. (a) If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

(b) The department may combine petitions for incorporation from the same general area.

(c) The department shall hold at least one public hearing in the area proposed for incorporation.

Sec. 29.09.090. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal.

Sec. 29.09.100. DECISION ON BOROUGH INCORPORATION. (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110. INCORPORATION ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition. Within 30 days after notification, the lieutenant governor shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial officers in the same election. If incorporation is rejected, no officers are elected. The election is held not less than 30 nor more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in the incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each power to be exercised outside cities only is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing outside cities.

(d) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under this section.

Sec.29.09.120. ELECTION OF INITIAL OFFICERS (a) Repealed by Sec. 4 ch. 23 SLA 1976.

(b) Nominations for initial officers are made by petition. The petition is in the form prescribed by the lieutenant governor and includes the name and address of the nominee and a statement of the nominee that he is qualified under the provisions of this title for the office that he seeks. A person may file for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a home rule or first class city. Petitions to nominate officers of a second class city must include the signature and resident address of 10 voters in the area of the proposed city. Petitions to nominate elected municipal officers must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officers are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under (a) - (c) of this section.

(d) The initial elected municipal officials take office on the first Monday following certification of their election.

(e) The initial elected borough assembly and city council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130. INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. Service areas in a newly incorporated borough or city shall be integrated into the borough or city within two years after the date of incorporation. On integration the borough or city succeeds to all the rights, powers, duties, assets and liabilities of the service areas. After integration, the borough assembly or city council may exercise within a former service area all of the rights and powers exercised by the service area at the time of integration, and may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a borough or city as successor to the service area. Upon integration no less than all property in the service area at the time of integration remains subject to taxation to pay the principal of and interest on the bonds. The provisions of this section apply to all organized boroughs whether incorporated or organized before or after September 10, 1972.

Sec. 29.09.140. TRANSITION. (a) The powers and functions exercised by home rule or general law cities and service areas which are succeeded to by a newly incorporated borough or city are exercised by them until the new borough or city assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new borough or city.

(b) The borough or city shall give written notice of its assumption of the powers, duties and other items enumerated in Secs. 130-140 of this chapter, to the city, and service area concerned before the assumption. Borough or city officials shall consult with the officials of the city and service area concerned, and arrange an orderly transfer.

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

Sec. 29.09.150. CHALLENGE OF LEGALITY. No person may challenge the formation of a municipality except within six months of the date of its incorporation.

Article 03. TRANSITIONAL ASSISTANCE

Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to borough or city government and in order to provide for development and interim governmental operations, each borough and city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, other than a unified municipality incorporated under the provisions of (AS 29.85), or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to $10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough and each first class city incorporated or established by reclassification outside an organized borough is entitled to at least $25,000.

(b) Within 30 days after the date of incorporation of a borough or city after September 10, 1972, the Department of Community and Regional Affairs shall determine the number of voters in the borough or city who voted in the incorporation election.

(c) Within 30 days after the completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough or city the total amount of money to which the borough or city is entitled.

Proofed 12-30

## CHAPTER 09. INCORPORATION

### Article 1. REQUIREMENTS

Sec. 29.09.010. INCORPORATION OF CITIES. (a) A community which meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community which meets all the standards established in (a) of this section except (a)(1) may incorporate as a second class city.

Sec. 29.09.020. LIMITATIONS ON INCORPORATION OF CITIES. (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.

(b) A community within an organized borough may not incorporate as a city if the services could be provided on an areawide or nonareawide basis by the borough in which it is located or by annexation to an existing city.

Sec. 29.09.030. ORGANIZED BOROUGHS. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

Article 2. PROCEDURES

Sec. 29.09.050. PETITION. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs. The petition shall include the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

(4) [Effective until January 1, 1981] composition and apportionment of the assembly or council; [Effective January 1, 1981] composition and apportionment of the assembly or council;

(5) for a first class borough, a designation of areawide powers to be exercised;

(6) for a second class borough, a designation of areawide and nonareawide powers to be exercised;

(7) maps, documents, and other information required by the Department of Community and Regional Affairs;

(8) for first class city incorporation, the signatures and resident address of 50 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(9) for second class city incorporation, the signature and resident address of 25 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(10) for borough incorporation, the signature and resident address of 15 percent of the permanent resident voters in each first class city and 15 percent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;

(11) for a city, a designation of the powers proposed by the petitioners to be exercised;

(12) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation.

Sec. 29.09.070. REVIEW. The Department of Community and Regional Affairs shall review petitions for content and signatures and shall return deficient petitions for correction and completion.

Sec. 29.09.080. INVESTIGATION. (a) If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

(b) The department may combine petitions for incorporation from the same general area.

(c) The department shall hold at least one public hearing in the area proposed for incorporation.

Sec. 29.09.090. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal.

Sec. 29.09.100. DECISION ON BOROUGH INCORPORATION. (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110. INCORPORATION ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition. Within 30 days after notification, the lieutenant governor shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial officers in the same election. If incorporation is rejected, no officers are elected. The election is held not less than 30 nor more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in the incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each power to be exercised outside cities only is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing outside cities.

(d) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs under this section.

Sec.29.09.120. ELECTION OF INITIAL OFFICERS. (a) Repealed by Sec. 4 ch. 23 SLA 1976.

(b) Nominations for initial officers are made by petition. The petition is in the form prescribed by the lieutenant governor and includes the name and address of the nominee and a statement of the nominee that he is qualified under the provisions of this title for the office that he seeks. A person may file for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a home rule or first class city. Petitions to nominate officers of a second class city must include the signature and resident address of 10 voters in the area of the proposed city. Petitions to nominate elected municipal officers must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officers are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under (a) - (c) of this section.

(d) The initial elected municipal officials take office on the first Monday following certification of their election.

(e) The initial elected borough assembly and city council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130. INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. Service areas in a newly incorporated borough or city shall be integrated into the borough or city within two years after the date of incorporation. On integration the borough or city succeeds to all the rights, powers, duties, assets and liabilities of the service areas. After integration, the borough assembly or city council may exercise within a former service area all of the rights and powers exercised by the service area at the time of integration, and may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a borough or city as successor to the service area. Upon integration no less than all property in the service area at the time of integration remains subject to taxation to pay the principal of and interest on the bonds. The provisions of this section apply to all organized boroughs whether incorporated or organized before or after September 10, 1972.

Sec. 29.09.140. TRANSITION. (a) The powers and functions exercised by home rule or general law cities and service areas which are succeeded to by a newly incorporated borough or city are exercised by them until the new borough or city assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new borough or city.

(b) The borough or city shall give written notice of its assumption of the powers, duties and other items enumerated in Secs. 130-140 of this chapter, to the city, and service area concerned before the assumption. Borough or city officials shall consult with the officials of the city and service area concerned, and arrange an orderly transfer.

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

Sec. 29.09.150. CHALLENGE OF LEGALITY. No person may challenge the formation of a municipality except within six months of the date of its incorporation.

## Article 03. TRANSITIONAL ASSISTANCE

Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to borough or city government and in order to provide for development and interim governmental operations, each borough and city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, other than a unified municipality incorporated under the provisions of (AS 29.85), or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to $10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough and each first class city incorporated or established by reclassification outside an organized borough is entitled to at least $25,000.

(b) Within 30 days after the date of incorporation of a borough or city after September 10, 1972, the Department of Community and Regional Affairs shall determine the number of voters in the borough or city who voted in the incorporation election.

(c) Within 30 days after the completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough or city the total amount of money to which the borough or city is entitled.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or, for a second class city, reclassified after January 1, 1981 is entitled to an organization grant of $150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organization grant.

Late Aft.

McCARTER: Discussion of dual majority.

EXPLANATION: Since no new municipality formed is likely to contain a great enough population to qualify for a grant over the minimum, the provision tying population to the amount of the grant has been eliminated in favor of a flat amount. The amount of the grant has been raised from $25,000 to $150,000 in recognition of the fact that setting up a government has become an expensive proposition and to encourage the formation of local governments despite this expense. In addition, a second class city will qualify to receive that grant as well as a city within an organized borough, whereas the existing law ties the amount of a grant to a second class city and to a first class city in an organized borough to its population. This change encourages the formation of local governments in rural areas where the population may be small. The formation of a city is expensive regardless of the size of the population. It is felt that the grant should be used to cover any initial government operation, so the terms "development and interim" were eliminated as unduly restrictive. The increased grant will be available only to a municipality formed after January 1, 1981.

CERA has own proposal for transitional assistance

Discussion

Policy question - "seed money" for pre-incorporation?

ON HOLD

MAF 29 Dec

Motion - small group by Dimmick Parr, Larson, Branson

CHAPTER 09. INCORPORATION

(CHAPTER 18. INCORPORATION)

Article 1. REQUIREMENTS

(Article 1. REQUIREMENTS)

Sec. 29.09.010. (Sec. 29.18.011.) INCORPORATION OF CITIES. (a) A community which meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community which meets all the standards established in (a) of this section except (a)(1) may incorporate as a second class city.

Sec. 29.09.020. (Sec. 29.18.021.) LIMITATIONS ON INCORPORATION OF CITIES. (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.

(b) A community within an organized borough may not incorporate as a city if the services could be provided on an areawide or nonareawide basis by the borough in which it is located or by annexation to an existing city.

Sec. 29.09.030. (Sec. 29.18.030.) ORGANIZED BOROUGHS. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

Article 2. PROCEDURES

(Article 2. PROCEDURES)

Sec. 29.09.060. (Sec. 29.18.050.) PETITION. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs. The petition shall include the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

(4) [Effective until January 1, 1981] composition and apportionment of the assembly or council; [Effective January 1, 1981] composition and apportionment of the assembly or council;

(5) for a first class borough, a designation of areawide powers to be exercised;

(6) for a second class borough, a designation of areawide and nonareawide powers to be exercised;

(7) maps, documents, and other information required by the Department of Community and Regional Affairs;

(8) for first class city incorporation, the signatures and resident address of 50 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(9) for second class city incorporation, the signature and resident address of 25 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(10) for borough incorporation, the signature and resident address of 15 percent of the permanent resident voters in each first class city and 15 percent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;

(11) for a city, a designation of the powers proposed by the petitioners to be exercised;

(12) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation.

Sec. 29.09.070. (Sec. 29.18.060.) REVIEW. The Department of Community and Regional Affairs shall review petitions for content and signatures and shall return deficient petitions for correction and completion.

Sec. 29.09.080. (Sec. 29.18.070.) INVESTIGATION. (a) If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

(b) The department may combine petitions for incorporation from the same general area.

(c) The department shall hold at least one public hearing in the area proposed for incorporation.

Sec. 29.09.090. (Sec. 29.18.080.) REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal.

Sec. 29.09.100. (Sec. 29.18.090.) DECISION ON BOROUGH INCORPORATION. (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110. (Sec. 29.18.110.) INCORPORATION ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition. Within 30 days after notification, the lieutenant governor shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial officers in the same election. If

incorporation is rejected, no officers are elected. The election is held not less than 30 nor more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in the incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each power to be exercised outside cities only is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing outside cities.

(d) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs under this section.

Sec.29.09.120. (Sec. 29.18.120.) ELECTION OF INITIAL OFFICERS (a) Repealed by Sec. 4 ch 23 SLA 1976.

(b) Nominations for initial officers are made by petition. The petition is in the form prescribed by the lieutenant governor and includes the name and address of the nominee and a statement of the nominee that he is qualified under the provisions of this title for the office that he seeks. A person may file for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a home rule or first class city. Petitions to nominate officers of a second class city must include the signature and resident address of 10 voters in the area of the proposed city. Petitions to nominate elected municipal officers must include the signature and resident address of 50 voters in the area of the

proposed municipality, or that area of the proposed municipality from which the officers are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under (a) - (c) of this section.

(d) The initial elected municipal officials take office on the first Monday following certification of their election.

(e) The initial elected borough assembly and city council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130. (Sec. 29.18.130.) INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. Service areas in a newly incorporated borough or city shall be integrated into the borough or city within two years after the date of incorporation. On integration the borough or city succeeds to all the rights, powers, duties, assets and liabilities of the service areas. After integration, the borough assembly or city council may exercise within a former service area all of the rights and powers exercised by the service area at the time of integration, and may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a borough or city as successor to the service area. Upon integration no less than all property in the service area at the time of integration remains subject to taxation to pay the principal of and interest on the bonds. The provisions of this section apply to all organized boroughs whether incorporated or organized before or after September 10, 1972.

Sec. 29.09.140. (Sec. 29.18.140.) TRANSITION. (a) The powers and functions exercised by home rule or general law cities and service areas

which are succeeded to by a newly incorporated borough or city are exercised by them until the new borough or city assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new borough or city.

(b) The borough or city shall give written notice of its assumption of the powers, duties and other items enumerated in Secs. 130-140 of this chapter, to the city, and service area concerned before the assumption. Borough or city officials shall consult with the officials of the city and service area concerned, and arrange an orderly transfer.

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

Sec. 29.09.150. (Sec. 29.18.150.) CHALLENGE OF LEGALITY. No person may challenge the formation of a municipality except within six months of the date of its incorporation.

Article 03. TRANSITIONAL ASSISTANCE

(Article 03. TRANSITIONAL ASSISTANCE)

Sec. 29.09.180. (Sec. 29.18.180.) ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to borough or city government and in order to provide for development and interim governmental operations, each borough and city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, other than a unified municipality incorporated under the provisions of (AS 29.85), or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to $10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough and each first class city incorporated or established by reclassification outside an organized borough is entitled to at least $25,000.

(b) Within 30 days after the date of incorporation of a borough or city after September 10, 1972, the Department of Community and Regional Affairs shall determine the number of voters in the borough or city who voted in the incorporation election.

(c) Within 30 days after the completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough or city the total amount of money to which the borough or city is entitled.

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CHAPTER 12. ALTERATION OF MUNICIPALITIES.

Article 01. CHANGE OF NAME.

Sec. 29.12.010. CHANGE OF MUNICIPAL NAME. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Department of Community and Regional Affairs.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order.

Article 02. ANNEXATION AND EXCLUSION.

Sec. 29.12.040. LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presen-

tation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.

Sec. 29.12.050. ANNEXATION OF MILITARY RESERVATIONS. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under Sec. 040 of this chapter. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part.

Article 03. MERGER AND CONSOLDIATION. uc.

Sec. 29.12.080. METHODS OF MERGER AND CONSOLIDATION. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission, or

(2) the local option method specified in Secs. 090-160 of this chapter/1.

Sec. 29.12.090. PETITION. (a) Residents of two or more municipalities may file a merger or consolidation petition with the Department of Community and Regional Affairs. The petition must be signed by a number of municipal voters of each municipality equal to at least 25 percent of the number of votes cast in its last regular election.

(b) The petition includes

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information which show that the proposed municipality meets the standards for municipal incorporation .

Sec. 29.12.100. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.110. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.120. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the merger or consolidation.

(b) The Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the merger or consolidation petition, unless officials of the municipalities agree to a single hearing.

Sec. 29.12.130. DECISION. If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets these standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition. The decision may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition. Within 30 days after notification, the lieutenant governor shall order an election within the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election is held not less than 30 nor more than 90 days after the election order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 -15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within 10 days, set a date for election of officers of the new municipality under AS 29.09.120. The election date is not less than 60 nor more than 90 days after the election order. This date is the effective date for the merger or consolidation.

Sec. 29.12.150. ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the others.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160. ORDINANCES. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality.

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Article 04. UNIFICATION OF LOCAL GOVERNMENTS.

Sec. 29.12.190. UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.12.200. UNIFICATION TO BE PROPOSED BY PETITION. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition.

Sec. 29.12.210. PETITION REQUIREMENTS. (a) The petition shall read: "PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law: 'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for tneir approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law? Yes [] No []'

| Signature | Address | Inside First Class or Home Rule City | Outside First Class or Home Rule City" |
|---|---|---|---|

(b) The petition shall be signed by at least

(1) that number of qualified voters of the borough living outside all first class and home rule cities in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election; and

(2) that number of qualified voters residing in each first class and home rule city located in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election in each city.

Sec. 29.12.220. REVIEW OF PETITION. Upon receipt of a petition, the borough assembly shall review the petition within 15 days after its receipt to determine whether it complies with Sec. 210 of this chapter. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

Sec. 29.12.230 CALL FOR CHARTER COMMISSION NOMINATIONS. Once it is determined by the borough assembly that a petition meets the requirements of Sec. 210 of this chapter, or the assembly by its resolution proposes an election on formation of a charter commission to propose a unification charter, the assembly shall issue a call for the nomination of charter commission candidates, specifying the filing deadline and outlining the procedure described for making nominations under Sec. 240 of this chapter.

Sec. 29.12.240. NOMINATION OF CHARTER COMMISSION CANDIDATES. (a) Charter commission candidates shall be nominated by petition signed by at least 50 qualified voters of the area from which the candidate seeks election or by a number of qualified voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough.

Sec. 29.12.250. QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least one year immediately preceding the date his nomination petition is filed with the borough clerk.

****Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough; or,

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

Sec. 29.12.270. ELECTION. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution.

(b) The ballot on the question of unification shall be worded exactly as in Sec. 210(a) of this chapter.

(c) The election of charter commission members shall take place at the same time as the election on the question of unification.

(d) All costs incurred in conducting an election under this chapter shall be paid by the borough.

Sec. 29.12.280. REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION. (a) The votes on unification shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities of the borough. The other classification shall consist of all votes cast in the remaining areas of the borough. In order for unification to be approved, it is necessary that a majority of the votes in each classification favor unification.

(b) If unification is approved, those charter commission candidates who received the highest number of votes from their respective areas shall serve as members of the commission.

Sec. 29.12.290. CHARTER COMMISSION ORGANIZATION AND PROCEDURE. (a) The charter commission authorized by this chapter shall hold its first meeting within 30 days of the date of certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. No decision of the commission is valid or binding unless approved by that number of members necessary to constitute a quorum.

(c) The charter commission may elect other officers from among its membership, adopt rules governing its procedures and hire and discharge commission employees. Rules adopted must conform with the provisions of this chapter.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and shall be available for public inspection at the borough office.

(e) Except as provided in AS 29.12.340(e), vacancies on the charter commission shall be filled by a majority vote of the commission . The person appointed to fill a vacancy must be a qualified voter of the same area as the person whom he succeeds and must have been a qualified voter of that area for at least one year immediately preceding the date of his appointment.

(f) The borough assembly may grant a per diem allowance to the commission members and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by this chapter.

(g) Costs, fees, and other expenses incurred by the charter commission are a debt of the borough and shall be paid upon proper verification.

Sec. 29.12.300. CHARTER PREPARATION. (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in AS 29.12.380. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to AS 29.12.360;

(2) provisions for

(A) the establishment of service areas; and

(B) the establishment of districts or sections for the election of members of the legislative body of the unified municipality, if election of members of the legislative body is not areawide, and procedures by which to reapportion the election districts or sections;

(C) reapportionment of the sections, if established;

(3) provision for nonpartisan government and provision for the selection, organization, authority and responsibilities of the governing body and its executive and administrator;

(4) the transfer or other disposition of property and other rights, claims, assets and franchises of the local government to be unified under the charter;

(5) provision for exercise of the rights of initiative and referendum as required by AS 29.15.050;

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by AS 29.12.340, is effective;

(8) designation of the new municipality's official name, subject to the provisions of (b) of this section;

(9) other charter provisions which the charter commission elects to include and which may be included in a home rule charter under this chapter and the state constitution.

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law.

Sec. 29.12.310. PUBLIC HEARINGS. Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter commission whenever and wherever it believes necessary and appropriate.

Sec. 29.12.320. FILING OF PROPOSED CHARTER. Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy with signatures affixed shall also be filed with the clerk of each city within the borough.

Sec. 29.12.330. PUBLICATION AND POSTING OF PROPOSED CHARTER. Within 10 days after filing the proposed charter, the borough clerk shall have it published once in at least one newspaper having general circulation distributed within the borough, if there is a newspaper having general circulation distributed within the borough. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places within each city of the borough and each area outside cities. Copies of the proposed charter shall be made available by the borough assembly to the public at both the office of the borough clerk and the office of the clerk of each city within the borough. The clerk shall publish notice by radio and television of the publication, posting, and availability of the proposed charter in a manner intended to apprise the entire borough population of the existence of the proposed charter.

Sec. 29.12.340. ELECTION ON CHARTER. (a) The proposed charter adopted by the charter commission shall be submitted to the voters for ratification or rejection at the borough election specified in AS 29.12.300. The borough clerk shall prepare the ballots for use in the election and shall give published notice of and otherwise conduct the election in the manner in which regular municipal elections are conducted. In addition, the clerk shall publish notice of the election by radio and television in a manner intended to apprise the entire borough population of the election.

(b) A person who is a qualified voter of the borough may vote in the election on the proposed charter.

(c) If a majority of the votes cast in the area of the borough outside all first class and home rule cities and a majority of the votes cast in the remaining area of the borough, composed of all first class and home rule cities, are cast in favor of the proposed charter, the charter is ratified. If the charter is ratified, two copies of the charter shall be filed with each of the following authorities:

(1) lieutenant governor;

(2) commissioner of the Department of Community and Regional Affairs;

(3) district recorder for the area of the borough;

(4) clerk of the borough;

(5) clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a proposed charter to the voters at a general or special borough election called by the borough and held within one year of the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved.

(e) If after the rejection of the first proposed charter, more than one-half of the charter commission members resign from the commission, the borough assembly shall appoint new members to fill the vacancies in accordance with AS 29.12.160(e).

Sec. 29.12.350. EFFECT OF THE CHARTER AFTER RATIFICATION. Upon ratification, the charter of a unified municipality organized under AS 29.12.190 - 390 operates to dissolve all local governments within the area of unification in accordance with the charter.

Sec. 29.12.360. ASSETS AND LIABILITIES. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness or other debt incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by ordinance if the governing body determines that the asset for which the bonded indebtedness or other debt was incurred was used for the benefit of the larger area before unification, or is so used after unification. However, preunification bonded indebtedness or other debt for sewage col-

lection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt.

Sec. 29.12.370. ORDINANCES. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body.

Sec. 29.12.380. RIGHT TO STATE AND FEDERAL FUNDS PRESERVED. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under AS 29.12.190 - 29.12.390.

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all powers

(1) not prohibited it by law or charter;

(2) granted to ~~[organized]~~ home rule boroughs and first class cities.

U.C.

~~Article~~ 05. DISSOLUTION.

Sec. 29.12.420. METHODS OF DISSOLUTION. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.12.430 - 29.12.500

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the

Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

Sec. 29.12.430. PETITION. (a) Municipal residents may file a dissolution petition with the Department of Community and Regional Affairs in the form prescribed by the department. The petition must be signed by a number of municipal voters equal to at least 25 percent of the number of votes cast in the last regular municipal election.

(b) The petition includes

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution.

Sec. 29.12.440. STANDARDS. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

(1) it is free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by ch. 09 of this title, or it ceases to use each and every one of its mandatory powers.

(b) A home rule or general law city in a borough may petition for dissolution if the borough consents to assume the city's rights, powers, duties, assets and liabilities. The consent must be ratified by a majority of borough voters voting on the question.

Sec. 29.12.450. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.460. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.470. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be dissolved.

Sec. 29.12.480. DECISION. If the Local Boundary Commission determines that the municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

Sec. 29.12.490. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a dissolution petition. Within 30 days after notification, the lieutenant governor shall order an election within the municipality to determine whether the voters desire dissolution. The election is at least 30 and not more than 90 days after the election order.

(b) A person who is a qualified voter of the municipality may vote in the dissolution election.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If dissolution is approved, he shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.12.500. SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities as provided in AS 29.09.130-29.09.140.

Proofed 12-30

CHAPTER 12. ALTERATION OF MUNICIPALITIES

Article New?. CHANGE OF NAME

Sec. 29.12.010. CHANGE OF MUNICIPAL NAME. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Department of Community and Regional Affairs.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order.

Article 02. ANNEXATION AND EXCLUSION

Sec. 29.12.040. LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presen-

tation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.

Sec. 29.12.050. ANNEXATION OF MILITARY RESERVATIONS. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under Sec. 040 ~~(Sec. 10)~~ of this chapter. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part.

Article 03. MERGER AND CONSOLDIATION

Sec. 29.12.080. METHODS OF MERGER AND CONSOLIDATION. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission, or

(2) the local option method specified in Secs. 090-160 ~~(Secs. 40-110)~~ of this chapter .

Sec. 29.12.090. PETITION. (a) Residents of two or more municipalities may file a merger or consolidation petition with the Department of Community and Regional Affairs. The petition must be signed by a number of municipal voters of each municipality equal to at least 25 percent of the number of votes cast in its last regular election.

(b) The petition includes

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information which show that the proposed municipality meets the standards for municipal incorporation .

Sec. 29.12.100. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.110. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.120. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the merger or consolidation.

(b) The Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the merger or consolidation petition, unless officials of the municipalities agree to a single hearing.

Sec. 29.12.130. DECISION. If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets these standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition. The decision may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition. Within 30 days after notification, the lieutenant governor shall order an election within the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election is held not less than 30 nor more than 90 days after the election order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 -15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within 10 days, set a date for election of officers of the new municipality under AS 29.09.120 ~~(AS 29.18.120)~~. The election date is not less than 60 nor more than 90 days after the election order. This date is the effective date for the merger or consolidation.

Sec. 29.12.150. ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the others.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160. ORDINANCES. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality.

Article 04. UNIFICATION OF LOCAL GOVERNMENTS

Sec. 29.12.190. UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.12.200. UNIFICATION TO BE PROPOSED BY PETITION. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition.

Sec. 29.12.210. PETITION REQUIREMENTS. (a) The petition shall read: "PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law: 'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law? Yes [] No []'

| Signature | Address | Inside First Class or Home Rule City | Outside First Class or Home Rule City |
|---|---|---|---|

(b) The petition shall be signed by at least

(1) that number of qualified voters of the borough living outside all first class and home rule cities in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election; and

(2) that number of qualified voters residing in each first class and home rule city located in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election in each city.

Sec. 29.12.220. REVIEW OF PETITION. Upon receipt of a petition, the borough assembly shall review the petition within 15 days after its receipt to determine whether it complies with Sec. 200 ~~(Sec. 260)~~ of this chapter. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

Sec. 29.12.230 CALL FOR CHARTER COMMISSION NOMINATIONS. Once it is determined by the borough assembly that a petition meets the requirements of Sec. 260 of this chapter, or the assembly by its resolution proposes an election on formation of a charter commission to propose a unification charter, the assembly shall issue a call for the nomination of charter commission candidates, specifying the filing deadline and outlining the procedure described for making nominations under Sec. 240 ~~(Sec. 290)~~ of this chapter.

Sec. 29.12.240. NOMINATION OF CHARTER COMMISSION CANDIDATES. (a) Charter commission candidates shall be nominated by petition signed by at least 50 qualified voters of the area from which the candidate seeks election or by a number of qualified voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough.

Sec. 29.12.250. QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least one year immediately preceding the date his nomination petition is filed with the borough clerk.

****Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough; or,

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

Sec. 29.12.270. ELECTION. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution

(b) The ballot on the question of unification shall be worded exactly as in Sec. 210(a) ~~[Sec. 260(a)]~~ of this chapter.

(c) The election of charter commission members shall take place at the same time as the election on the question of unification.

(d) All costs incurred in conducting an election under this chapter shall be paid by the borough.

Sec. 29.12.280. REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION. (a) The votes on unification shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities of the borough. The other classification shall consist of all votes cast in the remaining areas of the borough. In order for unification to be approved, it is necessary that a majority of the votes in each classification favor unification.

(b) If unification is approved, those charter commission candidates who received the highest number of votes from their respective areas shall serve as members of the commission.

Sec. 29.12.290. CHARTER COMMISSION ORGANIZATION AND PROCEDURE. (a) The charter commission authorized by this chapter shall hold its first meeting within 30 days of the date of certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. No decision of the commission is valid or binding unless approved by that number of members necessary to constitute a quorum.

(c) The charter commission may elect other officers from among its membership, adopt rules governing its procedures and hire and discharge commission employees. Rules adopted must conform with the provisions of this chapter.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and shall be available for public inspection at the borough office.

(e) Except as provided in AS 29.12.340(e), vacancies on the charter commission shall be filled by a majority vote of the commission . The person appointed to fill a vacancy must be a qualified voter of the same area as the person whom he succeeds and must have been a qualified voter of that area for at least one year immediately preceding the date of his appointment.

(f) The borough assembly may grant a per diem allowance to the commission members and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by this chapter.

(g) Costs, fees, and other expenses incurred by the charter commission are a debt of the borough and shall be paid upon proper verification.

Sec. 29.12.300. CHARTER PREPARATION. (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in AS 29.12.380. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to AS 29.12.360;

(2) provisions for

(A) the establishment of service areas; and

(B) the establishment of districts or sections for the election of members of the legislative body of the unified municipality, if election of members of the legislative body is not areawide, and procedures by which to reapportion the election districts or sections;

(C) reapportionment of the sections, if established;

(3) provision for nonpartisan government and provision for the selection, organization, authority and responsibilities of the governing body and its executive and administrator;

(4) the transfer or other disposition of property and other rights, claims, assets and franchises of the local government to be unified under the charter;

(5) provision for exercise of the rights of initiative and referendum as required by AS 29.15.050;

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by AS 29.12.340, is effective;

(8) designation of the new municipality's official name, subject to the provisions of (b) of this section;

(9) other charter provisions which the charter commission elects to include and which may be included in a home rule charter under this chapter and the state constitution.

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law.

Sec. 29.12.310. PUBLIC HEARINGS. Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter commission whenever and wherever it believes necessary and appropriate.

Sec. 29.12.320. FILING OF PROPOSED CHARTER. Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy with signatures affixed shall also be filed with the clerk of each city within the borough.

Sec. 29.12.330. PUBLICATION AND POSTING OF PROPOSED CHARTER. Within 10 days after filing the proposed charter, the borough clerk shall have it published once in at least one newspaper having general circulation distributed within the borough, if there is a newspaper having general circulation distributed within the borough. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places within each city of the borough and each area outside cities. Copies of the proposed charter shall be made available by the borough assembly to the public at both the office of the borough clerk and the office of the clerk of each city within the borough. The clerk shall publish notice by radio and television of the publication, posting, and availability of the proposed charter in a manner intended to apprise the entire borough population of the existence of the proposed charter.

Sec. 29.12.340. ELECTION ON CHARTER. (a) The proposed charter adopted by the charter commission shall be submitted to the voters for ratification or rejection at the borough election specified in AS 29.12.300. The borough clerk shall prepare the ballots for use in the election and shall give published notice of and otherwise conduct the election in the manner in which regular municipal elections are conducted. In addition, the clerk shall publish notice of the election by radio and television in a manner intended to apprise the entire borough population of the election.

(b) A person who is a qualified voter of the borough may vote in the election on the proposed charter.

(c) If a majority of the votes cast in the area of the borough outside all first class and home rule cities and a majority of the votes cast in the remaining area of the borough, composed of all first class and home rule cities, are cast in favor of the proposed charter, the charter is ratified. If the charter is ratified, two copies of the charter shall be filed with each of the following authorities:

(1) li tenant governor;

(2) commissioner of the Department of Community and Regional Affairs;

(3) district recorder for the area of the borough;

(4) clerk of the borough;

(5) clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a proposed charter to the voters at a general or special borough election called by the borough and held within one year of the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved.

(e) If after the rejection of the first proposed charter, more than one-half of the charter commission members resign from the commission, the borough assembly shall appoint new members to fill the vacancies in accordance with AS 29.12.160(e).

Sec. 29.12.350. EFFECT OF THE CHARTER AFTER RATIFICATION. Upon ratification, the charter of a unified municipality organized under AS 29.12.190 - 390 operates to dissolve all local governments within the area of unification in accordance with the charter.

Sec. 29.12.360. ASSETS AND LIABILITIES. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness or other debt incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by ordinance if the governing body determines that the asset for which the bonded indebtedness or other debt was incurred was used for the benefit of the larger area before unification, or is so used after unification. However, preunification bonded indebtedness or other debt for sewage col-

lection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt.

Sec. 29.12.370. ORDINANCES. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body.

Sec. 29.12.380. RIGHT TO STATE AND FEDERAL FUNDS PRESERVED. All provisions of law authorizing contributions of any kind, in money or otherwise, from state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under AS 29.12.190 - 29.12.390.

Sec. 29.12.390 POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all powers

(1) not prohibited it by law or charter;

(2) granted to organized boroughs and first class cities.

Article 05. DISSOLUTION

Sec. 29.12.420. METHODS OF DISSOLUTION. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.12.430 - 29.12.500

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the

Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

Sec. 29.12.430. PETITION. (a) Municipal residents may file a dissolution petition with the Department of Community and Regional Affairs in the form prescribed by the department. The petition must be signed by a number of municipal voters equal to at least 25 percent of the number of votes cast in the last regular municipal election.

(b) The petition includes

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution.

Sec. 29.12.450. STANDARDS. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

(1) it free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by ch. 09 of this title, or it ceases to use each and every one of its mandatory powers.

(b) A home rule or general law city in a borough may petition for dissolution if the borough consents to assume the city's rights, powers, duties, assets and liabilities. The consent must be ratified by a majority of borough voters voting on the question.

Sec. 29.12.460. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.470. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.~~470~~ 480. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be dissolved.

Sec. 29.12.~~480~~ 490. DECISION. If the Local Boundary Commission determines that the municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

Sec. 29.12.~~490~~ 500. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a dissolution petition. Within 30 days after notification, the lieutenant governor shall order an election within the municipality to determine whether the voters desire dissolution. The election is at least 30 and not more than 90 days after the election order.

(b) A person who is a qualified voter of the municipality may vote in the dissolution election.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If dissolution is approved, he shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.12.~~500~~ 510. SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities as provided in AS 29.09.130-29.09.140.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough, or;

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

EXPLANATION: Subsection (a) has been altered so that second class cities are included within the area outside cities for purposes of selecting representatives on the charter commission. This was done so that first class and home rule cities, with their greater concentrations of population, have less chance of overwhelming the rest of the borough. Subsection (b) has been added to avoid the expense and inconvenience of an election in the question of unification if not enough nominations of commission members are received. It is felt that failure to nominate a sufficient number of commission candidates indicates a general lack of interest in the question of unification.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION.

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(b) If at least one nomination* of a qualified charter commission candidate is not filed in accordance with AS 29.12.240. for each available seat the resolution or petition for unification is void and no election on the question of unification shall be held.

*motion by Brearson
no obj no vote

EXPLANATION: Subsection (b) has been added to avoid the experse and inconvenience of an election on unification where there is not enough interest in the question to assure that a charter commission can be formed. An alternative would be to provide for appointment of members when not enough nominations are received, but it was felt that in such cases basic interest in unification was probably lacking so the process should be halted. OK

DISCUSSION:
CERA agrees - has happened in past?

V pg 19

Parr motion
2nd class cities be included in area outside 1st & HR in both .210 & 260(d-e)
motion carried unan.
back to tech for drafting.

pg 20

CHAPTER 12. ALTERATION OF MUNICIPALITIES

(CHAPTER 68. ALTERATION OF BOUNDARIES)

Article New. CHANGE OF NAME

Sec. 29.12.010. (Sec. 29.73.050.) CHANGE OF MUNICIPAL NAME. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Department of Community and Regional Affairs.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order.

Article 02. ANNEXATION AND EXCLUSION

(Article 1. ANNEXATION AND EXCLUSION)

Sec. 29.12.040. (Sec. 29.68.010.) LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission may consider any proposed local government

boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.

Sec. 29.12.050. (Sec. 29.68.020.) ANNEXATION OF MILITARY RESERVATIONS. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under Sec. 040 (Sec. 10) of this chapter. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part.

Article 03. MERGER AND CONSOLDIATION

(Article 3. MERGER AND CONSOLIDATION)

Sec. 29.12.080. (Sec. 29.68.030.) METHODS OF MERGER AND CONSOLIDATION. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission, or

(2) the local option method specified in Secs. 090-160 (Secs. 40-110) of this chapter .

Sec. 29.12.090. (Sec. 29.68.040.) PETITION. (a) Residents of two or more municipalities may file a merger or consolidation petition with the Department of Community and Regional Affairs. The petition must be signed by a number of municipal voters of each municipality equal to at least 25 percent of the number of votes cast in its last regular election.

(b) The petition includes

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information which show that the proposed municipality meets the standards for municipal incorporation .

Sec. 29.12.100. (Sec. 29.68.050.) REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.110. (Sec. 29.68.060.) INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.120. (Sec. 29.68.070.) REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local

Boundary Commission with its recommendations regarding the merger or consolidation.

(b) The Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the merger or consolidation petition, unless officials of the municipalities agree to a single hearing.

Sec. 29.12.130. (Sec. 29.68.080.) DECISION. If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets these standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition. The decision may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140. (Sec. 29.68.090.) ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition. Within 30 days after notification, the lieutenant governor shall order an election within the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election is held not less than 30 nor more than 90 days after the election order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 -15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within 10 days, set a date

for election of officers of the new municipality under AS 29.09.120 (AS 29.18.120). The election date is not less than 60 nor more than 90 days after the election order. This date is the effective date for the merger or consolidation.

Sec. 29.12.150. (Sec. 29.68.100.) ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the others.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160. (Sec. 29.68.110.) ORDINANCES. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality.

Article 04. UNIFICATION OF LOCAL GOVERNMENTS

(Article 3. UNIFICATION OF LOCAL GOVERNMENTS)

Sec. 29.12.190. (Sec. 29.68.240.) UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.12.200. (Sec. 29.68.250.) UNIFICATION TO BE PROPOSED BY PETITION. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition.

Sec. 29.12.210. (Sec. 29.68.260.) PETITION REQUIREMENTS. (a) The petition shall read: "PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE

UNIFICATION CHARTER We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law: 'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law? Yes [] No []'

| Signature | Address | Inside First Class or Home Rule City | Outside First Class or Home Rule City |
|---|---|---|---|

(b) The petition shall be signed by at least

(1) that number of qualified voters of the borough living outside all first class and home rule cities in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election; and

(2) that number of qualified voters residing in each first class and home rule city located in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election in each city.

Sec. 29.12.220. (Sec. 29.68.270.) REVIEW OF PETITION. Upon receipt of a petition, the borough assembly shall review the petition within 15 days after its receipt to determine whether it complies with Sec. 200 (Sec. 260) of this chapter. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

Sec. 29.12.230. (Sec. 29.68.280.) CALL FOR CHARTER COMMISSION NOMINATIONS. Once it is determined by the borough assembly that a petition meets the requirements of Sec. 260 of this chapter, or the assembly by its

resolution proposes an election on formation of a charter commission to propose a unification charter, the assembly shall issue a call for the nomination of charter commission candidates, specifying the filing deadline and outlining the procedure described for making nominations under Sec. 240 (Sec. 290) of this chapter.

Sec. 29.12.240. (Sec. 29.68.290.)NOMINATION OF CHARTER COMMISSION CANDIDATES. (a) Charter commission candidates shall be nominated by petition signed by at least 50 qualified voters of the area from which the candidate seeks election or by a number of qualified voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough.

Sec. 29.12.250. (Sec. 29.68.300.) QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least ng the date

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough, or;

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

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Sec. 29.12.270. (Sec. 29.68.320.) ELECTION. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution.

(b) The ballot on the question of unification shall be worded exactly as in Sec. 210(a) [Sec. 260(a)] of this chapter.

(c) The election of charter commission members shall take place at the same time as the election on the question of unification.

(d) All costs incurred in conducting an election under this chapter shall be paid by the borough.

Sec. 29.12.280. (Sec. 29.68.330.) REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION. (a) The votes on unification shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities of the borough. The other classification shall consist of all votes cast in the remaining areas of the borough. In order for unification to be approved, it is necessary that a majority of the votes in each classification favor unification.

(b) If unification is approved, those charter commission candidates who received the highest number of votes from their respective areas shall serve as members of the commission.

Sec. 29.12.290. (Sec. 29.68.340.) CHARTER COMMISSION ORGANIZATION AND PROCEDURE. (a) The charter commission authorized by this chapter shall hold its first meeting within 30 days of the date of certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. No decision of the commission is valid or binding unless approved by that number of members necessary to constitute a quorum.

(c) The charter commission may elect other officers from among its membership, adopt rules governing its procedures and hire and discharge commission employees. Rules adopted must conform with the provisions of this chapter.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and shall be available for public inspection at the borough office.

(e) Except as provided in Sec. 340(e) [Sec. 390(e)] of this chapter, vacancies on the charter commission shall be filled by a majority vote of the commission . The person appointed to fill a vacancy must be a qualified voter of the same area as the person whom he succeeds and must have been a qualified voter of that area for at least one year immediately preceding th date of his appointment.

(f) The borough assembly may grant a per diem allowance to the commission members and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by this chapter.

(g) Costs, fees, and other expenses incurred by the charter commission are a debt of the borough and shall be paid upon proper verification.

Sec. 29.12.300. (Sec. 29.68.350.) CHARTER PREPARATION. (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in Sec. 380 of this chapter. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to Sec. 360 (Sec. 410) of this chapter;

(2) provisions for

(A) the establishment of service areas; and

(B) the establishment of districts or sections for the election of members of the legislative body of the unified municipality, if election of members of the legislative body is not areawide, and procedures by which to reapportion the election districts or sections;

(C) reapportionment of the sections, if established;

(3) provision for nonpartisan government and provision for the selection, organization, authority and responsibilities of the governing body and its executive and administrator;

(4) the transfer or other disposition of property and other rights, claims, assets and franchises of the local government to be unified under the charter;

(5) provision for exercise of the rights of initiative and referendum as required by AS 29.15.050 (AS 29.13.050);

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by Sec. 340 (Sec. 390) of this chapter, is effective;

(8) designation of the new municipality's official name, subject to the provisions of (b) of this section;

(9) other charter provisions which the charter commission elects to include and which may be included in a home rule charter under this chapter and the state constitution.

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law.

Sec. 29.12.310. (Sec. 29.68.360.) PUBLIC HEARINGS. Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter commission whenever and wherever it believes necessary and appropriate.

Sec. 29.12.320. (Sec. 29.68.370.) FILING OF PROPOSED CHARTER. Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy with signatures affixed shall also be filed with the clerk of each city within the borough.

Sec. 29.12.330. (Sec. 29.68.380.) PUBLICATION AND POSTING OF PROPOSED CHARTER. Within 10 days after filing the proposed charter, the borough clerk shall have it published once in at least one newspaper having general circulation distributed within the borough, if there is a newspaper having general circulation distributed within the borough. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places within each city of the borough and each area outside cities. Copies of the proposed charter shall be made available by the borough assembly to the public at both the office of the borough clerk and the office of the clerk of each city within the borough. The clerk shall publish notice by radio and television of the publication, posting, and availability of the proposed charter in a manner intended to apprise the entire borough population of the existence of the proposed charter.

Sec. 29.12.340. (Sec. 29.68.390.) ELECTION ON CHARTER. (a) The proposed charter adopted by the charter commission shall be submitted to the voters for ratification or rejection at the borough election specified in

Sec. 300 (Sec. 350) of this chapter. The borough clerk shall prepare the ballots for use in the election and shall give published notice of and otherwise conduct the election in the manner in which regular municipal elections are conducted. In addition, the clerk shall publish notice of the election by radio and television in a manner intended to apprise the entire borough population of the election.

(b) A person who is a qualified voter of the borough may vote in the election on the proposed charter.

(c) If a majority of the votes cast in the area of the borough outside all first class and home rule cities and a majority of the votes cast in the remaining area of the borough, composed of all first class and home rule cities, are cast in favor of the proposed charter, the charter is ratified. If the charter is ratified, two copies of the charter shall be filed with each of the following authorities:

(1) lieutenant governor;

(2) commissioner of the Department of Community and Regional Affairs;

(3) district recorder for the area of the borough;

(4) clerk of the borough;

(5) clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a proposed charter to the voters at a general or special borough election called by the borough and held within one year of the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved.

(e) If after the rejection of the first proposed charter, more than one-half of the charter commission members resign from the commission, the borough assembly shall appoint new members to fill the vacancies in accordance with Sec. 160(e) [Sec. 210(e)] of this chapter.

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Sec. 29.12.350. (Sec. 29.68.400.) EFFECT OF THE CHARTER AFTER RATIFICATION. Upon ratification, the charter of a unified municipality organized under Secs. 190-390 (Secs. 240-440) of this chapter operates to dissolve all local governments within the area of unification in accordance with the charter.

Sec. 29.12.360. (Sec. 29.68.410.) ASSETS AND LIABILITIES. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness or other debt incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by ordinance if the governing body determines that the asset for which the bonded indebtedness or other debt was incurred was used for the benefit of the larger area before unification, or is so used after unification. However, preunification bonded indebtedness or other debt for sewage collection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt.

Sec. 29.12.370. (Sec. 29.68.420.) ORDINANCES. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body.

Sec. 29.12.380. (Sec. 29.68.430.) RIGHT TO STATE AND FEDERAL FUNDS PRESERVED. All provisions of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under Secs. 190-390 (Secs. 240-440) of this chapter.

Sec. 29.12.390. (Sec. 29.68.440.) POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under Secs. 190-390 (Secs. 240-440) of this chapter shall have all powers

(1) not prohibited it by law or charter;

(2) granted to organized boroughs and first class cities.

Article 05. DISSOLUTION

(Article 5. DISSOLUTION)

Sec. 29.12.420. (Sec. 29.68.500.) METHODS OF DISSOLUTION. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in Secs. 430-500 (Secs. 510-580)

of this chapter.

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

Sec. 29.12.430. (Sec. 29.68.510.) PETITION. (a) Municipal residents may file a dissolution petition with the Department of Community and Regional Affairs in the form prescribed by the department. The petition must be signed by a number of municipal voters equal to at least 25 percent of the number of votes cast in the last regular municipal election.

(b) The petition includes

(1) the name of the municipality;

(2) maps, documents, and othe. information showing that the municipality meets the standards for dissolution.

Sec. 29.12.450. (Sec. 29.68.520.) STANDARDS. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

(1) it is free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by ch. 09 (ch. 18) of this title, or it ceases to use each and every one of its mandatory powers.

(b) A home rule or general law city in a borough may petition for dissolution if the borough consents to assume the city's rights, powers, duties, assets and liabilities. The consent must be ratified by a majority of borough voters voting on the question.

Sec. 29.12.460. (Sec. 29.68.530.) REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.470. (Sec. 29.68.540.) INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.480. (Sec. 29.68.550.) REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be dissolved.

Sec. 29.12.490. (Sec. 29.68.560.) DECISION. If the Local Boundary Commission determines that the municipality fails to meet the standards for

dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

Sec. 29.12.~~490~~ 500. (Sec. 29.68.570.) ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a dissolution petition. Within 30 days after notification, the lieutenant governor shall order an election within the municipality to determine whether the voters desire dissolution. The election is at least 30 and not more than 90 days after the election order.

(b) A person who is a qualified voter of the municipality may vote in the dissolution election.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If dissolution is approved, he shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.12.~~500~~ 10. (Sec. 29.68.580.) SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities as provided in AS 29.09.130-29.09.140 (AS 29.18.130-29.18.140).

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CHAPTER 15. HOME RULE MUNICIPALITIES.

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Article 1. CHARTERS.

Sec. 29.15.010. MUNICIPAL CHARTER ADOPTION. A first class or second class municipality [or second class borough] may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec 29.15.020. NOMINATION. (a) Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

**** (b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

Sec. 29.15.030. ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission.

Sec. 29.15.040. PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be

signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter.

Sec. 29.15.050 INITIATIVE AND REFERENDUM. ****(a) A municipal charter shall provide procedures for initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 percent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by Sec. 7, art. XI of the state constitution.

Sec. 29.15.060. CHARTER ELECTION. The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter.

Sec. 29.15.070. CHARTER ADOPTION. (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

(1) lieutenant governor - two copies;

(2) Department of Community and Regional Affairs - two copies;

(3) district recorder - one copy;

(4) municipal clerk - one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

Sec. 29.15.080. CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter [or by initiative [referendum [as provided in AS 29.30.090 - 29.30.180,] except that no amendment shall be effective unless ratified by the voters.

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Article 2. HOME RULE LIMITATIONS

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 Borough Transition

(2) AS 29.12.010 Municipal Name Change

(3) AS 29.12.040 Annexation and Exclusion

(4) AS 29.12.080 - 29.12.160 Merger and Consolidation

(5) AS 29.12.420 - 29.12.500 Dissolution

(6) AS 29.15.080 Charter Amendment

(7) AS 29.24.010 Conflict of Interest

(8) AS 29.24.020 Meetings Public

(9) ~~(Effective until January 1, 1981)~~ AS 29.23.020 - 29.23.050 ~~Borough Assembly Representation~~

(Effective January 1, 1981) AS 29.24.060; 29.24.080 - 29.24.140 (29.23.021; 29.23.025 - 29.23.050) Borough assembly composition and Apportionment; Borough Assembly Members

√Berns deletion recc. as not "limitations"

(10) AS 29.24.150(c) Expulsion of Borough Assemblymen

(11) AS 29.24.200(f) Removal of Borough Mayor from Office

(12) AS 29.24.290(b) Expulsion of City Councilman from Office

**** (13) AS 29.24.340(a) Repeal

(14) AS 29.24.350 Removal of Mayor from Office

(15) AS 29.24.680 Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 Municipal Reports

(17) AS 29.27.010(a)(12) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 Codification

(19) AS 29.30.010, 29.30.030(b) - 29.30.040 Municipal Elections

(20) AS 29.30.060(f) Expulsion, Removal from Office

(21) AS 29.30.210 - 29.30.330 Recall

(22) AS 29.33.020 Extraterritorial Jurisdiction

(23) AS 29.33.030 Eminent Domain

(24) AS 29.33.080 Garbage and Solid Waste Services

(25) AS 29.33.090(b) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090(c) Borough Building Code Jurisdiction within Cities √OK

(27) AS 29.33.100 - 29.33.160 Utilities

**** (28) AS 29.33.220 Repeal

(29) AS 29.33.230 Post Audit

(30) AS 29.36.010(b) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020(a) Responsibility for education on Military Reservations

(32) AS 29.36.130(c) Acquisition of Additional Areawide Powers

(33) AS 29.39.020 - 29.39.060 Powers of Cities Outside Boroughs

Repeal ~~(34)~~ AS 29.42.040(d) Zoning of State Land for Homesite Entry

Repeal ~~(35)~~ AS 29.42.080(b) Applicability of Local Platting Regulations to State Land in a Municipality

(36) AS 29.45.010 - 29.45.530 Borough and City Property Taxes

~~(37)~~ AS 29.45.020 Taxpayer Notice

~~(38)~~ AS 29.45.580(d) Interest on Sales Tax

(39) AS 29.48.090 Exemption from Special Assessment

Repeal ~~(40)~~ AS 29.51.420 - 29.51.430 Bonded Debt for School Construction

(41) AS 29.51.210(b) Security for Bonds

Repeal ~~(42)~~ AS 29.51.390 Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. Municipal Tax Resource Equalization

(44) AS 29.62. State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 Adverse Possession

(46) AS 29.71.020 Taxation of Municipalities

Proofed 12-30

## CHAPTER 15. HOME RULE MUNICIPALITIES

### Article 1. CHARTERS

Sec. 29.15.010. MUNICIPAL CHARTER ADOPTION. A first class municipality or second class borough may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec 29.15.020. NOMINATION. (a) Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

**** (b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

Sec. 29.15.030. ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission.

Sec. 29.15.040. PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be

signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter.

Sec. 29.15.050 INITIATIVE AND REFERENDUM. ****(a) A municipal charter shall provide procedures for initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 percent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by Sec. 7, art. XI of the state constitution.

Sec. 29.15.060. CHARTER ELECTION. The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter.

Sec. 29.15.070. CHARTER ADOPTION. (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

(1) lieutenant governor - two copies;

(2) Department of Community and Regional Affairs - two copies;

(3) district recorder - one copy;

(4) municipal clerk - one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

Sec. 29.15.080. CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter or by initiative referendum as provided in AS 29.30.090-29.30.180, except that no amendment shall be effective unless ratified by the voters.

Article 2. HOME RULE LIMITATIONS

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 Borough Transition

(2) AS 29.12.010 Municipal Name Change

(3) AS 29.12.040 Annexation and Exclusion

(4) AS 29.12.080-~~29.12.~~160 Merger and Consolidation

(5) AS 29.12.420-29.12.500 Dissolution

(6) AS 29.15.080 Charter Amendment

(7) AS 29.24.010 Conflict of Interest

(8) AS 29.24.020~~(29.23.580)~~ Meetings Public

(9) (Effective until January 1, 198) AS 29.23.020-29 23.050 Borough Assembly Representation

(Effective January 1, 198) AS 29.24.060; 29.24.080-29.24.140 (29.23.021; 29.23.025-29.23.050) Borough assembly composition and Apportionment; Borough Assembly Members

(10) AS 29.24.150(c) Expulsion of Borough Assemblymen

(11) AS 29.24.200(f) Removal of Borough Mayor from Office

(12) AS 29.24.290(b) Expulsion of City Councilman from Office

**** (13) AS 29.24.340(a) Repeal

(14) AS 29.24.350 Removal of Mayor from Office

(15) AS 29.24.680 Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 Municipal Reports

(17) AS 29.27.010(a)(12) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 Codification

(19) AS 29.30.010, 29.30.030(b)-29.30.040 Municipal Elections

(20) AS 29.30.060(f) Expulsion, Removal from Office

(21) AS 29.30.210-29.30.330 Recall

(22) AS 29.33.020 Extraterritorial Jurisdiction

(23) AS 29.33.030 Eminent Domain

(24) AS 29.33.080 Garbage and Solid Waste Services

(25) AS 29.33.090(b) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090(c) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100-29.33.160 Utilities

**** (28) AS 29.33.220 Repeal

(29) AS 29.33.230 Post Audit

(30) AS 29.36.010(b) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020(a) Responsibility for education on Military Reservations

(32) AS 29.36.130(c) Acquisition of Additional Areawide Powers

(33) AS 29.39.020-29.39.060 Powers of Cities Outside Boroughs

(34) AS 29.42.040(d) Zoning of State Land for Homesite Entry

(35) AS 29.42.080(b) Applicability of Local Platting Regulations to State Land in a Municipality

(36) AS 29.45.010-29.45.530 Borough and City Property Taxes

(37) AS 29.45.020

(38) AS 29.45.580(d) Interest on Sales Tax

(39) AS 29.48.090 Exemption from Special Assessment

(40) AS 29.51.420-29.51.430 Bonded Debt for School Construction

(41) AS 29.51.210(b) Security for Bonds

(42) AS 29.51.390 Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. Municipal Tax Resource Equalization

(44) AS 29.62. State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 Adverse Possession

(46) AS 29.71.020 Taxation of Municipalities

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.15.020. NOMINATION.

(b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or city council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

EXPLANATION: Subsection (b) has been added to avoid the expense and inconvenience of an election on the question of forming a charter commission if not enough nominations for commission members are received. An alternative would be to provide for appointment of members in such cases but it was felt that failure to nominate a sufficient number of commission candidates indicated a general lack of interest in the formation of a charter commission.

NO DISCUSSION - OK

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.15.050. INITIATIVE AND REFERENDUM. (a) A municipal charter shall provide procedures for initiative and referendum.

EXPLANATION: This is technical clean-up creating no substantive change in existing law. However, it has been argued that the phrase "charters shall provide the procedures" refers to the procedures set out in Title 29 applicable to general law municipalities. Consequently, "the" has been dropped in order to clarify the fact that home rule municipalities are free to establish procedures which may differ from those set out in Title 29.

OK No discussion

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS. (32)

(13) AS 29.24.340(a) (election and term of mayor) Repeal.

(19) AS 29.30.040 (voter qualification) AS RETAINED & MADE UNIFORM STWIDE

(28) AS 29.33.220 (expenditure of borough revenue) Repeal.

(13) No objections

EXPLANATION: AS 29.24.340(a) provides that a home rule city may prescribe additional residency requirements by charter for eligibility to hold the office of mayor. This is not a limitation and does not properly appear in the list of home rule limitations. That section also stipulates that a mayor must be a municipal voter, but it is felt that those sort of administrative decisions ought to be left up to a home rule municipality.

REPEAL NO OBJECTION

AS 29.30.010 provides that three judges shall be appointed for each polling place and that the assembly or council prescribe rules for conduction elections. These appear to be administrative decisions properly left up to a home rule municipality. This section is eliminated from (19) as a limitation.

REPEAL NO OBJECTION

AS 29.30.030(b) provides that the assembly or council may call a special election upon at least 20 days notice. This is an administrative matter properly left up to home rule municipalities and was eliminated from (19). However, it was felt that AS 29.30.040 dealing with voter qualifications ought to be included as a limitation on home rule powers to preserve uniformity across the state in this area.

NO OBJECTION

AS 29.33.220 provides that revenues collected on an areawide basis may be expended on general administrative costs and on areawide functions only. Likewise, revenues collected outside cites may be expended on general administrative costs and in providing services outside cities. It was felt that home rule municipalities ought to be given more flexibility in managing revenues.

Service area money spent only

CHAPTER 15. HOME RULE MUNICIPALITIES

(CHAPTER 13. HOME RULE MUNICIPALITIES)

Article 1. CHARTERS

Sec. 29.15.010. (Sec. 29.13.010.) MUNICIPAL CHARTER ADOPTION. A first class municipality or second class borough may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec 29.15.020. (Sec. 29.13.020.) NOMINATION. Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

Sec. 29.15.030. (Sec. 29.13.030.) ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission

Sec. 29.15.040. (Sec. 29.13.040.) PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough

assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter.

Sec. 29.15.050. (Sec. 29.13.050.) INITIATIVE AND REFERENDUM. (a) Municipal charters shall provide the procedures for the initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 percent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by Sec. 7, art. XI of the state constitution.

Sec. 29.15.060. (Sec. 29.13.060.) CHARTER ELECTION. The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter.

Sec. 29.15.070. (Sec. 29.13.070.) CHARTER ADOPTION. (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

(1) lieutenant governor - two copies;

(2) Department of Community and Regional Affairs - two copies;

(3) district recorder - one copy;

(4) municipal clerk - one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

Sec. 29.15.080. (Sec. 29.13.080.) CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter or by initiative referendum as provided in AS 29.30.090-29.30.180 (AS 29.28.060-29.28.110), except that no amendment shall be effective unless ratified by the voters.

Article 2. HOME RULE LIMITATIONS

Sec. 29.15.110. (Sec. 29.13.100.) LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 (29.18.140) Borough Transition

(2) AS 29.12.010 (29.73.050) Municipal Name Change

(3) AS 29.12.040 (29.68.010) Annexation and Exclusion

(4) AS 29.12.080-160 (29.68.030-29.68.110) Merger and Consolidation

(5) AS 29.12.420-29.12.500 (29.68.500-29.68.580) Dissolution

(6) AS 29.15.080 (29.13.080) Charter Amendment

(7) AS 29.24.010 (29.23.555) Conflict of Interest

(8) AS 29.24.020 (29.23.580) Meetings Public

(9) [Effective until January 1, 1981] AS 29.23.020-29.23.050 Borough Assembly Representation

[Effective January 1, 1981 AS 29.24.060; 29.24.080-29.24.140 (29.23.021; 29.23.025-29.23.050) Borough assembly composition and Apportionment; Borough Assembly Members

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

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(5) AS 29.12.220-29.12.500 (29.68.500-29.68.580) Dissolution

(6) AS 29.15.080 (29.13.080) Charter Amendment

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[Effective January 1, 1981 AS 29.24.060; 29.24.080-29.24.140 (29.23.021; 29.23.025-29.23.050) Borough assembly composition and Apportionment; Borough Assembly Members

(10) AS 29.24.150 [29.23.060(c)] Explusion of Borough Assemblymen

(11) AS 29.24.200 [29.23.130(f)] Removal of Borough Mayor from Office

(12) AS 29.24.290 [29.23.210(b)] Explulsion of City Councilman from Office

(13) AS 29.24.340[a] (29.23.250[a]) Election and Term of Mayor

(14) AS 29.24.350 (29.23.255) Removal of Mayor from Office

(15) AS 29.24.680 (29.23.540) Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 (29.23.560) Municipal Reports

(17) AS 29.27.010[a][12] (29.48.130[a][12]) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 (29.48.180) Codification

(19) AS 29.30.010, 29.30.030[b]-29.30.040 (29.28.010, 29.28.020[b]-29.28.030 Municipal Elections

(20) AS 29.30.060(f) [29.28.050(f)] Expulsion, Removal from Office

(21) AS 29.30.210-29.30.330 (29.28.130-29.28.250) Recall

(22) AS 29.33.020 (29.48.037) Extraterritorial jurisdiction

(23) AS 29.33.030 (29.73.020) Eminent Domain

(24) AS 29.33.080 (29.48.033) Garbage and Solid Waste Services

(25) AS 29.33.090[b] (29.48.035[b]) Effect of Areawide Exercise of Porough Power

(26) AS 29.33.090[c] (29.48.035[c]) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100-29.33.160 (29.48.040-29.48.100) Utilities

(28) AS 29.33.220 (29.48.210) Expenditure of Borough Revenue

(29) AS 29.33.230 (29.48.220) Post Audit

(10) AS 29.24.150 [29.23.060(c)] Explusion of Borough Assemblymen

(11) AS 29.24.200 [29.23.130(f)] Removal of Borough Mayor from Office

(12) AS 29.24.290 [29.23.210(b)] Explulsion of City Councilman from Office

(13) AS 29.24.340[a] (29.23.250[a]) Election and Term of Mayor

(14) AS 29.24.350 (29.23.255) Removal of Mayor from Office

(15) AS 29.24.680 (29.23.540) Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 (29.23.560) Municipal Reports

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(14) AS 29.24.350 (29.23.255) Removal of Mayor from Office

(15) AS 29.24.680 (29.23.540) Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 (29.23.560) Municipal Reports

(17) AS 29.27.010[a][12] (29.48.130[a][12]) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 (29.48.180) Codification

(19) AS 29.30.010, 29.30.020[b]-29.30.030 (29.28.010, 29.28.020[b]-29.28.030 Municipal Elections

(20) AS 29.30.060 [29.28.050(f)] Expulsion, Removal from Office

(21) AS 29.30.210-29.30.330 (29.28.130-29.28.250) Recall

(22) AS 29.33.020 (29.48.037) Extraterritorial jurisdiction

(23) AS 29.33.030 (29.73.020) Eminent Domain

(24) AS 29.33.080 (29.48.033) Garbage and Solid Waste Services

(25) AS 29.33.090[b] (29.48.035[b]) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090[c] (29.48.035[c]) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100-29.33.160 (29.48.040-29.48.100) Utilities

(28) AS 29.33.220 (29.48.210) Expenditure of Borough Revenue

(29) AS 29.33.230 (29.48.220) Post Audit

(30) AS 29.36.010[b] (29.33.010[b]) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020[a] (29.33.050, 29.41.010[d], 14.12.020[a]) Responsibility for education on Military Reservations

(32) AS 29.36.130[c] (29.33.290[c]) Acquisition of Additional Areawide Powers

(33) AS 29.39.020-29.39.060 (29.43.020-29.43.040) Powers of Cities Outside Boroughs

(34) AS 29.42.040[d] (29.33.090[d]) Zoning of State Land for Homesite Entry

(35) AS 29.42.080[b] (29.33.150[b]) Applicability of Local Platting Regulations to State Land in a Municipality

(36) AS 29.45.010-29.45.530 (29.53.010-53.400) Borough and City Property Taxes

(37) AS 29.45.020 [AS 29.73.060(070)] Taxpayer Notice

(38) AS 29.45.580[d] (29.53.415[d]) Interest on Sales Tax

(39) AS 29.48.090 (29.63.065) Exemption from Special Assessment

(40) AS 29.51.420-29.51.430 (29.58.345-29.58.350) Bonded Debt for School Construction

(41) AS 29.51.210[b] (29.58.180[b]) Security for Bonds

(42) AS 29.51.390 (29.58.315) Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. (29.88) Municipal Tax Resource Equalization

(44) AS 29.62. (29.89) State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 (29.73.030) Adverse Possession

(46) AS 29.71.020 (29.73.040) Taxation of Municipalities

(30) AS 29.36.010[b] (29.33.010[b]) Areawide Borough Powers

(31) AS 29.36.050, AS 29.36.320, AS 14.12.020[a] (29.33.050, 29.41.010[d], 14.12.020[a]) Responsibility for education on Military Reservations

(32) AS 29.36.130[c] (29.33.290[c]) Acquisition of Additional Areawide Powers

(33) AS 29.39.020-29.39.050 (29.43.020-29.43.040) Powers of Cities Outside Boroughs

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(36) AS 29.45.010-29.45.450 (29.53.010-53.400) Borough and City Property Taxes

(37) AS 29.45.020 [AS 29.73.060(070)] Taxpayer Notice

(38) AS 29.45.580[d] (29.53.415[d]) Interest on Sales Tax

(39) AS 29.48.090 (29.63.065) Exemption from Special Assessment

(40) AS 29.51.520-29.51.530 (29.58.345-29.58.350) Bonded Debt for School Construction

(41) AS 29.58.310[b] (29.58.180[b]) Security for Bonds

(42) AS 29.58.490 (29.58.315) Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. (29.88) Municipal Tax Resource Equalization

(44) AS 29.62. (29.89) State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 (29.73.030) Adverse Possession

(46) AS 29.71.020 (29.73.040) Taxation of Municipalities

SCOMM

#23:28

# CHAPTER 18. DEVELOPMENT CITIES

**** Repeal.

CHAPTER 18. DEVELOPMENT CITIES

(Article 4. DEVELOPMENT CITIES)

Sec. 29.18.010. (Sec. 29.18.220.) LEGISLATIVE FINDINGS.The legislature finds that the development of natural resources in isolated and relatively unpopulated areas requires a policy and procedure which will provide planning, financial and other assistance necessary for encouraging orderly development of well-planned, diversified and economically sound new cities necessary to support the sound development of the state's resources by both the private and public sector. It is the purpose of Secs. 220-460 of this chapter to set out the mutual responsibilities of the private and public sectors to achieve these objectives with a view to securing information valuable to future legislatures so that general legislation applicable to the establishment of development cities may be perfected.

Sec. 29.18.020. (Sec. 29.18.230.) DEVELOPMENT CITIES. Subject to reclassification under Sec. 200(c) [Sec. 400(c)] of this chapter, a development city is a city of the class designated by the Department of Community and Regional Affairs.

Sec. 29.18.030. (Sec. 29.18.240.) INCORPORATION. An area not served by an existing municipality which is not reasonably practicable to be served by an existing municipality may be incorporated as a development city by

(1) petition of the industrial developer to the Department of Community and Regional Affairs to be acted on by the Local Boundary Commission; or

(2) act of the legislature.

Sec. 29.18.040. (Sec. 29.18.250.) PETITION FOR INCORPORATION. A development city incorporation petition proposed by an industrial developer shall include the following information about the proposed city:

(1) class,

(2) name,

(3) boundaries,

(4) composition of the council,

(5) maps, documents, preliminary economic development projections, preliminary population projections, outline of the industrial developer's investigative and development expenditures and its proposed capital program, and other information required by the Department of Community and Regional Affairs to show that the proposed city meets the standards for incorporation,

(6) the proposed agreement required under Sec. 120 (Sec. 330) of this chapter .

Sec. 29.18.050. (Sec. 29.18.260.) REVIEW. The Department of Community and Regional Affairs shall review the petition for content and shall return deficient petitions for correction and completion.

Sec. 29.18.060. (Sec. 29.18.270.) INVESTIGATION. If the petition contains the required information, the Department of Community and Regional Affairs shall investigate the proposal to determine whether the development expenditures and proposed capital program by the developer serve the public interest and demonstrate a probability of being carried forward to a successful conclusion.

Sec. 29.18.070. (Sec. 29.18.280.) REPORT. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation within 60 days of receipt of the petition for incorporation.

(b) The Local Boundary Commission shall review the petition and the findings and recommendations of the Department of Community and Regional Affairs within 60 days of receving them.

Sec. 29.18.080. (Sec. 29.18.290.) DECISION ON DEVELOPMENT CITY INCORPORATION. (a) The Local Boundary Commission may reject a petition for

incorporation if it finds that

(1) the area proposed for incorporation is served by an existing municipality or could be served by an existing municipality;

(2) it is improbable that the proposed development will take place;

(3) the program and activities contemplated by this chapter may be undertaken through expansion of the corporate limits of an existing city and then declares that city to be a development city for the purpose of preferential designation under Secs. 10 and 130-460 (Secs. 10 and 340 460) of this chapter;

(4) the program and activities contemplated by this chapter may be undertaken by establishing a service area within an existing organized borough for a development project, and declares the service area to be eligible for preferential designation under Secs. 200 and 230 (Secs. 410 and 450) of this chapter;

(5) the proposed development does not serve the public interest.

(b) If the Local Boundary Commission finds that a service area within an organized borough is to be designated for preferential treatment under (a)(4) of this section, the assembly may undertake the project in the manner of a development city and shall present to the Local Boundary Commission a contractual agreement outlining responsibilities assumed by the borough and the industrial developer to implement the proposed development program.

(c) The assembly may decline findings under (b) of this section to establish a service area and in the alternative request the Local Boundary Commission to approve incorporation of a development city.

(d) The Local Boundary Commission may dissolve a development city established under Sec. 20 of this chapter if subsequent to its incorporation

(1) the major economic development projected does not occur within a period of five years; and

(2) if the development project had been reviewed as a new project the Local Boundary Commission determines it would have rejected the petition on the basis that it is improbable the proposed development would have taken place.

(e) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.18.090. (Sec. 29.18.300.) PRELIMINARY PLANNING. The city shall prepare and submit to the state preliminary plans in advance of completion of the final basic comprehensive plan for the city. The preliminary plans shall include

(1) maps, documents, preliminary economic development projections, preliminary population projections, outline of the industrial developer's investigative and development expenditures and its proposed capital program, and other information required by reviewing agencies of the state;

(2) a report on the physical and biological character of the proposed city's site and a land and water use plan and the design and siting of the community to be developed based upon these natural factors.

Sec. 29.18.100. (Sec. 29.18.310.) REVIEW AND REPORT. (a) The division of planning and research, in conjunction with the Departments of Community and Regional Affairs, Natural Resources, and Environmental Conservation and other departments as determined appropriate by the division of planning and research, shall review the preliminary planning and additional data may be requested.

(b) The division of planning and research shall coordinate the preparation of a report and recommendations, if any, which shall be submitted to the governor within 60 days of receipt by the state of the preliminary plans from the city. The city may proceed to the completion of

the final basic comprehensive plan upon satisfying any specific recommendations contained in the report.

(c) During the course of planning toward completion of the basic comprehensive development plan the division of planning and research and the Department of Community and Regional Affairs shall be kept currently informed and the final plan shall be subject to review and recommendation by the division of planning and research, which shall act in its coordinating capacity to secure review by the Department of Environmental Conservation and other state agencies as appropriate.

Sec. 29.18.110. (Sec. 29.18.320.) LIMITATION. The city may not proceed with commitment of funds or formal undertakings for physical development until it has a signed contract or contracts for sale of the company's products in quantities shown in the economic data and submitted by the company to be adequate to sustain an economically viable operation. The company may submit alternative valid evidence that the projected operation will proceed. The company shall notify the Department of Community and Regional Affairs of the meeting of this requirement. Unless the Department of Economic Development makes a determination that the data is insufficient, the city may proceed.

Sec. 29.18.120. (Sec. 29.18.330.) LOCAL HIRE. In consideration of the incorporation of a development city under this chapter, the major develope shall enter into an agreement with the appropriate agencies of the state concerning

(1) establishing and maintaining an approved Department of Labor on-the-job training program to qualify Alaska residents lacking in the requisite technical skills of the activities to be undertaken;

(2) establishing resident hire goals in terms of percent of employees at the end of the first year, second year and third year of operatio

(3) establishing the responsibilities of the various state agencies towards providing technical assistance, manpower procurement, relocation assistance, job opportunity services to residents in the area, supplemental vocational training, and the scope of effort each state agency has in this regard with specific commitments in terms of numbers of residents, time schedule and dollar value of training;

(4) establishing the penalties and conditions of noncompliance with the agreement.

Sec. 29.18.130. (Sec. 29.18.340.) DEVELOPMENT CITY COUNCIL. The council of a development city has five members consisting of the commissioner of the Department of Community and Regional Affairs, or his designee, and four public members designated by the governor. The governor shall appoint no fewer than two public members from a list of nominees designated by the major developer providing the industrial base of the city as measured by employment and capital investment. The council shall serve at the pleasure of the governor. The designated councilmen need not be residents of the city during its development stage.

Sec. 29.18.140. (Sec. 29.18.350.) FILLING A VACANCY. If a vacancy occurs in the council as constituted under Sec. 130 (Sec. 340) of this chapter, the applicable appointing authority shall designate the replacement during the development stage of the city.

Sec. 29.18.150. (Sec. 29.18.360.) POWERS AND DUTIES OF THE COUNCIL. During the development stage the council of a development city may

(1) exercise the powers and duties of a school board if the city is located outside an organized borough;

(2)exercise the powers and duties of a planning commission under AS 29.42.020 (AS 29.33.080), except that during the first five years or until the development city has 400 permanent residents, zoning and zoning changes will be reviewed and approved by the division of planning and research and the Department of Environmental Conservation.

Sec. 29.18.160. (Sec. 29.18.370.) POWERS AND DUTIES OF DEVELOPMENT CITY EXECUTIVE DIRECTOR. During the development stage the council shall appoint an executive director of the development city, who may be one of its members, to serve at the pleasure of the council. The executive director shall have the powers and duties of all executive and administrative city officials set out in this title in order to develop the city under a comprehensive community development plan.

Sec. 29.18.170. (Sec. 29.18.380.) PROCEDURES. During the development stage, the council may provide for conference telephone or radiophone meetings at times determined by the council and shall determine its own rules and order of business.

Sec. 29.18.180. (Sec. 29.18.390.) DEVELOPMENT CITY CAPITAL IMPROVEMENT FUNDS. All state agencies shall, where appropriate, adopt procedures to insure that, during the development stage, the needs of a development city are carefully considered in the allocation of funds available for capital improvement projects where those funds have not otherwise been committed by the legislature.

Sec. 29.18.190. (Sec. 29.18.400.) TRANSITION. (a) When a development city has 400 permanent residents elections shall take place according to the following schedule:

(1) in the first year two additional councilmen who shall be city residents elected for three-year terms;

(2) in the second year two councilmen who shall be city residents elected for three-year terms to replace one of the councilmen nominated by the industrial developer and one of the public members designated by the governor;

(3) in the third year two councilmen who shall be city residents elected for three-year terms to replace the commissioner of the Department of Community and Regional Affairs and one of the councilmen nominated by the industrial developer;

(4) in the fourth year a mayor who shall be a city resident elected for a three-year term to replace the remaining councilman nominated by the industrial developer.

(b) At the time of the election under (a)(4) of this section, or any time after it, the electorate may exercise the right to become a home rule city as authorized under this title.

(c) If, within a period of five years from the incorporation of a development city, the number of permanent residents does not reach 400, the Department of Community and Regional Affairs shall order an election for city officials and designate a successor class of city based on population as provided in this title. If the department designates a successor class of city, the provisions of this title relating to that class of city apply, and the city shall be reclassified accordingly.

Sec. 29.18.200. (Sec. 29.18.410.) HOUSING POWERS. From the time of the appointment of the first city council and for a period of 10 years following the first election of councilmen, the council may act as its own housing and urban renewal authority if such powers have been granted to cities under applicable provisions of law.

Sec. 29.18.210. (Sec. 29.18.430.) REVENUE BONDS. Revenue bonds may be issued by a development city under the provisions of AS 29.51.340-29.51.320 (AS 29.58.200-29.58.220). However, no vote of the people is required to issue revenue bonds during the development stage. During the development stage revenue bonds may be issued by a majority vote of the city council.

Sec. 29.18.220. (Sec. 29.18.440.) SHARED REVENUE. A development city is entitled to shared revenue and other state funds on the same basis as a city or organized borough of the first class or, if reclassified under Sec. 200(c) [Sec. 400(c)] of this chapter, on the basis of the reclassification. During the development stage the Department of Community and Regional Affairs may establish an assumed population figure which shall be used to determine shared revenue based on population on per capita grants.

Sec. 29.18.230. (Sec. 29.18.450.) APPLICABILITY OF OTHER PROVISIONS OF THIS TITLE. All applicable provisions of this title consistent with the provisions of this chapter apply to development cities. Provisions of this chapter prevail over other provisions of this title which are inconsistent.

Sec. 29.18.240. (Sec. 29.18.460.) DEFINITION. In this chapter "development stage" means that period of time extending from the date of incorporation of a development city until such time as the city may attain a population of 400 permanent residents, or five years from the date of incorporation, whichever is earlier.

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CHAPTER 21. CAPITAL CITY

Sec. 29.21.010. INCORPORATION. There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city.

Sec. 29.21.020. BOUNDARIES. The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state.

Sec. 29.21.030. CITY COUNCIL. (a) Until council members elected by the residents of the capital city take office as provided in AS 29.21.060 the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governor. The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in AS 29.21.160 the successors of the initial appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance.

Sec. 29.21.040. FILLING A VACANCY. If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacement who shall serve for the unexpired portion of the term.

Sec. 29.21.050. APPOINTMENT OF CITY OFFICIALS. Until a mayor is elected in accordance with AS 29.21.060, the council shall appoint a city manager for the capital city to serve at the pleasure of the council. The city manager may not be a council member.

Sec. 29.21.060. TRANSITION. (a) When the capital city attains a population of 400 permanent residents, as certified by the lieutenant governor based on the best information available, the lieutenant governor shall notify the council of this determination. The lieutenant governor shall specify an election date which shall be the first Tuesday of October following the notification, except that if it is less than six months from the date of the certification to the first Tuesday of October then the election date shall be the first Tuesday of October of the year following. The elected members shall take office on the Monday following the election.

(b) After the lieutenant governor has specified the election date, the council shall make arrangements for an election at which five council members and a mayor shall be elected in the manner prescribed by ordinance and law. The expenses of the election shall be borne by the state. The council of the capital city shall have six members. The governor shall designate

one council member holding office on the date of the election to remain a member of the council for a single three-year term commencing on the date the elected council members take office. The successors to the appointed council members shall be elected by the residents, except that if the appointed council member leaves office during the three years, the governor may appoint a successor. The terms of all other appointed or designated council members expire when the elected council members take office. The term of elected council members is as provided in AS 29.24.280 except that three of the members are elected for an initial term of one year.

*Sec. 29.21.070. PLANNING AND LAND USE REGULATION AUTHORITY. The general development plan and specific development plans constitute the land use plan for the capital city area. When a parcel of land has been developed in accordance with the applicable specific development plan, that parcel becomes subject to all planning, zoning, subdivision, building code or other similar ordinances of the Matanuska-Susitna Borough.

Sec. 29.21.080. TRANSFER OF UTILITIES TO THE CAPITAL CITY. The development corporation, in cooperation with the capital city, shall arrange for and agree to an orderly schedule for transferring to the capital city ownership of, and financial and operational responsibility for utilities and any other facilities which the development corporation considers to be integral parts of the capital city infrastructure. Before January 1, 1985, the development corporation and the council of the capital city shall jointly retain independent consultants to study and determine an orderly schedule for transfer of these utilities and facilities to the capital city. The study shall consider the capabilities of the capital city and its existing and anticipated residents to finance the cost of these utilities and other facilities and their operating expenses. The consultants shall propose a recommended schedule for and terms of transfer which are commensurate with the capital city's existing and anticipated population, tax base and any other factors relating to its capability to finance and operate these facilities as they consider appropriate. The development corporation shall, after considering the consultants' report, propose a schedule of and terms and conditions of the transfer to the capital city, which shall, upon review and approval by the council, be included in an agreement between the development corporation and the capital city. If the development corporation and the capital city are unable to agree within six months after the development corporation submits its proposal, the development corporation shall submit the proposal to the Legislative Budget and Audit Committee

which shall consider the proposal, and if the committee considers it appropriate to do so, shall recommend to the legislature legislation it considers desirable for the disposition of the utilities and other facilities. If the legislature does not enact legislation regarding the disposition within one year after the proposal is submitted to the Legislative Budget and Audit Committee, the development corporation may at any time thereafter sell or dispose of the utilities and facilities or any of them to a private person or entity or government body, or continue to operate them.

Sec. 29.21.090. DEFINITIONS. In AS 29.21.010 - 29.21.090, unless the context requires otherwise,

(1) "capital city area" means the area described in AS 29.21.020

(2) "capital city " means the municipality incorporated by this chapter;

(3) "development corporation' means the Alaska Capital City Development Corporation;

(4) "general development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to the general development plan;

(5) "specific development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to each specific development plan.

Sec. 29.21.100. SHORT TITLE. AS 29.21.010 - 100 of this chapter may be cited as the Capital City Incorporation Act.

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## CHAPTER 21. CAPITAL CITY

Sec. 29.21.010. INCORPORATION. There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city.

Sec. 29.21.020. BOUNDARIES. The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state.

Sec. 29.21.030. CITY COUNCIL. (a) Until council members elected by the residents of the capital city take office as provided in AS 29.21.060 the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governor. The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in AS 29.21.160 the successors of the initial appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance.

Sec. 29.21.040. FILLING A VACANCY. If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacement who shall serve for the unexpired portion of the term.

Sec. 29.21.050. APPOINTMENT OF CITY OFFICIALS. Until a mayor is elected in accordance with AS 29.21.060, the council shall appoint a city manager for the capital city to serve at the pleasure of the council. The city manager may not be a council member.

Sec. 29.21.060. TRANSITION. (a) When the capital city attains a population of 400 permanent residents, as certified by the lieutenant governor based on the best information available, the lieutenant governor shall notify the council of this determination. The lieutenant governor shall specify an election date which shall be the first Tuesday of October following the notification, except that if it is less than six months from the date of the certification to the first Tuesday of October then the election date shall be the first Tuesday of October of the year following. The elected members shall take office on the Monday following the election.

(b) After the lieutenant governor has specified the election date, the council shall make arrangements for an election at which five council members and a mayor shall be elected in the manner prescribed by ordinance and law. The expenses of the election shall be borne by the state. The council of the capital city shall have six members. The governor shall designate

one council member holding office on the date of the election to remain a member of the council for a single three-year term commencing on the date the elected council members take office. The successors to the appointed council members shall be elected by the residents, except that if the appointed council member leaves office during the three years, the governor may appoint a successor. The terms of all other appointed or designated council members expire when the elected council members take office. The term of elected council members is as provided in AS 29.24.280 except that three of the members are elected for an initial term of one year.

*Sec. 29.21.070. PLANNING AND LAND USE REGULATION AUTHORITY. The general development plan and specific development plans constitute the land use plan for the capital city area. When a parcel of land has been developed in accordance with the applicable specific development plan, that parcel becomes subject to all planning, zoning, subdivision, building code or other similar ordinances of the Matanuska-Susitna Borough.

Sec. 29.21.080. TRANSFER OF UTILITIES TO THE CAPITAL CITY. The development corporation, in cooperation with the capital city, shall arrange for and agree to an orderly schedule for transferring to the capital city ownership of, and financial and operational responsibility for utilities and any other facilities which the development corporation considers to be integral parts of the capital city infrastructure. Before January 1, 1985, the development corporation and the council of the capital city shall jointly retain independent consultants to study and determine an orderly schedule for transfer of these utilities and facilities to the capital city. The study shall consider the capabilities of the capital city and its existing and anticipated residents to finance the cost of these utilities and other facilities and their operating expenses. The consultants shall propose a recommended schedule for and terms of transfer which are commensurate with the capital city's existing and anticipated population, tax base and any other factors relating to its capability to finance and operate these facilities as they consider appropriate. The development corporation shall, after considering the consultants' report, propose a schedule of and terms and conditions of the transfer to the capital city, which shall, upon review and approval by the council, be included in an agreement between the development corporation and the capital city. If the development corporation and the capital city are unable to agree within six months after the development corporation submits its proposal, the development corporation shall submit the proposal to the Legislative Budget and Audit Committee which shall

consider the proposal, and if the committee considers it appropriate to do so, shall recommend to the legislature legislation it considers desirable for the disposition of the utilities and other facilities. If the legislature does not enact legislation regarding the disposition within one year after the proposal is submitted to the Legislative Budget and Audit Committee, the development corporation may at any time thereafter sell or dispose of the utilities and facilities or any of them to a private person or entity or government body, or continue to operate them.

Sec. 29.21.090. DEFINITIONS. In AS 29.21.010 - 29.21.090, unless the context requires otherwise,

(1) "capital city area" means the area described in AS 29.21.020

(2) "capital city " means the municipality incorporated by this chapter;

(3) "development corporation" means the Alaska Capital City Development Corporation;

(4) "general development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to the general development plan;

(5) "specific development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to each specific development plan.

Sec. 29.21.100. SHORT TITLE. AS 29.21.010 - 100 of this chapter may be cited as the Capital City Incorporation Act.

## CHAPTER 21. CAPITAL CITY

(Article 5. CAPITAL CITY INCORPORATION)

Sec. 29.21.010. (Sec. 29.18.510.) INCORPORATION. There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city.

Sec. 29.21.020. (Sec. 29.18.520.) BOUNDARIES. The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state.

Sec. 29.21.030. (Sec. 29.18.530.) CITY COUNCIL. (a) Until council members elected by the residents of the capital city take office as provided in Sec. 060 (Sec. 570) of this chapter, the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governor. The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in Sec. 060 Sec. 570 of this chapter, the successors of the initial appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance.

Sec. 29.21.040. (Sec. 29.18.540.) FILLING A VACANCY. If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacement who shall serve for the unexpired portion of the term.

Sec. 29.21.050. (Sec. 29.18.550.) APPOINTMENT OF CITY OFFICIALS. Until a mayor is elected in accordance with Sec. 060 (Sec. 570) of this chapter, the council shall appoint a city manager for the capital city to serve at the pleasure of the council. The city manager may not be a council member.

Sec. 29.21.060. (Sec. 29.18.570.) TRANSITION. (a) When the capital city attains a population of 400 permanent residents, as certified by the lieutenant governor based on the best information available, the lieutenant governor shall notify the council of this determination. The lieutenant governor shall specify an election date which shall be the first Tuesday of October following the notification, except that if it is less than six months from the date of the certification to the first Tuesday of October then the election date shall be the first Tuesday of October of the year following. The elected members shall take office on the Monday following the election.

(b) After the lieutenant governor has specified the election date, the council shall make arrangements for an election at which five council members and a mayor shall be elected in the manner prescribed by ordinance and law. The expenses of the election shall be borne by the state. The council of the capital city shall have six members. The governor shall designate

one council member holding office on the date of the election to remain a member of the council for a single three-year term commencing on the date the elected council members take office. The successors to the appointed council members shall be elected by the residents, except that if the

appointed council member leaves office during the three years, the governor may appoint a successor. The terms of all other appointed or designated council members expire when the elected council members take office. The term of elected council members is as provided in AS 29.24.280 [AS 29.23.200(c except that three of the members are elected for an initial term of one year.

Sec. 29.21.070. (Sec. 29.18.580.) PLANNING AND ZONING AUTHORITY. The general development plan and specific development plans constitute the land use plan for the capital city area. When a parcel of land has been developed in accordance with the applicable specific development plan, that parcel becomes subject to all planning, zoning, subdivision, building code or other similar ordinances of the Matanuska-Susitna Borough.

Sec. 29.21.080. (Sec. 29.18.590.) TRANSFER OF UTILITIES TO THE CAPITAL CITY. The development corporation, in cooperation with the capital city, shall arrange for and agree to an orderly schedule for transferring to the capital city ownership of, and financial and operational responsibility for utilities and any other facilities which the development corporation considers to be integral parts of the capital city infrastructure. Before January 1, 1985, the development corporation and the council of the capital city shall jointly retain independent consultants to study and determine an orderly schedule for transfer of these utilities and facilities to the capital city. The study shall consider the capabilities of the capital city and its existing and anticipated residents to finance the cost of these utilities and other facilities and their operating expenses. The consultants shall propose a recommended schedule for and terms of transfer which are commensurate with the capital city's existing and anticipated population, tax base and any other factors relating to its capability to finance and operate these facilities as they consider appropriate. The development corporation shall, after considering the consultants' report, propose a

schedule of and terms and conditions of the transfer to the capital city, which shall, upon review and approval by the council, be included in an agreement between the development corporation and the capital city. If the development corporation and the capital city are unable to agree within six months after the development corporation submits its proposal, the development corporation shall submit the proposal to the Legislative Budget and Audit Committee which shall consider the proposal, and if the committee considers it appropriate to do so, shall recommend to the legislature legislation it considers desirable for the disposition of the utilities and other facilities. If the legislature does not enact legislation regarding the disposition within one year after the proposal is submitted to the Legislative Budget and Audit Committee, the development corporation may at any time thereafter sell or dispose of the utilities and facilities or any of them to a private person or entity or government body, or continue to operate them.

Sec. 29.21.090. (Sec. 29.18.600.) DEFINITIONS. In Secs. 010-090 Secs. 510-600 of this chapter, unless the context requires otherwise,

(1) "capital city area" means the area described in Sec. 020 (Sec. 520) of this chapter;

(2) "capital city" means the municipality incorporated by this chapter;

(3) "development corporation" means the Alaska Capital City Development Corporation;

(4) "general development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to the general development plan;

(5) "specific development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to each specific development plan.

Sec. 29.21.100. (Sec. 29.18.610.) SHORT TITLE. Sections 010-100 (Sections 510-610) of this chapter may be cited as the Capital City Incorporation Act.

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CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES.

~~Article~~ uc 1. CONFLICTS OF INTERESTS, PUBLIC MEETINGS.

****Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law municipality shall adopt a conflicts-of-interest ordinance which provides that a member of a legislative body shall declare a substantial financial interest he has in an official action and ask to be excused from a vote on the matter. The presiding officer shall rule on the question. His decision may be overidden by the majority vote of the governing body.

Sec. 29.24.020. MEETINGS PUBLIC. Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

Article 2. uc GOVERNING BODIES. ~~BOROUGH ASSEMBLY~~

****Sec. 29.24.050. (Sec. 29.23.010.) GENERAL POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

~~Sec. 29.24.060. REAPPORTIONMENT.~~

Sec. 29.24.060. ASSEMBLY COMPOSITION AND APPORTIONMENT. [Effective January 1, 1981].

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

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

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

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

Sec.29.24.070. COMPOSITION AND FORM OF REPRESENTATION. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.24.080.

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

Sec. 29.24.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.24.060. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.24.070(b)(2) or (b)(3) the assembly shall submit with the proposition of a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.24.060 the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060.

At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registerd voters who are residents of the borough request the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.24.060, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.24.060 the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.090. APPORTIONMENT APPEALS. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.24.060 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of community and regional affairs

requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.24.060 or whether a decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under AS 29.24.080(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community and regional affairs to review a decision of the borough assembly under AS 29.24.080(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.24.060, or if he determines that the decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is not correct, the commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.24.060 and submit the ordinance to the voters.

(d) When the borough assembly has been directed by the commissioner of community and regional affairs to prepare a reapportionment ordinance under (c) of this section, the borough assembly shall, within two months of its receipt of the commissioner's order, adopt an ordinance providing for reapportionment. The borough assembly shall submit an

ordinance adopted under this subsection to the voters at a regular election or special election held within 60 days of the date of adoption of the reapportionment ordinance.

(e) If at the end of the time period provided under (d) of this seciton an ordinance providing for reapportionment has not been approved by the voters, the commissioner of community and regional affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.100. JUDICIAL REVIEW AND RELIEF. (a) The commissioner of community and regional affairs may request the superior court to enforce a reapportionment order issued under AS 9.24.090(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.24.080(a);

(2) a determination by the borough assembly under AS 29.24.080 that the standards of AS 29.24.060 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.24.080(d);

(4) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(c);

(5) a reapportionment ordinance approved by the voters under AS 29.24.090(d); and

(6) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(e);

Sec. 29.24.110 EFFECTIVE DATE OF APPORTIONMENT. (a) A change in assembly apportionment or composition under AS 29.23.080 or AS 29.24.090 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.24.080(a), AS 29.24.080(e), or AS 29.24.090(d); or

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(d).

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

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

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(e).

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

Sec. 29.24.120. APPLICABLITY OF APPORTIONMENT PROVISIONS. The provisions of AS 29.24.080-29.24.110 do not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390;

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

****Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The

council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

Delete Sec. 29.24.130. REGULAR TERM OF OFFICE. (a) Assemblymen are selected for three-year terms and until their successors are selected and have qualified, unless different terms not exceeding four years are prescribed by borough charter or ordinance. Except when otherwise required by a change of composition or apportionment, if the term of an assemblyman is changed by charter or ordinance, the term of an assemblyman holding office at the time the change takes effect is not affected by that change.

(b) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by borough charter or ordinance.

(c) This section applies to home rule and general law boroughs.

****Sec. 29.24.140 QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the council. A member of the assembly who ceases to be a qualified voter immediately forfeits his office. A member of the council who ceases to be a qualfied city voter immediately forfeits his office.

(b) A governing body may by ordinance establish a durational residency requirement for its members not to exceed three years.

(c) An assembly or council member who represents an area less than that of the total borough or city and who becomes a resident of another area within the municipality may continue to serve until the next regular election unless provided otherwise by ordinance.

(d) A municipality may by ordinance establish district residency requirements for members of its governing body.

****Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three-year terms and until their successors have qualified unless different terms not exceeding four years are prescribed by charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a governing body is changed by charter or ordinance the term of an official holding office at the time the change becomes effective is not affected.

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

****Sec. 29.24.150. PROCEDURES OF GOVERNING BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) A municipal governing body shall hold at least one regular meeting every month, unless otherwise provided by ordinance. A special meeting may be held at the call of the presiding officer or at least one-third of the members provided a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held. A waiver shall be made a part of the journal for the meeting.

(c) A majority of the total membership of a governing body authorized by law shall constitute a quorum. A member disqualifed by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(d) Actions of a governing body are adopted by a majority of the total membership of the body. All members present shall vote on every question unless they are required to abstain from voting on a question by law. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it is necessary only to so state.

(e) A governing body shall maintain a journal of its official proceedings which shall be a public record.

(f) A governing body may, consistent with law or charter, determine by ordinance its own rules of procedure and order of business.

****Sec. 29.24.160. DEPARTMENTS. Repeal.

****Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor, vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent from the municipality for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office as determined by two-thirds vote of the governing body;

(5) if a member of the governing body, misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice and two-thirds of the members of the governing body concur in expelling him;

(8) no longer physically resides in the municipality and the governing body by two-thirds vote declares the seat vacant.

****Sec. 29.24.175. FILLING A VACANCY. (a) If a vacancy occurs in a governing body, the remaining members shall within 30 days, unless a different period is provided by ordinance, appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to service the balance of the term. If less than 30 days remain in a term, a vacancy shall not be filled.

(b) Notwithstanding subsection (a), if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall within seven days appoint a number of qualified persons to constitute a quorum.

Article 3. BOROUGH EXECUTIVE AND ADMINISTRATOR

****Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a municipality is vested in a mayor elected by the voters or by the governing body as provided in this article.

(b) The mayor shall act as ceremonial head of government, execute official documents upon authorization of the governing body, and is responsible for additional duties and powers prescribed by this chapter.

****Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a borough or first class city shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor of a borough or first class city begins on the first Monday following certification of his election.

(b) The mayor of a second class city is elected by and from the council and serves until a successor is elected and has qualified. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately. The mayor of a second class city shall serve a one-year term unless a longer term is provided by ordinance, except that the mayor of a second class city may serve only while he is a member of the council regardless of the term established for the office of mayor.

(c) The governing body may not limit the number of terms a mayor may serve.

****Sec. 29.24.206. QUALFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter of a borough or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor in that city.

(b) Residency requirements for the office of mayor not exceeding three years may be prescribed by ordinance.

****Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same powers and duties as those of the manager.

(b) The mayor may take part in the discussion of all matters before the governing body.

(c) The mayor may not vote on any matter before the governing body, except that the mayor of a first class city may vote in the case of a tie and the mayor of a second class city may vote on all matters as a council member.

Sec. 29.24.220. EXECUTIVE ABSENCE. The borough mayor, subject to assembly approval, shall designate a person to act as mayor during the mayor's temporary absence or disability. If a manager plan has been adopted, the assembly shall designate by resolution a borough administrative officer to act as manager during his absence or disability.

Delete

~~Sec. 29.24.230. ASSEMBLY PARTICIPATION. The borough mayor may take part in the discussion of all matters before the assembly but may not vote.~~

****Sec. 29.24.240. VETO. (a) Except as provided in subsections (c) and (d), the mayor may veto any ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items.

(b) A veto must be exercised before the next regular meeting of the governing body and must be accompanied by a written explanation of the reasons for that action. A veto may be overridden by vote of two-thirds of the authorized membership of the governing body within 21 days following exercise of the veto or at the next regular meeting, whichever is later.

(c) The veto does not extend to

(1) appropriation items in a school budget ordinance;

(2) actions of the ~~board~~ governing body sitting as the board of equalization or the board of adjustment;

(3) adoption or repeal of the manager form of government.

(d) The mayor of a third class borough and the mayor of a second class city has no veto power.

****Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) The governing body shall, upon two-thirds concurring vote, declare the office of mayor vacant only when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) if, as a member of the assembly or council, he misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office;

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice; or

(8) no longer physically resides in the municipality.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occuring six months before a regular election shall be filled by the governing body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the governing body is chosen, he shall resign his seat on the assembly or council. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.

(c) Notwithstanding (b) of this section, in a second class city, the office of mayor is filled by and from the council and retains his seat on the council.

uc. repeal

Article 4. CITY COUNCIL.

Sec. 29.24.280. COMPOSITION, ELIGIBILITY, ELECTION AND TERM. (a) Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

(b) A city voter is eligible to hold office as a member of the council. The council may by ordinance establish residence requirements for council members not exceeding three years. A council member who ceases to be eligible to be a city voter immediately forfeits that office.

(c) Councilmen are selected for three-year terms and until their successors are elected and have qualified. The regular term of office begins on the first Monday following certification of the election. The council may

provide by ordinance for different terms not to exceed four years, except that the current term of incumbent councilmen may not be altered.

Sec. 29.24.290. PROCEDURE. (a) The council shall meet at least once every month, unless otherwise provided by ordinance. Special meetings may be held on the call of the mayor or two councilmen upon not less than 24 hours written or oral notice communicated to each member. In an emergency, a special meeting called on less than 24 hours notice is a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be made either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The council is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The council shall consider that conviction during its first meeting following final determination of the conviction.

(c) Four councilmen constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

(d) The final vote on each ordinance, resolution, or substantive motion is a recorded roll call vote. All councilmen present shall vote unless the council, for special reasons, permits a member to abstain.

Sec. 29.24.300. FILLING A VACANCY. If a vacancy occurs in the council, the council by vote of a majority of its remaining members shall designate a person to fill the vacancy until the next regular election, and until a successor is elected and has qualified.

UC.

Article 5. CITY EXECUTIVE AND ADMINISTRATOR.

****Sec. 29.24.330. Repeal

****Sec. 29.24.340. Repeal.

****Sec. 29.24.350. Repeal

****Sec. 29.24.360. Repeal.

****Sec. 29.24.370. Repeal.

****Sec. 29.24.380. Repeal.

****Sec. 29.24.390. Repeal.

UC

ARTICLE 6. SCHOOL BOARDS.

****Sec. 29.24.240. SCHOOL BOARDS. (a) Each municipal school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large unless a different method of election has been approved by the voters in a regular election.

(b) Nothwithstanding (a) of this section, assembly members in a third class borough serve as the school board and the mayor is president of the school board.

****Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. (a) The governing body may, by ordinance, establish advisory, ~~administrative, technical~~, or quasi-judicial boards and commissions.

~~(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed~~ by the governing body.

UC.

~~Article~~ 7. UTILITY BOARDS.

Sec. 29.24.450. UTILITY BOARDS. (a) The assembly or council of a municipality operating a public utility may provide by ordinance for a managing board of five members and define the board's powers and duties.

(b) As determined by ordinance, members of the board are appointed by the municipal executive and confirmed by the assembly or council or are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. The term of a utility board member is two years and until a successor is selected and has qualified. However, the assembly or council may by ordinance provide for a different term not to exceed four years and not altering the current term of an elected incumbent.

(c) Vacancies in the board are filled by the municipal executive. Executive appointments shall be confirmed by the assembly or council. A person selected to fill a vacancy on a utility board serves until the expiration of the term and until a successor is elected and has qualified.

(d) Unless otherwise provided by ordinance, the board shall

(1) choose its chairman and secretary;

(2) appoint the manager of the public utility for a term not longer than five years and set his salary;

(3) formulate and enforce the general rules and policies of the utility.

UC. ~~Article~~ 8. OTHER OFFICERS AND EMPLOYEES.

****Sec. 29.24.480. APPOINTMENT OF OFFICERS. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative official. Unless otherwise provided by ordinance, officials described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative official, must be confirmed by the governing body.

Sec. 29.24.490. MUNICIPAL ATTORNEY. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

Sec. 29.24.500. MUNICIPAL CLERK. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

****Sec. 29.24.510. MUNICIPAL TREASURER. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the governing body directs.

****Sec. 29.24.515. DEPARTMENTS. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

Repeal

Sec. 29.24.520. APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS. (a) Notwithstanding AS 39.05.100 or a provision of law relating to age, the municipal appointing authority for a municipal board or commission may appoint a 17-21 year old municipal resident to the board or commission if recommended by the commission, established in AS 29.68.020 of this chapter.

(b) A young person recommended by the commission may be appointed to a municipal board or commission having special qualifications for membership if the proposed nominee, except for his age, meets the required qualifications set by law.

(c) An individual appointed to a municipal board or commission under this section is entitled to the rights, privileges and responsibilities of other members, and his appointment is subject to confirmation by the governing body when required by law.

(d) No additional seat on a municipal board or commission is created by virtue of AS 29.68.

****Sec. 29.24.530. PERSONNEL SYSTEM. (a) Except as provided by (b) of this section, all appointments and promotions of municipal employees are made on the basis of merit. The governing body may provide for a ~~confidential or managerial~~ personnel system and classified service.

conf. for mang

(b) By ordinance the governing body may designate positions which are wholly or partially exempt from the classified service filled by persons who serve at the pleasure of their appointing authority and whose terms of employment are determined by their appointing authority.

UC

~~Article~~ 9. ADOPTION OR REPEAL OF MANAGER PLAN.

Sec. 29.24.550. APPLICATION. A municipality may adopt a manager plan of government.

Sec. 29.24.560. PETITION. Adoption of a manager plan may be initated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council.

The petition must be signed by a number of municipal voters equal to the following percent of the votes cast at the preceding regular election:

(1) 25 percent when the municipality has fewer than 7,500 persons;

(2) 15 percent when the municipality has 7,500 persons or more.

****Sec. 29.24.570. ELECTION. Upon receipt of the petition or upon its own motion, the governing body shall provide by ordinance or resolution for a vote on the question at the next regular or special election.

Sec. 29.24.580. ADOPTION. (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

****Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. An member of the gov. body elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office except that by a vote of three-fourths of ~~its~~ the authorized membership of the governing body ~~may at any time appoint one of its members or other elected municipal official as manager~~.

Sec. 29.24.600. TERM. Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council.

Repeal ~~Sec. 29.24.610. APPOINTMENT OF TEMPORARY OR NEW MANAGER. In the~~ absence or disability of the manager, the ~~assembly~~ or council shall appoint a temporary manager. If the office becomes vacant, the assembly or council ~~shall~~ appoint a ~~new manager~~.

****Sec. 29.24.620. REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. Within 60 days after repeal, the governing body shall enact provisions for the reorganization of the municipal executive and administrative functions.

****Sec. 29.24.630. POWERS AND DUTIES OF A MANAGER. As chief administrator the manager shall

(1) appoint, suspend, or remove municipal employees and administrative officials, except as provided otherwise in this title and AS 14.14.065; he may hire necessary administrative assistants and may authorize an administrative official to appoint suspend, or remove subordinates;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program adopted;

(4) make monthly financial reports and other reports on municipal finances and operations as required by the governing body;

(5) exercise care and custody over all real and personal property of the municipality except as provided otherwise in AS 29.36.040;

(6) perform other duties required by law or by action of the governing body; and

(7) serve as personnel officer unless the governing body authorizes him to appoint a personnel officer.

****Sec. 29.24.640. INTERGOVERNMENTAL APPOINTMENTS. A borough adopting a manager plan, may by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in this chapter. Nothing in this ~~sub~~section affects the authority of the governing body to provide for other dual officeholding if the dual offices held are compatible, or otherwise to appoint officials and employees in accordance with law.

Article 10. MISCELLANEOUS PROVISIONS.

*Sec. 29.24.650. OATHS OF OFFICE. Municipal officials, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk.

*Sec. 29.24.660. BONDING. The administrator and the other municipal officials or employees which the ~~assembly or council~~ governing body may designate shall give bond in the amount and with the surety prescribed by the assembly or council. Premiums on bonds are paid by the municipality.

****Sec. 29.24.670. SALARIES OF ELECTED OFFICIALS. The governing body shall by ordinance provide a method of determining the salaries of elected officials. The salary of the mayor may not be reduced during his term of office unless during his term a manager plan is adopted. An elected official may not receive any other compensation for service to the municipality unless otherwise provided by ordinance. Per diem payments or reimbursements for expenses are not compensation under this section.

~~****Sec. 29.24.680. PROHIBITIONS. (a)~~ Repeal.

(b) Repeal.

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve o a school district board in the school district where he is employed.

(d) For purposes of this section a school district employee is not a municipal employee.

Sec. 29.24.690. PERSONNEL SYSTEM. All appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system.

Sec. 29.24.700. REPORTS. (a) ~~Home rule and general law~~ Municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) repealed.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, toegther with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

Sec. 29.24.710. VACANCIES. An elected municipal office is vacated under the following conditions and upon the declaration of vacancy by the assembly or council. The assembly or council shall declare an elective office vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) is physically absent from the municipality for a 90-day period unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) is removed from office;

(6) misses three consecutive regular meetings unless excused; or

(7) is convicted of a felony or of an offense involving a violation of his oath of office.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.010. CONFLICT OF INTEREST. Each home rule and general law municipality shall adopt a conflicts-of-interest ordinance which, ~~other provisions of this chapter notwithstanding,~~ includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest.

EXPLANATION: The second sentence is deleted as redundant.

* unless excused by the presiding officer or by a

52 adopted as standard with provision that

provides that a member of a legislative body shall declare a substantial financial interest he has in an official action and ask to be excused. The presiding officer or ~~a~~ ~~majority of the legislative body~~ shall rule on the question; ~~and unless the majority~~ his decision ~~so~~ ~~may~~ ~~be~~ is overridden by the majority vote of the ~~legislative~~ body.

offices by bodies

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

ARTICLE 2. MUNICIPAL LEGISLATIVE BODIES

Sec. 29.24.050. GENERAL LEGISLATIVE POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

EXPLANATION: The second sentence is added. Rather than dealing with assemblies in one article and councils in another, this article will deal with both legislative bodies. No substantive change.

Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

EXPLANATION: This section contains material now found in AS 29.23.200(a). The material currently in (b) has been moved to the section on qualifications. No substantive change.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.140. QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the council. A member of the assembly who ceases to be a qualified borough voter immediately forfeits his office. A member of the council who ceases to be a qualified city voter immediately forfeits his office.

(b) A ~~legislative~~ body may by ordinance establish a durational residency requirement for its members not to exceed three years.

(c) An assembly or council member who represents an area less than that of the total borough or city and who becomes a resident of another area within the municipality may continue to serve until the next regular election unless provided otherwise by ordinance.

(d) A municipality may by ordinance establish district residency requirements for members of its ~~legislative~~ body.

EXPLANATION: The qualification for members of the council or assembly are combined since they are identical. Subsection (c) has been altered to allow a municipality the flexibility of providing otherwise by ordinance. Subsection (d) has been added to allow a municipality to impose additional district residency requirements.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three year terms and until their successors have qualified unless different terms not exceeding four years are prescribed by charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a ~~legislative~~ governing body is changed by charter or ordinance the term of an official holding office at the time the change becomes effective is not affected.

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

EXPLANATION: The term of both assembly and council members is combined into one section. ~~Under existing law different terms not exceeding four years may be prescribed. The four year maximum has been eliminated for greater flexibility.~~ The section is no longer mandatory for home rule municipalities.

Para. 605

Sec. 29.24.150. PROCEDURES OF ~~LEGISLATIVE~~ GOVERNING BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) A municipal ~~legislative~~ body shall hold at least one regular meeting every month, unless otherwise provided by ordinance. A special meeting may be held at the call of the presiding officer or at least one-third of the members provided a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held. A waiver shall be made a part of the journal for the meeting.

(c) A majority of the total membership of a ~~legislative~~ body authorized by law shall constitute a quorum. A member disqualified by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(d) Actions of a ~~legislative~~ body are adopted by a majority of members ~~authorized to vote on the question~~. All members present shall vote on every question unless they are required to abstain from voting on a question by law. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it is necessary only to so state.

(e) A ~~legislative~~ body shall maintain a journal of its official proceedings which shall be a public record.

(f) A ~~legislative~~ body may, consistent with law or charter, determine by ordinance its own rules of procedure and order of business.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.150.

EXPLANATION: Combines the procedures to be followed by both assemblies and councils. Allows a special meeting to be held if a majority of members receive actual notice whereas existing law allows for a meeting only if all members receive notice and if an emergency exists. Reference to the fact that meetings are public is deleted because that requirement is contained in AS 29.24.020. A requirement that the journal maintained by the legislative body be public was added in (e). The material concerned with the expulsion of members for committing a corrupt practice was moved to AS 29.23.070.

Sec. 29.24.160. DEPARTMENTS. Repeal

EXPLANATION: The material contained in this section is placed in an article dealing with municipal departments and employees.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.170. VACANCIES. The ~~legislative~~ governing body ~~shall~~ may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor. Unless otherwise provided by ordinance the ~~legislative~~ body ~~may~~ shall declare an elective office, other than the office of mayor, vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the ~~assembly or council~~ governing body, is physically absent from the municipality for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office as determined by 2/3 vote of the body;

(5) if a member of the ~~assembly or council~~ governing body, misses three consecutive regular meetings ~~unless excused~~ and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice and two-thirds of the members concur in expelling him

(8) [illegible] physically resides in the municipality and the body by 2/3 vote declares the ~~office~~ seat vacant

EXPLANATION: Allows the legislative body to provide the manner in which a vacancy occurs for all elected offices except for the office of mayor. If the body does not provide by ordinance situations which result in the vacancy of an office, the seven listed situations will result in a vacancy.

use term "governing body" uniformly and define in definitions

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.175. FILLING A VACANCY. (a) If a vacancy occurs in a ~~legislative~~ body, the remaining members shall within ~~30~~ days appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to serve the balance of the term. If less than 30 days remain in a term, a vacancy shall not be filled.

(b) Notwithstanding subsection (a), if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall within seven days appoint a number of qualified persons to constitute a quorum.

EXPLANATION: Contains material currently found in AS 29.23.080 and 29.23.220. Provides that no appointment shall be made where less than 30 days remain in a term. Subsection (b) was added to insure that a legislative body will be able to continue to function if the number of vacancies which occur destroys the possiblity of achieving a quorum.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

ARTICLE 3. MUNICIPAL EXECUTIVE

Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a municipality is vested in a mayor elected by the voters or by the ~~legislative~~ body as provided in this article.

(b) The mayor shall act as ~~ceremonial~~ head of government, execute official documents upon authorization of the ~~legislative~~ body, and is responsible for additional duties and powers prescribed by ~~ordinance~~.

EXPLANATION: Under current law the executive and administrator are dealt with in one article. It is proposed that one article deal with executive functions and a separate article deal with administrative functions. Therefore, this section eliminates the material dealing with administrative functions.

Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a borough or first class city shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor of a borough or first class city begins on the first Monday following certification of his election.

(b) The mayor of a second class city is elected by and from the council and serves until a successor is elected and has qualified. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately. The mayor of a second class city shall serve a one-year term unless a longer term ~~not to exceed four years~~ is provided by ordinance, except that the mayor of a second class city may serve only while he is a member of the ~~city~~ council regardless of the term established for the office of mayor.

(c) The governing body may not limit the number of terms a mayor may serve.

Repeal 29.24.[illegible]
29.24.[illegible]
29.24.[illegible]
29.24.[illegible]
29.24.[illegible]
29.24.[illegible]
29.24.[illegible]

(d) get wording from M.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a second class city is elected by and from the council.

(b) Except in 2nd class city, a ~~A~~ mayor shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, ~~except that~~ The current term of an incumbent mayor may not be altered. Except The regular term of a mayor commences on the first Monday following certification of his election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately. and serves a one year term.

(c) ~~The governing body may not~~ The number of terms may be limited by ordinance ratified by the majority of voters as a regular election.

EXPLANATION: This new section contains material currently found in AS 29.23.130(c) and 29.23.250. No substantive changes.

p.58 p.63

(c) The legislative body may not ~~by ordinance~~ limit the number of terms a mayor may serve.

(d) The mayor of a 2nd class city shall serve until the expiration of his current term as a council member unless a shorter period of not less than one year is provided by ordinance. Upon the expiration of the mayor's

The term of a mayor for a second class city shall be one year unless a different term not to exceed the ~~unexpired portion of the members term~~ is provided by ~~except that~~ ordinance, ~~[illegible]~~ term of office of a member of the ~~[illegible]~~ incumbent shall not have his term altered.

The mayor of a 2nd class city ~~shall~~ may serve only while he is a member of the city council regardless of the term established for the office of mayor.

Subcommittee

(d) A person elected for mayor will serve a one year term at the first regular meeting following

Sec. 29.24.206. QUALIFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter of a borough or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor in that city.

(b) Residency requirements for the office of mayor not exceeding three years may be prescribed by ordinance.

EXPLANATION: This section contains material now appearing in AS 29.23.130(b) and 29.23.250. No substantive change.

Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same powers and duties as those of the manager.

(b) The mayor may take part in the discussion of all matters before the ~~assembly or council~~.

(c) The mayor may not vote on any matter before the assembly or council, except that the mayor of a first class city may vote in the case of a tie and the mayor of a second class city may vote on all matters as a council member.

EXPLANATION: This section contains material currrently found in AS 29.23.130(a), AS 29.23.260, and AS 29.23.160. No substantive change.

Sec. 29.24.240. VETO. (a) Except as provided in subsections (c) and (d), the mayor may veto any ordinance, resolution, motion, or other action of the ~~legislative~~ body and may strike or reduce appropriation items.

(b) A veto must be exercised before the next regular meeting of the ~~legislative~~ body and must be accompanied by a written explanation of the reasons for that action. A veto may be overridden by vote of two-thirds of the authorized membership of the ~~legislative~~ body within 21 days following exercise of the veto or at the next regular meeting, whichever is later.

(c) The veto does not extend to

(1) appropriation items in a school budget ordinance;

(2) actions of the Board of Equalization or the Board of Adjustment;

(3) adoption or repeal of the manager form of government.

(d) The mayor of a ~~first~~ second class city has no veto power.

EXPLANATION: Contains material currently found in AS 29.23.170, 29.23.260, and 29.23.270. Adds a time period within which a veto must be overridden.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) ~~The assembly or council shall~~ provide by ordinance the manner in ~~which a vacancy occurs in the office of mayor. Unless otherwise provided by ordinance~~ the ~~legislative~~ body ~~may~~, upon two-thirds concurring vote, declare the office of mayor vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) ~~unless excused by the assembly or council~~, is physically absent for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) if a member of the assembly or council, he misses three consecutive regular meetings ~~unless excused~~;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; ~~or~~

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice; or

(b) Except as provided in subsection (c), a vacancy in the office of mayor occuring six months before a regular election shall be filled by the ~~legislative~~ body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the ~~legislative~~ body is chosen, he shall resign his seat on the assembly or council. If a vacancy occurs more than six months before a regular election, the ~~legislative~~ body shall call a special election to fill the unexpired term.

(c) ~~In~~ a second class city, the office of mayor is filled by and from the council.

(3) No longer physically resides in the municipality.

EXPLANATION: This section is enlarged to deal with a vacancy occuring in the office of city as well as borough mayor. Allows the legislative body to establish the manner in which a vacancy occurs in the office of mayor and supplies situations which may result in vacancy if the body does not provide an alternative.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.420. SCHOOL BOARDS. (a) Each ~~borough and city~~ municipal school district has a school board. ~~(b)~~ Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. ~~(c)~~ All board members are elected at large. unless a different method of election has been approved by the voters in a regular election.

EXPLANATION; The provision that school zones may be established as provided by Sec. 100 is deleted. AS 29.23.100 was repealed in 1972.

(1) ~~The number of members shall be determined by ordinance subject to voter approval.~~

(2) ~~The election of board members shall be the same as provided for members of the governing body unless provided otherwise by ordinance ratified by the voters.~~

Clarify status of trivial class borough members are assembly elected from districts

Ck: any constitutional problem

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. (a) The ~~assembly or council of a municipality~~ may, by ordinance, establish advisory, administrative, technical, or quasi-judicial boards and commissions.

(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the ~~assembly or council~~.

EXPLANATION: This is a new section authorizing the assembly or council to establish boards and commissions.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.480. APPOINTMENT OF OFFICERS. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative officer. Unless otherwise provided by ordinance, officers described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative officer, must be confirmed by the governing body.

EXPLANATION: This section has been technically redrafted. The only substantive change is that the confirmation of officers appointed by the administrator is not required if an ordinance is adopted directing otherwise. This section determines a method of appointment if none is provided by ordinance.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.510. MUNICIPAL TREASURER. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the ~~assembly or council~~ directs.

EXPLANATION: Reference to 14.14.060 is added since that section demands that the custodian of a centralized treasury containing school money be the borough administrator.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.160. DEPARTMENTS. Repeal.

Sec. 29.24.515. DEPARTMENTS. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

EXPLANATION: This new section is virtually identical to AS 29.24.160 except that stylistic changes apply this section to both cities and boroughs.

Sec. 29.24.570. ELECTION. Upon receipt of the petition or upon its own motion, the ~~assembly or council~~ shall provide by ordinance or resolution for a vote on the question at the next regular or special election.

EXPLANATION: Last line of existing section deleted due to possible confusion over notice requirements for elections contained in other sections which conflict.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
06 December 1980

Sec. 29.24.690. PERSONNEL SYSTEM. Repeal

Sec. 29.24.530. PERSONNEL SYSTEM. (a) Except as provided by (b) of this section, all appointments and promotions of municipal employees are made on the basis of merit. The ~~assembly or council~~ may provide for a personnel system and classified service.

(b) By ordinance the governing body may designate positions which are wholly or partially exempt from the classified service filled by persons who serve at the pleasure of their appointing authority and whose terms of employment are determined by their appointing authority.

EXPLANATION: Subsection (a) is essentially the same as the existing provisions of AS 29.24.690 except that officers are no longer required to be appointed on the basis of merit. Subsection (b) is new; this subsection allows the governing body to designate certain positions as executive positions and exempt persons occupying those positions from the classified service. This addition would allow municipalities to enact so called "executive plans" governing the wages, hours, and other terms and conditions of employment of high level executive employees.

confidential or managerial

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.~~450~~ 590. APPOINTMENT. The ~~assembly~~ council shall appoint a manager by a majority vote of its membership. He is chosen ~~solely~~ on the basis of his ~~executive and~~ administrative qualifications and receives the compensation set by the ~~assembly or council~~. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the ~~assembly or council~~ may at any time appoint one of its members or other elected municipal official as manager.

EXPLANATION: The word "officials" in the last line is changed to "official" so that it is clear that a committee of officials may not serve as manager.

Sec. 29.24.620. REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. Within 60 days after repeal, the ~~assembly or~~ council shall enact provisions for the reorganization of the municipal executive and administrative functions.

EXPLANATION: To allow for notice, 60 days is added. Otherwise this section may not comply with notice requirements for ordinances.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.210. POWERS AND DUTIES OF A BOROUGH ADMINISTRATOR. Repeal.

Sec. 29.24.390. POWERS AND DUTIES OF A CITY MANAGER. Repeal.

Sec 29.24.630. POWERS AND DUTIES OF A MANAGER. As chief administrative officer the manager shall

(1) appoint, suspend or remove municipal employees and administrative officers, except as provided otherwise in this title and AS 14.14.065; he may hire necessary administrative assistants and may authorize an administrative officer to appoint, suspend, or remove subordinates;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program adopted;

(4) make monthly financial reports and other reports on municipal finances and operations as required by the governing body;

(5) exercise care and custody over all real and personal property of the municipality except as provided otherwise in AS 29.36.040; ~~and~~

(6) perform other duties required by law or by action of the governing body. and

(7) Serve as personnel officer unless the governing body authorize him to appoint a personnel officer.

EXPLANATION: This new section is derived from AS 29.24.210 and 29.24.390 dealing with the duties of the borough administrator and with the duties of the city manager. Provisions relating to appointment and discipline of municipal employees have been consoldiated into paragraph (1). Paragraph (5) is derived from AS 29.23.140 allowing the manager to exercise care and custody over municipal property. A similar provision does not appear now with reference to the city manager and it is felt that this duty ought to apply. The language of AS 29.23.140(c)(10) relating to construction, maintenance, and operation of roads and public works is felt to be adequately covered by paragraph (3) directing the manager to execute the budget and capital improvement program.

Rules to amend (2)

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.200 (e) Repeal.

Sec. 29.24.640. INTERGOVERNMENT APPOINTMENTS. A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in this chapter. Nothing in this subsection affects the authority of the ~~assembly or council~~ to provide for other dual officeholding if the dual offices held are compatible, or otherwise to appoint officers and employees in accordance with law.

EXPLANATION: This section is derived intact from AS 29.24.200(e).

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.24.670. SALARIES OF ELECTED OFFICERS. The ~~assembl~~y or council shall by ordinance provide a method of determining the salaries of elected officers. The salary of the mayor may not be reduced during his term of office unless during his term a manager plan is adopted. An elected officer may not receive any other compensation for service to the municipality unless otherwise provided by ordinance. Per diem payments or reimbursements for expenses are not compensation under this section.

EXPLANATON: This change allows a local government the flexibility of establishing a salary commission or other method of determining salaries. Allows the mayor's salary to be reduced to reflect the change in his duties if a manager form of government is adopted. Grants flexibility to a municipality to allow an officer to receive other compensation for service to the municipality. This is important in small communities where the mayor, for example, may be the only electrician in town.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.24.680. PROHIBITIONS. (a) Repeal.

(b) Repeal.

(c) No change. Remove last sentence, et with tee.

(d) No change.

EXPLANATION: (a) and (b) are deleted because other state and federal laws mandate nondiscrimination and those provisions may not be identical to (a), which could create confusion. For example, (a) does not cover age, handicaps, or marital status. (a) might also create constitutional problems if interpreted to forbid affirmative action programs.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Proofed 12-30

## CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES

### Article 1. CONFLICT OF INTERESTS, PUBLIC MEETINGS

****Sec. 29.24.010. CONFLICT OF INTEREST. Each home rule and general law municipality shall adopt a conflicts-of-interest ordinance which provides that a member of a legislative body shall declare a substantial financial interest he has in an official action and ask to be excused from a vote on the matter. The presiding officer shall rule on the question. His decision may be overidden by the majority vote of the governing body.

Sec. 29.24.020. MEETINGS PUBLIC. Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

### Article 2. BOROUGH ASSEMBLY

****Sec. 29.24.050. (Sec. 29.23.010.) GENERAL POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

Sec. 29.24.060. ASSEMBLY COMPOSITION AND APPORTIONMENT. [Effective January 1, 1981].

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

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

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

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

Sec.29.24.070. COMPOSITION AND FORM OF REPRESENTATION. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.24.080.

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

Sec. 29.24.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.24.060. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.24.070(b)(2) or (b)(3) the assembly shall submit with the proposition of a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment meets the standards of AS 29.24.060 the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060.

At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registerd voters who are residents of the borough request the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.24.060 ~~(AS 29.23.021)~~, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.24.060 the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.090. APPORTIONMENT APPEALS. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.24.060 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of community and regional affairs

requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.24.060 or whether a decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under AS 29.24.080(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community and regional affairs to review a decision of the borough assembly under AS 29.24.080(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.24.060, or if he determines that the decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is not correct, the commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.24.060 and submit the ordinance to the voters.

(d) When the borough assembly has been directed by the commissioner of community and regional affairs to prepare a reapportionment ordinance under (c) of this section, the borough assembly shall, within two months of its receipt of the commissioner's order, adopt an ordinance providing for reapportionment. The borough assembly shall submit an

ordinance adopted under this subsection to the voters at a regular election or special election held within 60 days of the date of adoption of the reapportionment ordinance.

(e) If at the end of the time period provided under (d) of this seciton an ordinance providing for reapportionment has not been approved by the voters, the commissioner of community and regional affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.100. JUDICIAL REVIEW AND RELIEF. (a) The commissioner of community and regional affairs may request the superior court to enforce a reapportionment order issued under AS 29.24.090(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.24.080(a);

(2) a determination by the borough assembly under AS 29.24.080 that the standards of AS 29.24.060 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.24.080(d);

(4) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(c);

(5) a reapportionment ordinance approved by the voters under AS 29.24.090(d); and

(6) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(e);

Sec. 29.24.110 EFFECTIVE DATE OF APPORTIONMENT. (a) A change in assembly apportionment or composition under AS 29.23.080 or AS 29.24.090 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.24.080(a), AS 29.24.080(e), or AS 29.24.090(d); or

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(d).

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

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

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(e).

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

Sec. 29.24.120. APPLICABLITY OF APPORTIONMENT PROVISIONS. The provisions of AS 29.24.080-29.24.110 do not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390;

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

****Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The

council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

Sec. 29.24.130. REGULAR TERM OF OFFICE. (a) Assemblymen are selected for three-year terms and until their successors are selected and have qualified unless different terms not exceeding four years are prescribed by borough charter or ordinance. Except when otherwise required by a change of composition or apportionment, if the term of an assemblyman is changed by charter or ordinance, the term of an assemblyman holding office at the time the change takes effect is not affected by that change.

(b) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by borough charter or ordinance.

(c) This section applies to home rule and general law boroughs.

****Sec. 29.24.140 QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the council. A member of the assembly who ceases to be a qualified voter immediately forfeits his office. A member of the council who ceases to be a qualfied city voter immediately forfeits his office.

(b) A governing body may by ordinance establish a durational residency requirement for its members not to exceed three years.

(c) An assembly or council member who represents an area less than that of the total borough or city and who becomes a resident of another area within the municipality may continue to serve until the next regular election unless provided otherwise by ordinance.

(d) A municipality may by ordinance establish district residency requirements for members of its governing body.

****Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three-year terms and until their successors have qualified unless different terms not exceeding four years are prescribed by charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a governing body is changed by charter or ordinance the term of an official holding office at the time the change becomes effective is not affected.

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

****Sec. 29.24.150. PROCEDURES OF GOVERNING BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) A municipal governing body shall hold at least one regular meeting every month, unless otherwise provided by ordinance. A special meeting may be held at the call of the presiding officer or at least one-third of the members provided a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held. A waiver shall be made a part of the journal for the meeting.

(c) A majority of the total membership of a governing body authorized by law shall constitute a quorum. A member disqualifed by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(d) Actions of a governing body are adopted by a majority of the total membership of the body. All members present shall vote on every question unless they are required to abstain from voting on a question by law. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it is necessary only to so state.

(e) A governing body shall maintain a journal of its official proceedings which shall be a public record.

(f) A governing body may, consistent with law or charter, determine by ordinance its own rule of procedure and order of business.

****Sec. 29.24.160. DEPARTMENTS. Repeal.

****Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor, vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent from the municipality for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office as determined by two-thirds vote of the governing body;

(5) if a member of the governing body, misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice and two-thirds of the members of the governing body concur in expelling him;

(8) no longer physically resides in the municipality and the governing body by two-thirds vote declares the seat vacant.

****Sec. 29.24.175. FILLING A VACANCY. (a) If a vacancy occurs in a governing body, the remaining members shall within 30 days, unless a different period is provided by ordinance, appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to service the balance of the term. If less than 30 days remain in a term, a vacancy shall not be filled.

(b) Notwithstanding subsection (a), if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall within seven days appoint a number of qualified persons to constitute a quorum. ~~election.~~

Article 3. BOROUGH EXECUTIVE AND ADMINISTRATOR

****Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a municipality is vested in a mayor elected by the voters or by the governing body as provided in this article.

(b) The mayor shall act as ceremonial head of government, execute official documents upon authorization of the governing body, and is responsible for additional duties and powers prescribed by this chapter.

****Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a borough or first class city shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor of a borough or first class city begins on the first Monday following certification of his election.

(b) The mayor of a second class city is elected by and from the council and serves until a successor is elected and has qualified. The council of a second class city shall meet on the first Monday after certifi-

cation of the regular election and elect a mayor who takes office immediately. The mayor of a second class city shall serve a one-year term unless a longer term is provided by ordinance, except that the mayor of a second class city may serve only while he is a member of the council regardless of the term established for the office of mayor.

(c) The governing body may not limit the number of terms a mayor may serve.

****Sec. 29.24.206. QUALFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter of a borough or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor in that city.

(b) Residency requirements for the office of mayor not exceeding three years may be prescribed by ordinance.

****Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same powers and duties as those of the manager.

(b) The mayor may take part in the discussion of all matters before the governing body.

(c) The mayor may not vote on any matter before the governing body, except that the mayor of a first class city may vote in the case of a tie and the mayor of a second class city may vote on all matters as a council member.

Sec. 29.24.220. EXECUTIVE ABSENCE. The borough mayor, subject to assembly approval, shall designate a person to act as mayor during the mayor's temporary absence or disability. If a manager plan has been adopted, the assembly shall designate by resolution a borough administrative officer to act as manager during his absence or disability.

Sec. 29.24.230. ASSEMBLY PARTICIPATION. The borough mayor may take part in the discussion of all matters before the assembly but may not vote.

****Sec. 29.24.240. VETO. (a) Except as provided in subsections (c) and (d), the mayor may veto any ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items.

(b) A veto must be exercised before the next regular meeting of the governing body and must be accompanied by a written explanation of the reasons for that action. A veto may be overridden by vote of two-thirds of the authorized membership of the governing body within 21 days following exercise of the veto or at the next regular meeting, whichever is later.

(c) The veto does not extend to

(1) appropriation items in a school budget ordinance;

(2) actions of the board of equalization or the board of adjustment;

(3) adoption or repeal of the manager form of government.

(d) The mayor of a third class borough and the mayor of a second class city has no veto power.

****Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) The governing body shall, upon two-thirds concurring vote, declare the office of mayor vacant only when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) if, as a member of the assembly or council, he misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office;

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice; or

(8) no longer physically resides in the municipality.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occuring six months before a regular election shall be filled by the governing body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the governing body is chosen, he shall resign his seat on the assembly or council. If a vacancy occurs more than six months before a regular election the governing body shall call a special election to fill the unexpired term.

(c) Notwithstanding (b) of this section, in a second class city, the office of mayor is filled by and from the council and retains his seat on the council.

Article 4. CITY COUNCIL

Sec. 29.24.280. COMPOSITION, ELIGIBILITY, ELECTION AND TERM. (a) Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

(b) A city voter is eligible to hold office as a member of the council. The council may by ordinance establish residence requirements for council members not exceeding three years. A council member who ceases to be eligible to be a city voter immediately forfeits that office.

(c) Councilmen are selected for three-year terms and until their successors are elected and have qualified. The regular term of office begins on the first Monday following certification of the election. The council may

provide by ordinance for different terms not to exceed four years, except that the current term of incumbent councilmen may not be altered.

Sec. 29.24.290. PROCEDURE. (a) The council shall meet at least once every month, unless otherwise provided by ordinance. Special meetings may be held on the call of the mayor or two councilmen upon not less than 24 hours written or oral notice communicated to each member. In an emergency, a special meeting called on less than 24 hours notice is a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be made either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The council is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The council shall consider that conviction during its first meeting following final determination of the conviction.

(c) Four councilmen constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

(d) The final vote on each ordinance, resolution, or substantive motion is a recorded roll call vote. All councilmen present shall vote unless the council, for special reasons, permits a member to abstain.

Sec. 29.24.300. FILLING A VACANCY. If a vacancy occurs in the council, the council by vote of a majority of its remaining members shall designate a person to fill the vacancy until the next regular election, and until a successor is elected and has qualified.

Upper Case

Article 5. City Executive and Administrator

****Sec. 29.24.330. Repeal

****Sec. 29.24.340. Repeal.

****Sec. 29.24.350. Repeal

****Sec. 29.24.360. Repeal.

****Sec. 29.24.370. Repeal.

****Sec. 29.24.380. Repeal.

****Sec. 29.24.390. Repeal.

Article 6. SCHOOL BOARDS

****Sec. 29.24.240. SCHOOL BOARDS. (a) Each municipal school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large unless a different method of election has been approved by the voters in a regular election.

(b) Nothwithstanding (a) of this section, assembly members in a third class borough serve as the school board and the mayor is president of the school board.

****Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. (a) The governing body may, by ordinance, establish advisory, administrative, technical, or quasi-judicial boards and commissions.

(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the governing body.

Article 7. UTILITY BOARDS

Sec. 29.24.450. UTILITY BOARDS. (a) The assembly or council of a municipality operating a public utility may provide by ordinance for a managing board of five members and define the board's powers and duties.

(b) As determined by ordinance, members of the board are appointed by the municipal executive and confirmed by the assembly or council or are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. The term of a utility board member is two years and until a successor is selected and has qualified. However, the assembly or council may by ordinance provide for a different term not to exceed four years and not altering the current term of an elected incumbent.

(c) Vacancies in the board are filled by the municipal executive. Executive appointments shall be confirmed by the assembly or council. A person selected to fill a vacancy on a utility board serves until the expiration of the term and until a successor is elected and has qualified.

(d) Unless otherwise provided by ordinance, the board shall

(1) choose its chairman and secretary;

(2) appoint the manager of the public utility for a term not longer than five years and set his salary;

(3) formulate and enforce the general rules and policies of the utility.

## Article 8. OTHER OFFICERS AND EMPLOYEES

****Sec. 29.24.480. APPOINTMENT OF OFFICERS. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative official. Unless otherwise provided by ordinance, officials described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative official, must be confirmed by the governing body.

Sec. 29.24.490. MUNICIPAL ATTORNEY. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

Sec. 29.24.500. MUNICIPAL CLERK. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

****Sec. 29.24.510. MUNICIPAL TREASURER. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the governing body directs.

****Sec. 29.24.515. DEPARTMENTS. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

Sec. 29.24.520. APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS. (a) Notwithstanding AS 39.05.100 or a provision of law relating to age, the municipal appointing authority for a municipal board or commission may appoint a 17-21 year old municipal resident to the board or commission if recommended by the commission, established in AS 29.68.020 of this chapter.

(b) A young person recommended by the commission may be appointed to a municipal board or commission having special qualifications for membership if the proposed nominee, except for his age, meets the required qualifications set by law.

(c) An individual appointed to a municipal board or commission under this section is entitled to the rights, privileges and responsibilities of other members, and his appointment is subject to confirmation by the governing body when required by law.

(d) No additional seat on a municipal board or commission is created by virtue of AS 29.68.

****Sec. 29.24.530. PERSONNEL SYSTEM. (a) Except as provided by (b) of this section, all appointments and promotions of municipal employees are made on the basis of merit. The governing body may provide for a personnel system and classified service.

(b) By ordinance the governing body may designate positions which are wholly or partially exempt from the classified service filled by persons who serve at the pleasure of their appointing authority and whose terms of employment are determined by their appointing authority.

## Article 9. ADOPTION OR REPEAL OF MANAGER PLAN

Sec. 29.24.550. APPLICATION. A municipality may adopt a manager plan of government.

Sec. 29.24.560. PETITION. Adoption of a manager plan may be initated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council.

The petition must be signed by a number of municipal voters equal to the following percent of the votes cast at the preceding regular election:

(1) 25 percent when the municipality has fewer than 7,500 persons;

(2) 15 percent when the municipality has 7,500 persons or more.

****Sec. 29.24.570. ELECTION. Upon receipt of the petition or upon its own motion, the governing body shall provide by ordinance or resolution for a vote on the question at the next regular or special election.

Sec. 29.24.580. ADOPTION. (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

****Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the governing body may at any time appoint one of its members or other elected municipal official as manager.

Sec. 29.24.600. TERM. Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council.

Sec. 29.24.610. APPOINTMENT OF TEMPORARY OR NEW MANAGER. In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office becomes vacant, the assembly or council shall appoint a new manager.

****Sec. 29.24.620. REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. Within 60 days after repeal, the governing body shall enact provisions for the reorganization of the municipal executive and administrative functions.

****Sec. 29.24.630. POWERS AND DUTIES OF A MANAGER. As chief administrator the manager shall

(1) appoint, susperd, or remove municipal employees and administrative officials, except as provided otherwise in this title and AS 14.14.065; he may hire necessary administrative assistants and may authorize an administrative official to appoint suspend, or remove subordinates;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program adopted;

(4) make monthly financial reports and other reports on municipal finances and operations as required by the governing body;

(5) exercise care and custody over all real and personal property of the municipality except as provided otherwise in AS 29.36.040;

(6) perform other duties required by law or by action of the governing body; and

(7) serve as personnel officer unless the governing body authorizes him to appoint a personnel officer.

****Sec. 29.24.640. INTERGOVERNMENT APPOINTMENTS. A borough adopting a manager plan, may by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in this chapter. Nothing in this subsection affects the authority of the governing body to provide for other dual officeholding if the dual offices held are compatible, or otherwise to appoint officials and employees in accordance with law.

## Article 10. MISCELLANEOUS PROVISIONS

*Sec. 29.24.650. OATHS OF OFFICE. Municipal officials, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk.

*Sec. 29.24.660. BONDING. The administrator and the other municipal officials or employees which the assembly or council may designate shall give bond in the amount and with the surety prescribed by the assembly or council. Premiums on bonds are paid by the municipality.

****Sec. 29.24.670. SALARIES OF ELECTED OFFICIALS. The governing body shall by ordinance provide a method of determining the salaries of elected officials. The salary of the mayor may not be reduced during his term of office unless during his term a manager plan is adopted. An elected official may not receive any other compensation for service to the municipality unless otherwise provided by ordinance. Per diem payments or reimbursements for expenses are not compensation under this section.

****Sec. 29.24.680. PROHIBITIONS. (a) Repeal.

(b) Repeal.

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed.

(d) For purposes of this section a school district employee is not a municipal employee.

Sec. 29.24.690. PERSONNEL SYSTEM. All appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system.

Sec. 29.24.700. REPORTS. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) repealed.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, toegther with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62 The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

Sec. 29.24.710. VACANCIES. An elected municipal office is vacated under the following conditions and upon the declaration of

vacancy by the assembly or council. The assembly or council shall declare an elective office vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) is physically absent from the municipality for a 90-day period unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) is removed from office;

(6) misses three consecutive regular meetings unless excused; or

(7) is convicted of a felony or of an offense involving a violation of his oath of office.

CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES

(CHAPTER 23. MUNICIPAL OFFICERS AND EMPLOYEES)

Article 1. CONFLICT OF INTERESTS, PUBLIC MEETINGS

Sec. 29.24.010. (Sec. 29.23.555.) CONFLICT OF INTERESTS. Each home rule and general law municipality shall adopt a conflict-of-interests ordinance which, other provisions of this chapter notwithstanding, includes provision that an officer or employee shall declare & ask to be disqualify himself from excused participating in any official action in which he has a substantial financial interest. If a home rule or general law municipality fails to adopt such a conflict-of-interests ordinance within 90 days from September 10, 1972, the conflict-of-interests provision of this section is automatically applicable to and binding upon that municipality.

Sec. 29.24.020. (Sec. 29.23.580.) MEETINGS PUBLIC. Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

Article 2. BOROUGH ASSEMBLY

(Article 1. BOROUGH ASSEMBLY)

Sec. 29.24.050. (Sec. 29.23.010.) GENERAL POWER. The legislative power of a borough is vested in the assembly.

Sec. 29.24.060. (Sec. 29.23.021.) ASSEMBLY COMPOSITION AND APPORTIONMENT. [Effective January 1, 1981].

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

(b) The assembly of a newly incorporated borough is, after incorporation and until the adoption of an ordinance providing for a change in composition or apportionment, composed of the number of members and apportioned as set out in the incorporation petition approved by the voters.

If the borough is already incorporated, the assembly shall be composed and apportioned in a manner that is consistent with the requirements of this section and prescribed by charter or ordinance.

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

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

Sec.29.24.070. (Sec. 29.23.023.) COMPOSITION AND FORM OF REPRESENTATION. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.24.080 [AS 29.23.025(a)].

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190-29.12.390 (AS 29.68.240-29.68.440);

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

Sec. 29.24.080. (Sec. 29.23.025.) ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.24.060 (AS 29.23.021). If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.24.070(b)(2) or (b)(3) [AS 29.23.023(b)(2) or (b)(3)], the assembly shall submit with the proposition of a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly

determines that its existing apportionment meets the standards of AS 29.24.060 (AS 29.23.021), the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060 (AS 29.23.021). At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registerd voters who are residents of the borough request the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.24.060 (AS 29.23.021), and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.24.060 (AS 29.23.021), the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS

29.24.060 (AS 29.23.021) by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.090. (Sec. 29.23.027) APPORTIONMENT APPEALS. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.24.060 (AS 29.23.021) do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of community and regional affairs requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.24.060 (AS 29.23.021), or whether a decision of the borough assembly that the standards of AS 29.24.060 (AS 29.23.021) do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under AS 29.24.080(e) [AS 29.23.025(e)], the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community and regional affairs to review a decision of the borough assembly under AS 29.24.080(c) [AS 29.23.025(c)], the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.24.060 (AS 29.23.021), or if he determines that the decision of the borough assembly that the standards of

AS 29.24.060 (AS 29.23.021) do not require a change of apportionment is not correct, the commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.24.060 (AS 29.23.021) and submit the ordinance to the voters.

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

(e) If at the end of the time period provided under (d) of this seciton an ordinance providing for reapportionment has not been approved by the voters, the commissioner of community and regional affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.24.060 (AS 29.23.021) by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.100. (Sec. 29.23.029) JUDICIAL REVIEW AND RELIEF. (a) The commissioner of community and regional affairs may request the superior court to enforce a reapportionment order issued under AS 29.24.090(e) [AS 29.23.027(e)].

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

(1) a plan of reapportionment approved by the voters under AS 29.24.080(a) [AS 29.23.025(a)];

(2) a determination by the borough assembly under AS 29.24.080 [AS 29.23.025(c)] that the standards of AS 29.24.060 (AS 29.23.021) do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.24.080(d) [AS 29.23.025(d)];

(4) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(c) [AS 29.23.027(c)];

(5) a reapportionment ordinance approved by the voters under AS 29.24.090(d) [AS 29.23.027(d)]; and

(6) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090 (e) [AS 29.23.027(e)].

Sec. 29.24.110 (Sec. 29.23.031) EFFECTIVE DATE OF APPORTIONMENT. (a) A change in assembly apportionment or composition under AS 29.23.080 (AS 29.23.025) or AS 29.24.090 (AS 29.23.027) is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.24.080(a) [29.23.025(a)], AS 29.24.080(e) [29.23.025(e)], or AS 29.24.090(d) [29.23.027(d)]; or

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(d) [29.23.027(e)].

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

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

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(e) [AS 29.23.027(e)].

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

Sec. 29.24.120. (Sec. 29.23.033) APPLICABLITY OF APPORTIONMENT PROVISIONS. The provisions of AS 29.24.080-29.24.110 (AS 29.23.025 - 29.23.031) do not apply

(1) to a unified municipality incorporated under AS 29.12.190-29.12.390 (AS 29.68.240 - 29.68.440);

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

Sec. 29.24.130. (Sec. 29.23.040.) REGULAR TERM OF OFFICE. (a) Assemblymen are selected for three-year terms and until their successors are selected and have qualified, unless different terms not exceeding four years are prescribed by borough charter or ordinance. Except when otherwise required by a change of composition or apportionment, if the term of an assemblyman is changed by charter or ordinance, the term of an assemblyman holding office at the time the change takes effect is not affected by that change.

(b) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by borough charter or ordinance.

(c) This section applies to home rule and general law boroughs.

Sec. 29.24.140. (Sec. 29.23.050.) QUALIFICATIONS. A resident of the borough is eligible to be an assemblyman if he is a borough voter. An assemblyman who ceases to be a borough voter immediately forfeits his office. An assemblyman elected from or selected to represent a borough area

less than the borough area at large and who becomes a resident of another area may continue to serve only until the next regular election. The assembly may by ordinance establish residence requirements for assemblymen not exceeding three years. This section applies to home rule and general law boroughs.

Sec. 29.24.150. (Sec. 29.23.060.) PROCEDURE. (a) The assembly shall meet at least once every month, unless otherwise provided by ordinance. All meetings shall be public meetings. Special meetings may be held on the call of the chairman, the presiding officer, or one-third of the members, upon not less than 24 hours written or oral notice communicated to each member. In an emergency a special meeting shall be a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at its pleasure, except that in manager plan boroughs the borough mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(c) The assembly shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The assembly is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The assembly shall consider a conviction of a member for a felony or misdemeanor described in AS 15.56 as a corrupt practice at its first meeting following the final determination of the conviction.

(d) A majority of the membership authorized by law constitutes a quorum. In the absence of a quorum, any number less than a quorum may recess or adjourn the meeting to a later date. Actions of the assembly are adopted by a majority of the votes authorized on the question. All assemblymen present shall vote unless the assembly for special reasons permits a member to abstain, except no assemblyman may vote on a question in which he has a substantial direct or indirect financial interest.

(e) The final vote on each ordinance, resolution, or substantive motion is a recorded "yes" or "no", except that if the vote is unanimous it is necessary only so to state.

(f) Repealed by Sec. 16 ch 118 SLA 1972.

(g) Repealed by Sec. 16 ch 118 SLA 1972.

(h) Repealed by Sec. 16 ch 118 SLA 1972.

(j) Repealed by Sec. 16 ch 118 SLA 1972.

Sec. 29.24.160. (Sec. 29.23.070.) DEPARTMENTS. (a) The assembly may establish departments and distribute administrative functions among them.

(b) Each department is administered by a department head. With the consent of the assembly, the borough mayor may serve as the head of one or more departments or may appoint one person as the head of two or more departments.

Sec. 29.24.170. (Sec. 29.23.080.) ASSEMBLY VACANCIES. The assembly shall provide by ordinance the manner in which a vacancy in assembly representation occurs. A vacancy is filled by the majority of the remaining assemblymen, who designate a voter and, if the assembly seat vacated is other than an at-large seat, a resident of the borough area to which the seat was apportioned, to serve until the next regular election. However, if under a borough apportionment city councilmen are appointed as assemblymen or elected to dual assemblycouncil seats, a vacancy in a councilman's seat

on the assembly shall be filled by a councilman designated by a majority of the remaining membership of the council to serve until the next regular election.

Article 3. BOROUGH EXECUTIVE AND ADMINISTRATOR

(Article 2. BOROUGH EXECUTIVE AND ADMINISTRATOR

Sec. 29.24.200. (Sec. 29.23.130.) POWER GENERALLY. (a) If the borough has not adopted a manager plan, the borough executive and administrative power is vested in an elected borough mayor. If the borough has adopted a manager plan, the administrative power is vested in an appointed manager and the executive power in an elected borough mayor who has the same functions as those of the mayor of a manager-plan city under Sec. 330 (Sec. 240) of this chapter.

(b) A borough voter is eligible to be borough mayor. The assembly may by ordinance establish residency requirements for candidates for borough mayor not exceeding three years.

(c) The borough mayor's regular term of office is three years and until a successor is elected and has qualified and begins on the first Monday following certification of the mayor's election. The assembly may provide by ordinance for a different term not to exceed four years, except that the current term of an incumbent borough mayor may not be altered.

(d) A borough may adopt or abandon a manager plan at any time, as provided in Secs. 550-620 (Secs. 410-480) of this chapter. The borough mayor may not veto an ordinance or resolution calling for an election on this question. The manager has all the powers and duties of the borough mayor as chief administrative officer. The borough mayor then serves as borough executive.

(e) A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a

manager plan may, by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in Secs. 200-220 (Secs. 130-150) and Secs. 590-610 (Secs. 450 - 470) of this chapter. Nothing in this subsection affects the authority of the assembly or council to provide for other dual officeholding if the dual offices held are compatible or otherwise to appoint officers and employees in accordance with law.

(f) The assembly, with the concurrence of two-thirds of its members, may remove the borough mayor from office for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The assembly shall consider a conviction of the borough mayor of a felony or misdemeanor described in AS 15.56 as a corrupt practice at its first meeting following the final determination of the conviction.

Sec. 29.24.210. (Sec. 29.23.140.) POWERS AND DUTIES OF BOROUGH ADMINISTRATOR. The borough mayor or manager as the case may be, as the chief administrative officer, is responsible for the proper administration of all borough affairs. The mayor or manager of the borough shall

(1) appoint borough employees and administrative officers, except as provided otherwise in Sec. 480 (Sec. 360) of this chapter and (AS 29.33.050); he may hire necessary administrative assistants and may authorize an appointive administrative officer to appoint, suspend, or remove subordinates in his department;

(2) suspend or remove by written order borough employees and administrative officers, except as provided otherwise in Sec. 480 (Sec. 360) of this chapter and (AS 29.33.050);

(3) supervise enforcement of borough law;

(4) prepare the annual budget and capital improvements program for the assembly;

(5) execute the budget and capital improvement program as adopted;

(6) make monthly reports to the assembly on borough finances and operations;

(7) report to the assembly at the end of each fiscal year on the finances and administrative activities of the borough;

(8) prepare and make available for public distribution an annual report on borough affairs;

(9) serve as borough personnel officer unless the assembly authorizes him to appoint a personnel officer;

(10) direct and supervise the administration of

(A) the functions of all borough officers and employees except as provided otherwise in this title;

(B) the care and custody of all borough buildings and of all real and personal property of the borough, except as provided otherwise by AS (29.33.050);

(C) the construction, maintenance, and operation of all borough roads, bridges, drains, buildings and other public works;

(11) execute other powers or duties specified in this title or lawfully prescribed by the assembly.

Sec. 29.24.220. (Sec. 29.23.150.) EXECUTIVE ABSENCE. The borough mayor, subject to assembly approval, shall designate a person to act as mayor during the mayor's temporary absence or disability. If a manager plan has been adopted, the assembly shall designate by resolution a borough administrative officer to act as manager during his absence or disability.

Sec. 29.24.230. (Sec. 29.23.160.) ASSEMBLY PARTICIPATION. The borough mayor may take part in the discussion of all matters before the assembly but may not vote.

Sec. 29.24.240. (Sec. 29.23.170.) VETO. (a) Except as provided in (b) of this section, the borough mayor may veto any ordinance, resolution,

motion or other action of the assembly and may, by veto, strike or reduce items in appropriation ordinances except for school budget items. He shall submit to the assembly at its next regular meeting a written statement advising of his veto and giving his reasons. His veto may be overridden by two-thirds of all the votes to which the assembly is entitled on the question.

(b) The borough mayor may not veto actions of the assembly taken under Sec. 200(d) [Sec. 130(d)] of this chapter or actions of the board of equalization and the board of adjustment.

Sec. 29.24.250. (Sec. 29.23.180.) FILLING A VACANCY. A vacancy in the office of the borough mayor occurring within six months of a regular election shall be filled by the assembly. The person designated shall serve until the next regular election and until a successor is elected and has qualified. If an assemblyman is chosen, he shall resign his assembly seat. If a vacancy occurs more than six months before a regular election, the assembly shall call a special election to fill the unexpired term.

Article 4. CITY COUNCIL

(Article 3. CITY COUNCIL)

Sec. 29.24.280. (Sec. 29.23.200.) COMPOSITION, ELIGIBILITY, ELECTION AND TERM. (a) Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

(b) A city voter is eligible to hold office as a member of the council. The council may by ordinance establish residence requirements for council members not exceeding three years. A council member who ceases to be eligible to be a city voter immediately forfeits that office.

(c) Councilmen are selected for three-year terms and until their successors are elected and have qualified. The regular term of office begins on the first Monday following certification of the election. The council may provide by ordinance for different terms not to exceed four years, except that the current term of incumbent councilmen may not be altered.

Sec. 29.24.290. (Sec. 29.23.210.) PROCEDURE. (a) The council shall meet at least once every month, unless otherwise provided by ordinance. Special meetings may be held on the call of the mayor or two councilmen upon not less than 24 hours written or oral notice communicated to each member. In an emergency, a special meeting called on less than 24 hours notice is a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be made either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The council is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The council shall consider that conviction during its first meeting following final determination of the conviction.

(c) Four councilmen constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

(d) The final vote on each ordinance, resolution, or substantive motion is a recorded roll call vote. All councilmen present shall vote unless the council, for special reasons, permits a member to abstain.

Sec. 29.24.300. (Sec. 29.23.220.) FILLING A VACANCY. If a vacancy occurs in the council, the council by vote of a majority of its remaining members shall designate a person to fill the vacancy until the next regular election, and until a successor is elected and has qualified.

Article 5 CITY EXECUTIVE AND ADMINISTRATOR

(Article 4. CITY EXECUTIVE AND ADMINISTRATOR)

Sec. 29.24.330. (Sec. 29.23.240.) MAYOR. Each city has a mayor as executive who shall preside at council meetings, act as ceremonial head of the city, and sign documents on the city's behalf upon council authorization. In cities which have not adopted a manager plan, the mayor is responsible for the duties listed in Sec. 390 (Sec. 290) of this chapter.

Sec. 29.24.340. (Sec. 29.23.250.) ELECTION AND TERM OF MAYOR. (a) A voter of a home rule or general law city is eligible to hold the office of mayor, except that a home rule city may prescribe additional residency requirements by charter. The council, for all other cities, may by ordinance establish residence requirements for candidates for mayor not exceeding three years.

(b) The mayor of a first class city is elected at large for a term of three years and until a successor is elected and has qualified. The council may provide by ordinance for a different term not to exceed four years, except that the current term of an incumbent mayor may not be altered.

(c) The mayor of a second class city is elected by and from the council for a term of one year and until a successor is elected and has qualified.

(d) The mayor's regular term begins on the first Monday following certification of the mayor's election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately.

Sec.29.24.350. (Sec. 29.23.255) REMOVAL FROM OFFICE. The council may, with concurrence of two-thirds of its members, remove the mayor from office for a conviction of a felony or misdemeanor described in AS 15.56 as a corrupt practice. The council shall consider the conviction during its first meeting following final determination of the conviction.

Sec. 29.24.360. (Sec. 29.23.260.) MAYOR'S VOTE. (a) The mayor of a first class city is not a council member and may vote only in the case of a tie.

(b) The mayor of a second class city is a council member and may vote on all matters.

Sec. 29.24.370. (Sec. 29.23.270.) VETO. (a) The mayor of a first class city may veto any ordinance, resolution, motion, or other action of the council and may, by veto, strike or reduce items in appropriation ordinances except, in a city outside an organized borough, for school budget items. He shall submit to the council at its next regular meeting a written statement advising of his veto and giving his reasons. A veto is overridden by the vote of two-thirds of the authorized membership of the council.

(b) The mayor of a second class city has no veto power.

Sec. 29.24.380. (Sec. 29.23.280.) FILLING A VACANCY. (a) In a first class city, a vacancy in the office of mayor occurring within six months of a regular election shall be filled by the council. The person designated shall serve until the next regular election and until a successor is elected and has qualified. If a councilman is chosen, he shall resign his council seat. If a vacancy occurs more than six months before a regular election, the council shall call a special election to fill the unexpired term.

(b) In a second class city, a vacancy in the office of mayor is filled by and from the council.

Sec. 29.24.390. (Sec. 29.23.290.) POWERS AND DUTIES OF A CITY MANAGER. If the city has a manager, he is the chief administrative officer. The manager shall

(1) appoint city employees and administrative officers, except as provided otherwise in Sec. 480 (Sec. 360) of this chapter and AS 14.14.065; he may hire necessary administrative assistants and may authorize an appointive administrative officer to appoint, suspend, or remove subordinates in his department;

(2) suspend or remove by written order city employees and administrative officers, except as provided otherwise in Sec. 480 (Sec. 360) of this chapter and AS 14.14.065;

(3) supervise enforcement of city law;

(4) prepare the annual budget and capital improvement program for the council;

(5) execute the budget and capital program as adopted;

(6) make monthly financial reports to the council on city finances and operations;

(7) report to the council at the end of each fiscal year on the finances and administrative activities of the city;

(8) prepare and make available for public distribution an annual report on city affairs;

(9) serve as city personnel officer unless the council authorizes him to appoint a personnel officer;

(10) execute other powers and duties specified in this title or lawfully prescribed by the council.

Article 6. SCHOOL BOARDS

(Article 5. SCHOOL BOARDS)

Sec. 29.24.420. (Sec. 29.23.310.) ELECTION. Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, for three-year terms and until their successors take office. All board members are elected at large, but school zones for the election of borough school boards may be established, altered, or abolished as provided by (Sec. 100) of this chapter.

Article 7. UTILITY BOARDS

(Article 6. UTILITY BOARDS)

Sec. 29.24.450. (Sec. 29.23.340.) UTILITY BOARDS. (a) The assembly or council of a municipality operating a public utility may provide by ordinance for a managing board of five members and define the board's powers and duties.

(b) As determined by ordinance, members of the board are appointed by the municipal executive and confirmed by the assembly or council or are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. The term of a utility board member is two years and until a successor is selected and has qualified. However, the assembly or council may by ordinance provide for a different term not to exceed four years and not altering the current term of an elected incumbent.

(c) Vacancies in the board are filled by the municipal executive. Executive appointments shall be confirmed by the assembly or council. A person selected to fill a vacancy on a utility board serves until the expiration of the term and until a successor is elected and has qualified.

(d) Unless otherwise provided by ordinance, the board shall

(1) choose its chairman and secretary;

(2) appoint the manager of the public utility for a term not longer than five years and set his salary;

(3) formulate and enforce the general rules and policies of the utility.

Article 8. OTHER OFFICERS AND EMPLOYEES

(Article 7. OTHER OFFICERS AND EMPLOYEES)

Sec. 29.24.480. (Sec. 29.23.360.) APPOINTMENT OF OFFICERS. The municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrator or by the assembly or council, as determined by

ordinance. Officers serve at the pleasure of the appointing authority, subject to ordinance Appointments by the chief administrator are subject to confirmation by the governing body.

Sec. 29.24.490. (Sec. 29.23.370.) MUNICIPAL ATTORNEY. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

Sec. 29.24.500. (Sec. 29.23.380.) MUNICIPAL CLERK. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

Sec. 29.24.510. (Sec. 29.23.390.) MUNICIPAL TREASURER. (a) The treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the assembly or council directs.

Sec. 29.24.520. (Sec. 29.23.401.) APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS. (a) Notwithstanding AS 39.05.100 or a provision of law relating to age, the municipal appointing authority for a municipal board or commission may appoint a 17-21 year old municipal resident to the board or commission if recommended by the commission, established in AS 29.68.020 (Sec. 397) of this chapter.

(b) A young person recommended by the commission may be appointed to a municipal board or commission having special qualifications for membership if the proposed nominee, except for his age, meets the required qualifications set by law.

(c) An individual appointed to a municipal board or commission under this section is entitled to the rights, privileges and responsibilities of other members, and his appointment is subject to confirmation by the governing body when required by law.

(d) No additional seat on a municipal board or commission is created by virtue of AS 29.68 (Secs. 395-401) of this chapter.

Article 9. ADOPTION OR REPEAL OF MANAGER PLAN

(Article 8. ADOPTION OR REPEAL OF MANAGER PLAN)

Sec. 29.24.550. (Sec. 29.23.410.) APPLICATION. A municipality may adopt a manager plan of government.

Sec. 29.24.560. (Sec. 29.23.420.) PETITION. Adoption of a manager plan may be initated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council. The petition must be signed by a number of municipal voters equal to the following per cent of the votes cast at the preceding regular election:

(1) 25 percent when the municipality has fewer than 7,500 persons;

(2) 15 percent when the municipality has 7,500 persons or more.

Sec. 29.24.570. (Sec. 29.23.430.) ELECTION. Upon receipt of the petition or upon its motion, the assembly or council shall provide by ordinance or resolution for a vote on the question at the next regular or special election. Notice of the election shall be published at least 30 days before the election.

Sec. 29.24.580. (Sec. 29.23.440.) ADOPTION. (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

Sec. 29.24.590. (Sec. 29.23.450.) APPOINTMENT. The assembly or council shall appoint a manager by a majority vote of its membership. He is chosen solely on the basis of his executive and administrative qualifications and receives the compensation set by the assembly or council. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the assembly or council may at any time appoint one of its members or other elected municipal officials as manager.

Sec. 29.24.600. (Sec. 29.23.460.) TERM. Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council.

Sec. 29.24.610. (Sec. 29.23.470.) APPOINTMENT OF TEMPORARY OR NEW MANAGER. In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office becomes vacant, the assembly or council shall appoint a new manager.

Sec. 29.24.620. (Sec. 29.23.480.) REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. At its first

meeting after repeal, the assembly or council shall enact provisions for the reorganization of the municipal executive and chief administrator.

Article 10. MISCELLANEOUS PROVISIONS

(Article 9. MISCELLANEOUS PROVISIONS)

Sec. 29.24.650. (Sec. 29.23.500.) OATHS OF OFFICE. Municipal officers, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk.

Sec. 29.24.660. (Sec. 29.23.520.) BONDING. The administrator and the other municipal officers or employees which the assembly or council may designate shall give bond in the amount and with the surety prescribed by the assembly or council. Premiums on bonds are paid by the municipality.

Sec. 29.24.670. (Sec. 29.23.530.) SALARIES OF ELECTED OFFICERS. The assembly or council shall fix by ordinance the salaries of elected officers. The salary of the mayor may not be reduced during his term of office. An elected officer may not receive any other compensation for service to the municipality. Per diem payments or reimbursements for expenses are not compensation under this section.

Sec. 29.24.680. (Sec. 29.23.540.) PROHIBITIONS. (a) No person may be appointed to or removed from municipal office or in any way favored or discrimininated against with respect to a municipal position because of his race, color, sex, creed, national origin or, unless otherwise contrary to law, because of his political opinions or affiliations.

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

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general

election. However, no school district employee may serve on a school district board in the school district where he is employed. ~~Provisions of this section do not apply to term of office in effect on August 24, 1976.~~

(d) For purposes of this section a school district employee is not a municipal employee.

Sec. 29.24.690. (Sec. 29.23.550.) PERSONNEL SYSTEM. All appointments and promotions of municipal officers and employees are made on the basis of merit. The assembly or council may provide for a personnel system.

Sec. 29.24.700. (Sec. 29.23.560) REPORTS. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) repealed.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, toegther with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 (AS 29.88) and state aid for miscellaneous municipal services under AS 29.62 (AS 29.89). The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

Sec. 29.24.710. (Sec.29.23.570.) VACANCIES. An elected municipal office is vacated under the following conditions and upon the declaration of

vacancy by the assembly or council. The assembly or council shall declare an elective office vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) is physically absent from the municipality for a 90-day period unless excused by the assembly or council;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) is removed from office;

(6) misses three consecutive regular meetings unless excused; or

(7) is convicted of a felony or of an offense involving a violation of his oath of office.

Fouse Notes

## Article 3. Chief Administrative Officers

Section
115. Application
120. Petition
125. Election
130. Adoption
135. Appointment
140. Term
145. Appointment of temporary or new manager
150. Repeal
155. Powers and duties of the manager
160. Intergovernmental appointments

Sec. 29.23.115. Application. A municipality may adopt a manager plan of government.

EXPLANATION

Identical to AS 29.23.410.

Sec. 29.23.120. Petition. Adoption of a manager plan may be initiated either by petition or upon motion of the assembly or council. A petition for the adoption of a manager plan is submitted to the assembly or council. The petition must be signed by a number of municipal voters equal to the following per cent of the votes cast at the preceding regular municipal election:

(1) 25 per cent when the municipality has fewer than 7,500 persons;

(2) 15 per cent when the municipality has 7,500 persons or more.

EXPLANATION

Identical to AS 29.23.420.

Sec. 29.23.125. Election. Upon receipt of the petition or upon its motion, the assembly or council shall provide by ordinance or resolution

for a vote on the question at the next regular or special election. ~~Notice of the election shall be published at least 30 days before the election.~~

EXPLANATION

Identical to AS 29.23.430.

Sec. 29.23.130. Adoption. (a) If the manager plan is approved, the assembly or council shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The assembly or council shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

EXPLANATION

Identical to AS 29.23.440.

Sec. 29.23.135. Appointment. The assembly or council shall appoint a manager by a majority vote of its membership. He is chosen solely on the basis of his executive and administrative qualifications and receives the compensation set by the assembly or council. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the assembly or council may at any time appoint one of its members or other elected municipal officials as manager.

EXPLANATION

Identical to AS 29.23.450.

Sec. 29.23.140. Term. Subject to the contract of employment, the manager holds office at the pleasure of the assembly or council.

EXPLANATION

Identical to AS 29.23.460.

Sec. 29.23.145. Appointment of temporary or new manager. In the absence or disability of the manager, the assembly or council shall appoint a temporary manager. If the office becomes vacant, the assembly or council shall appoint a new manager.

EXPLANATION

Identical to AS 29.23.470.

Sec. 29.23.150. Repeal. A municipality may repeal the manager plan in the same manner used for its adoption. ~~At its first meeting~~ WITHIN 60 days after repeal, the assembly or council shall enact provisions for the [reorganization of ~~the municipal executive and chief administrator.~~] Language executive & administrative functions.

EXPLANATION

Identical to AS 29.23.480.

Sec. 29.23.155. Powers and duties of the manager. As chief administrative officer the manager shall:

(1) appoint, supervise, and discipline all municipal employees except those who are appointed and supervised directly by the governing body; APD wdg ~~in compliance w personnel system.~~ (414.360)

(2) supervise the enforcement of municipal law and ~~carry out the~~ directives of the governing body; see 29.23.140(1)

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program as adopted;

(4) make such monthly financial reports and such other periodic reports on municipal finances and operations as the governing body may direct;

(5) exercise care and custody over all real and personal property of the borough except as provided otherwise in AS 29.33.050; and

(6) perform other powers and duties provided by law or by action of the governing body.

EXPLANATION

This section is derived from AS 29.23.140 relating to the powers and duties of the borough administrator and AS 29.23.290 which describes the powers and duties of the city manager. Sections relating to appointment and dicipline of municipal employees have been consolidated into subsection 1. Subsection 5 allows the manager to exercise care and custody over all real and personal property of the municipality, which section is derived from AS 29.23.140 relating to borough manager, which language is not carried over into the existing AS 29.23.290. Insomuch as Subsection 3 directs the manager to execute the budget and capital improvement program as adopted by the governing body, retention of language contained in AS 29.23.140(10)(c) relating to construction, maintenance, and operation of borough roads, bridges, drainage, buildings and other public works is redundant and unnecessary.

Sec. 29.23.160. Intergovernment appointments. A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in §§ 115-155 of this chapter. Nothing in this subsection affects the authority of the assembly or council to provide for other dual office-holding if the dual offices held are compatible or otherwise to appoint officers and employees in accordance with law.

EXPLANATION

This section is derived in tact from AS 29.23.130(e).

Article 4. Municipal Departments and Employees

Section
165. Appointment of Officers
170. Municipal Attorney
175. Municipal Clerk
180. Municipal Treasurer
185. Departments
190. Personnel system

Make into two sections.

Sec. 29.23.165. Appointment of Officers. The municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative officer unless otherwise provided by ordinance. Officers described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative officer must be confirmed by the governing body.

UOPO ordinance,

EXPLANATION

This section is derived from AS 29.23.360 and is identical to that section except that the last two sentences in 29.23.360 have been combined and the words "subject to ordinance" have been removed from that last sentence.

Sec. 29.23.170. Municipal attorney. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board ~~has the right to~~ MAY hire independent counsel ~~when in its judgment independent counsel is needed.~~

EXPLANATION

Identical to AS 29.23.370.

Sec. 29.23.175. Municipal clerk. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

EXPLANATION

Identical to AS 29.23.380.

ref: Title 14

Sec. 29.23.180. Municipal treasurer. (a) The treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the assembly or council directs.

EXPLANATION

Identical to AS 29.23.390.

see 29.48.010

Sec. 29.23.185. Departments. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more

departments or a single administrator may serve as head of two or more departments.

EXPLANATION

This section is virtually identical to AS 29.23.070 except that stylistic changes apply this section to both cities and boroughs.

Sec. 29.23.190. Personnel system. (a) Except as provided by (b) below, all appointments and promotions of municipal ~~officers and~~ employees are made on the basis of merit. The ~~assembly or council~~ governing body may provide for a personnel system.

(b) By ordinance the governing body may designate ~~executive~~ positions filled by persons who serve at the pleasure of their appointing authority and ~~which are wholly or partially exempt from the classified service.~~ whose terms & conditions of employment shall be as determined by the appTNG authority.

EXPLANATION

Subsection (a) is essentially the same as the existing provisions of AS 29.23.550. Subsection (b) is new; this subsection allows the governing body to designate certain positions as executive positions and exempt persons occupying those positions from the classified service. This addition would allow municipalities to enact so called "executive plans" governing the wages, hours, and other terms and conditions of employment of high level executive employees.

Article 5. Municipal Boards and Commissions

Section
195. School Boards
200. Other Boards and Commissions

Sec. 29.23.195. School boards. Each borough and city school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, for three-year terms and until their successors take office. All board members are elected at large. ~~but school zones for the election of borough school boards may be established, altered, or abolished as provided by § 100 of this chapter.~~

EXPLANATION

This section is identical to AS 29.23.310.

Sec. 29.23.200. Other boards and commissions. (a) The assembly or council of a municipality may, by ordinance, establish such advisory, administrative, technical, or quasi judicial boards and commissions it deems necessary.

(b) Members of boards and commissions, except for the Board of Adjustment and assembly members serving on the Board of Equalization, are appointed by the mayor and confirmed by the assembly or council.

EXPLANATION

This is a new section authorizing the assembly or council to, by ordinance establish advisory, administrative, technicial, or quaisi judicial boards and commissions as it deems necessary. This section also provides that, except for the board of adjustment and the board of equalization, members of boards and commissions are appointed by the mayor and confirmed by the assembly.

Article 6. Miscellaneous Provisions

Section
205. Salaries of elected officials
210. Prohibitions
215. Conflict of Interest
220. Reports

Sec. 29.23.205. Salaries of elected officers. The assembly or council shall ~~fix by ordinance~~ provide by ordinance for the establishment of the salaries of elected officers. The salary of the mayor may not be reduced during his term of office. An elected officer may not receive any other compensation for service to the municipality. Per diem payments or reibursements for expenses are not compensation under this section.

method for determining

ref: manager plan adoption

Language chg. unless OPBO

EXPLANATION

This [illegible] identical to AS 29.23.530.

Sec. 29.23.210. Prohibitions. (a) No person may be appointed to or removed from municipal office or in any way favored or discriminated against with respect to a municipal position because of his race, color, sex, creed, national origin or, unless otherwise contrary to law, because of his political opinions or affiliations.

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

(b) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed. ~~Provisions of this section do~~ not apply to term of office in ~~effect on August 24, 1976~~.

~~(c) For purposes of this section a school district employee is not a municipal employee.~~

EXPLANATION

This section is identical to AS 29.23.540.

Sec. 29.23.215. Conflict of interests. Each home rule and general law municipality shall adopt a conflict-of-interest ordinance which, other provisions of this chapter notwithstanding, includes provison that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest. ~~If a home rule or general law municipality fails to adopt such a conflict-of-interest ordinance within 90 days from September 10, 1972, the conflict-of-interest provision of this section is automatically applicable to and binding upon that municipality.~~

EXPLANATION

This section is identical to AS 29.23.555.

Sec. 29.23.220. Reports. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) reports relating to long-term debt as provided in AS 44.19 .205.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, together with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.88 and state aid for miscellaneous municipal services under AS 29.89 The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

EXPLANATION

This section is identical to AS 29.23.560.

SCOMM

#23:31

CHAPTER 27. MUNICIPAL ENACTMENTS.

Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCES. (a) In addition to other actions which this title requires to be by ordinance, the ~~assembly of council~~ governing body of a municipality shall use ordinances to

(1) establish, alter or abolish municipal departments;

**** (2) Repeal.

(3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;

(4) provide for the levying of taxes;

**** (5) make appropriations except supplemental appropriations or transfer of appropriations;

(6) grant, renew, or extend a franchise;

**** (7) Repeal.

**** (8) adopt, modify or repeal the comprehensive plan, land use ~~regulations and~~ subdivision regulations, ~~ordinances,~~ building and housing codes, and the official map;

(9) approve the transfer of a power to a borough from a city;

(10) designate the borough seat;

(11) provide for the retention or sale of tax-foreclosed property.

Repeal (12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

(b) This section grants no authority but requires the ~~assembly or~~ governing body ~~council~~ to use ordinances in exercising certain of its powers.

Sec. 29.27.020. FORM OF ORDINANCES. Repeal.

****Sec. 29.27.030. ORDINANCE PROCEDURE. (a) Ordinances are introduced in writing in the form required by the assembly or council.

(b) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the ~~assembly or council~~ governing body or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance [and its amendments] is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The ~~assembly or council~~ governing body shall hear all interested persons wishing to be heard. After the hearing, the ~~assembly or council~~ governing body shall consider the ordinance and may adopt it with or without amendment. The ~~assembly or council~~ governing body shall print and make available copies of adopted ordinances.

(c) Ordinances take effect upon adoption or at a later date specified in the ordinance.

Sec. 29.27.040. EMERGENCY ORDINANCES. (a) To meet a public emergency the ~~assembly or council~~ governing body may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the ~~assembly or council~~ governing body that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The ~~assembly~~ governing body must print and make available copies of adopted emergency ordinances.

(b) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility for its services.

(c) Emergency ordinances are effective for 60 days.

****Sec. 29.27.050. CODES OF REGULATION. The ~~assembly or council~~ governing body may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The ~~assembly or council~~ governing body shall provide for the adopted code to be ~~sold or available at no charge to the public.~~ made avail to the public at no more than cost.

Sec. 29.27.060. CODIFICATION. (a) Each ordinance after adoption shall be codified.

**** (b) Within three years after incorporation of the municipality, the municipal clerk or his designee shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

(c) In (a) of this section, "codified" means

(1) the ordinance has been given a serial number or other permanent identifying number and, bearing a notation of the date of adoption and the designation of the adopting authority, it has been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision which establishes a rule of conduct or behavior and which is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

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

Sec. 29.27.070. RESOLUTIONS. The assembly or council shall provide for the maintenance of a permanent file of resolutions that have been adopted.

****Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the ~~assembly or council~~ governing body may prescribe ~~punishment~~ penalties not to exceed ~~the penalty~~ those imposed for a class B misdemeanor. ~~By ordinance~~ and may require mandatory, nonsuspendable imprisonment not to exceed five days. ~~may be imposed for violation of an ordinance.~~

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or a threatened violation, the injunction shall be granted by the Superior Court. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The ~~punishment~~ penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost ~~, or at no charge~~ no more than.

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CHAPTER 27. MUNICIPAL ENACTMENTS.

Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCES. (a) In addition to other actions which this title requires to be by ordinance, the assembly or council of a municipality shall use ordinances to

(1) establish, alter or abolish municipal departments;

**** (2) Repeal.

(3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;

(4) provide for the levying of taxes;

**** (5) make appropriations except supplemental appropriations or transfer of appropriations;

(6) grant, renew, or extend a franchise;

**** (7) Repeal.

**** (8) adopt, modify or repeal the comprehensive plan, land use regulations and subdivision ordinances, building and housing codes, and the official map;

(9) approve the transfer of a power to a borough from a city;

(10) designate the borough seat;

(11) provide for the retention or sale of tax-foreclosed property.

(12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

(b) This section grants no authority but requires the assembly or council to use ordinances in exercising certain of its powers.

Sec. 29.27.020. FORM OF ORDINANCES. Repeal.

****Sec. 29.27.030. ORDINANCE PROCEDURE. (a) Ordinances are introduced in writing in the form required by the assembly or council.

(b) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the assembly or council or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance and its amendments is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The assembly or council shall hear all interested persons wishing to be heard. After the hearing, the assembly or council shall consider the ordinance and may adopt it with or without amendment. The assembly or council shall print and make available copies of adopted ordinances.

(c) Ordinances take effect upon adoption or at a later date specified in the ordinance.

Sec. 29.27.040. EMERGENCY ORDINANCES. (a) To meet a public emergency the assembly or council may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the assembly or council that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The assembly must print and make available copies of adopted emergency ordinances.

(b) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility for its services.

(c) Emergency ordinances are effective for 60 days.

****Sec. 29.27.050. CODES OF REGULATION. The assembly or council may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The assembly or council shall provide for the adopted code to be sold or available at no charge to the public.

Sec. 29.27.060. CODIFICATION. (a) Each ordinance after adoption shall be codified.

**** (b) Within three years after incorporation of the municipality, the municipal clerk or designee shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

(c) In (a) of this section, "codified" means

(1) the ordinance has been given a serial number or other permanent identifying number and, bearing a notation of the date of adoption and the designation of the adopting authority, it has been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision which establishes a rule of conduct or behavior and which is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

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

Sec. 29.27.070. RESOLUTIONS. The assembly or council shall provide for the maintenance of a permanent file of resolutions that have been adopted.

****Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed the penalty imposed for a class B misdemeanor. By ordinance mandatory nonsuspendable imprisonment not to exceed five days may be imposed for violation of an ordinance.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy upon application for injunctive relief and a finding of a violation or a threatened violation, the injunction shall be granted. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost, or at no charge.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed ~~a fine of $1,000 or imprisonment for 90 days, or both~~. By ordinance mandatory nonsuspendable imprisonment not to exceed five days may be imposed for violation of an ordinance. ~~However,~~ the punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c)

EXPLANATION: In (a) the fine and the term of imprisonment have been increased to match the penalty imposed under the criminal code for a class B misdemeanor. ~~(d) and (c) have~~ (b) has been added to provide municipalities with additional remedies for the violation of ordinances, matching recommended remedies for enforcement of land use regulations.

## CHAPTER 27. MUNICIPAL ENACTMENTS

(CHAPTER 48, Article 3. MUNICIPAL ENACTMENTS)

Sec. 29.27.010. (Sec. 29.48.130.) ACTS REQUIRED TO BE BY ORDINANCES. (a) In addition to other actions which this title requires to be by ordinance, the assembly or council of a municipality shall use ordinances to

(1) establish, alter or abolish municipal departments;

(2) fix the compensation of members of the assembly or council;

(3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;

(4) provide for the levying of taxes;

(5) make appropriations except supplemental appropriations or transfer of appropriations;

(6) grant, renew, or extend a franchise;

(7) regulate the rate charged by a public utility;

(8) adopt, modify or repeal the comprehensive plan, land use regulations, subdivision ordinances, building and housing codes, and the official map;

(9) approve the transfer of a power to a borough from a city;

(10) designate the borough seat;

(11) provide for the retention or sale of tax-foreclosed property.

(12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

(b) This section grants no authority but requires the assembly or council to use ordinances in exercising certain of its powers.

Sec. 29.27.020. (Sec. 29.48.140.) FORM OF ORDINANCES. Ordinances are introduced in writing in the form required by the assembly or council.

Combine w 020

Sec. 29.27.030. (Sec. 29.48.150.) ORDINANCE PROCEDURE. (a) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the assembly or council or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance and its amendments is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The assembly or council shall hear all interested persons wishing to be heard. After the hearing, the assembly or council shall consider the ordinance and may adopt it with or without amendment. The assembly or council shall print and make available copies of adopted ordinances.

(b) Ordinances take effect upon adoption or at a later date specified in the ordinance.

Sec. 29.27.040. (Sec. 29.48.160.) EMERGENCY ORDINANCES. (a) To meet a public emergency the assembly or council may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the assembly or council that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The assembly must print and make available copies of adopted emergency ordinances.

Define "emergency".

(b) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility for its services.

(c) Emergency ordinances are effective for 60 days.

Sec. 29.27.050. (Sec. 29.48.170.) CODES OF REGULATION. The assembly or council may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The assembly or council shall provide for the adopted code to be sold to the public; or at reasonable charge

Sec. 29.27.060. (Sec. 29.48.180.) CODIFICATION. (a) Each ordinance after adoption shall be codified.

(b) Within three years after incorporation of the municipality, the municipal ~~executive, with the advice and assistance of a legal advisor~~ clerk or designee, shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

(c) In (a) of this section, "codified" means

(1) the ordinance has been given a serial number or other permanent identifying number and, bearing a notation of the date of adoption and the designation of the adopting authority, it has been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision which establishes a rule of conduct or behavior and which is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

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

Sec. 29.27.070. (Sec. 29.48.185.) RESOLUTIONS. The assembly or council shall provide for the maintenance of a permanent file of resolutions that have been adopted.

Sec. 29.27.080. (Sec. 29.48.200.) PENALTIES. For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed a fine of $500 or imprisonment for 30 days, or both. However, the punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost.

- 1cl ord could not suspend (Supreme Court) KODIAK CASE

$500 fine
- EACH day indiv. violation
see zoning

Mun prov mand. ord
5 days ~ jail term

SCOMM

#23:32

CHAPTER 30. ELECTIONS.

ARTICLE 1. REGULAR AND SPECIAL ELECTIONS.

****Sec. 29.30.010. ADMINISTRATION. The ~~borough assembly or city council~~ governing body shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Sec. 29.30.030. ELECTION DATES. (a) The date of ~~a~~ the regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

(b) The assembly or council may call a special election upon at least 20 days notice. Notice of municipal elections shall have a

Sec. 29.30.040. VOTER QUALIFICATION. A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities.

****Sec 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

Sec. 29.30.060. ELECTION CONTEST AND APPEAL. (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the assembly or council, by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the

superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) ~~Notwithstanding the provisions of (e) of this section,~~ the expulsion of a member of a ~~borough assembly under~~ governing body AS 29.24.150(c), of a member of a ~~city council~~ under AS 29.24.290(b) of a ~~borough~~ mayor under AS 29.24.200(f) ~~or of a city mayor~~ under AS 29.24.350 is final and is not subject to judicial review.

ARTICLE 2. INITIATIVE AND REFERENDUM.

Sec. 29.30.090. RESERVATION OF POWERS. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by Sec. 7, art. XI, of the state constitution.

****Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

Sec. 29.30.100. PETITION. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election.

****Sec. 29.30.110. CONTENTS OF PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, (7) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition.

The statement provided under AS 29.30.110(a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

Sec. 29.30.140. PROTEST. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting to the assembly or council which shall hear and decide the protest.

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

see original recommendation

****Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner that 45 days after certification.

(b) If the assembly or council adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

****Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

****Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

ARTICLE 3. RECALL.

****Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

Sec. 29.30.220. GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

****Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(.) the signatures and residence addresses of at least ten municipal voters who will sponsor the petition;

(2) The address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularily.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

****Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) The name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(7)

(b) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by a number of voters residing within the municipality equal to 35 percent of the number of votes cast at the last regular election for that office held prior to the issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by a number of the voters residing within the district equal to 35 percent of the number of votes cast at the last regular election for that office held prior to the issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficent, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an

adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

****Sec. 29.30.260. NEW RECALL PETITION. The rejection of a recall petition for any reason does not preclude the filing of a new petition. However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall immediately submit it to the assembly or council.

****Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the governing body, the governing body shall submit the recall at that election.

(b) If no regular election occurs within 75 days the governing body shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the governing body.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The governing body may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

****Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

****Sec. 29.30.300. ELECTION ~~PROCEDURE~~ NOTICE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary. 20 days notice of the election

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote on the question is required to recall an officer.

Sec. 29.30.320. EFFECT. If an incumbent is not recalled at the recall election, a petition application for a to recall the same incumbent may not be filed sooner than six months after the recall election.

****Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body, ~~the governing body,~~ his office becomes vacant and is filled in acc. w by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

~~(b)~~ NOTWITHSTANDING (a) If all members of the governing body are recalled, the governor shall appoint ~~at least~~ three qualified persons to the governing body. The appointees shall, ~~by an affirmative vote of the majority,~~ appoint additional members to fill remaining vacancies As per AS _____.

~~(c)~~ If all but two members of the governing body are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining ~~members and their~~ appointees.

(d) If all officials are recalled from a school board the governing body may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Proofed 12-31

Upper Case → Article CHAPTER 30. ELECTIONS.

Article 1. REGULAR AND SPECIAL ELECTIONS.

****Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Sec. 29.30.030. ~~(Sec. 29.28.020.)~~ ELECTION DATES. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

(b) The assembly or council may call a special election upon at least 20 days notice.

Sec. 29.30.040. ~~(Sec. 29.28.030.)~~ VOTER QUALIFICATION. A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities.

****Sec 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

Sec. 29.30.060. ELECTION CONTEST AND APPEAL. (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the assembly or council, by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the

superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.24.150(c), of a member of a city council under AS 29.24.290(b) of a borough mayor under AS 29.24.200(f) or of a city mayor under AS 29.24.350 is final and is not subject to judicial review.

upper case

Article 2. INITIATIVE AND REFERENDUM.

Sec. 29.30.090. RESERVATION OF POWERS. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by Sec. 7, art. XI, of the state constitution.

****Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

Sec. 29.30.100. PETITION. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election.

****Sec. 29.30.110. CONTENTS OF PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition.

The statement provided under AS 29.30.110(a)(6) shall be completed and signed by the sponsor. Signatures shall be ~~in~~ ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplemental filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

Sec. 29.30.140. PROTEST. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting to the assembly or council which shall hear and decide the protest.

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

****Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner that 45 days after certification.

(b) If the assembly or council adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

****Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner that 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

****Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

upper case

Article 3. RECALL.

****Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

Sec. 29.30.220. GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

****Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signatures and residence addresses of at least ten municipal voters who will sponsor the petition;

(2) The address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularily.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

****Sec. 29 30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.2^5, he shall prepare a recall petition. All copies of the petition shall contain

(1) The name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the pet tion, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be ~~in~~ ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by a number of voters residing within the municipality equal to 35 percent of the number of votes cast at the last regular election for that office held prior to the issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by a number of the voters residing within the district equal to 35 percent of the number of votes cast at the last regular election for that office held prior to the issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficent, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an

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Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public record.

(c)

****Sec. 29.30.260. NEW RECALL PETITION. The rejection of a recall petition for any reason does not preclude the filing of a new petition. However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall immediately submit it to the assembly or council.

****Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the governing body, the governing body shall submit the recall at that election.

(b) If no regular election occurs within 75 days the governing body shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the governing body.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The governing body may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

****Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

****Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election

are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote on the question is required to recall an officer.

Sec. 29.30.320. EFFECT. If an incumbent is not recalled at the recall election, a petition to recall the same incumbent may not be filed sooner than six months after the recall election.

****Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the ~~assembly or council~~ governing body, the ~~assembly or council~~ governing body, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the governing body are recalled, the governor shall appoint at least three qualified persons to the governing body. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the governing body are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the governing body may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a)-(d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except

that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

Pg 148

ART 3. Cit Prop Tax
ART 4. Borough Sales
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DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. The following language was deleted as a duplication of AS 29.30.040: "The municipality may not alter voter qualification requirements of this title." Subsection (b), making this applicable to home rule municipalities, was deleted.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance the procedure for the nomination of elected officers by declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

No objection.

EXPLANATION: This is a technical revision which does not substantively alter existing law.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.030. ELECTION DATES. (a) Unless otherwise provided by ordinance, a regular municipal election shall be held annually on the first Tuesday of October.

EXPLANATION: This is a technical revision assuring maximum flexibility for local governments.

No objection

Sec. 29.30.040. VOTER QUALIFICATION. (a) A person may vote if he meets the requirements of AS 15.05.010 - 15.05.040, has been a resident of the municipality for 30 days immediately preceding the election, is registered to vote in state elections and is not disqualified under article V of the state constitution.

(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of the precinct, district, or service area in which he votes.

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

EXPLANATION: A reference has been provided to the voter qualification requirements for state elections. A municipality has been granted the flexibility of imposing a requirement that a person be a resident of the area in which he votes to avoid the possiblity of people voting on nonareawide matters who will not have to live with the outcome of the vote.

Parr - does not address/allow for questioned ballot. Denies right of suffrage ~~to second~~ for admin. conv

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This requirement has been altered to apply to certain offices only and liberalized to allow a municipality to provide otherwise by ordinance. The provisions specifying when a runoff must be held and notice requirements are no longer mandatory. In addition, the procedure set out in (c), for the benefit of a municipality which desires specific procedural guidance, has been changed to provide three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoff elections.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

EXPLANATION: This is a new section. The first part is modeled after section two of the initiative article in the state constitution. Sponsors of a petition would be required to register with the clerk. The clerk would review an initiative for substantive legality, with his decision subject to immediate appeal. This allows for a judicial determination of the legality of an initiative prior to incurring the expense of an election on it.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.110. PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition. The statement provided under AS 29.30.110(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: The 60 day signature gathering period is carried forward. While the possibility of an initiative or referendum on a matter which affects only a service area is not eliminated, such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body. Additional changes require rejection of a signature not accompanied by a legible residence address and allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public recond.

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures the sponsors have only 10 days to gather the signatures. They may not use signatures which were gathered prior to the first filing but not submitted, and they may not use signatures gathered during the period in which the clerk is checking the petition.

Sec. 29.30.140. PROTEST. Repeal

EXPLANATION: Since the clerk determines the sufficiency of a petition, it was felt that allowing a protest to the municipal executive when a petition is rejected to be considered by the assembly or council would serve no purpose. The assembly or council would simply rely upon the clerk, since he has the voter registration records.

No discussion

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new application for a petition on substantially the same matter may not be filed sooner than six months after the petition is rejected.

EXPLANATION: This section was changed slightly to take into account the application procedure and to clarify that a new petition may not be filed dealing with the same matter, but that a petition on a different matter may be filed sooner than the six month period.

No discussion

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If the assembly or council adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

EXPLANATION: The changes allow for the submission of an initiative measure to the voters within 75 days after certification of a petition rather than requiring that the vote be delayed until the next regular election. The 45 day requirement was added to insure that a petition certified after the legal notices of a regular election were published does not complicate the election. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer may reject a petition. An areawide vote is required whether the matter initiated is areawide or nonareawide because a service area should not be allowed to become autonomous.

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

EXPLANATION: The ability to suspend an ordinance or resolution which has taken effect when a petition is filed within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as that is covered under AS 29.13.080. All questions are submitted to an areawide vote.

Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition process.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

EXPLANATION: The possibility of recalling an official who has been appointed to an elective position has been added. The date to be used in determining when the six month period has run has been clarified.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.220. GROUNDS. Grounds for recall may include any grounds which constitute failure to perform official duties ~~to the satisfaction of petitioners~~.

* ) OR misconduct in office.

EXPLANATION: This section broadens the grounds for recall in order to avoid forcing petitions to name a ground in a petition which has no connection with the real reasons which may inspire a recall effort. It is felt that an elected official ought not to be subjected to being labeled incompetent or guilty of misconduct or failure to perform his duties in a petition when the reason for a recall effort may not be based on any of those things.

LARSON
Issue:
Republican form of govt vs. participatory democracy.

Issue:
Should be some METHOD FOR adjudication of charges on recall petition. Too unwieldy

KOHLER no:
Retain
add. "OR OTHER grounds as may be established by local ORdinance"
Discussion of Constitutionality
WITHDRAWN

Sharp written statement re: grounds

~~LARSON~~ - Parr moves to accept language recc by TECH / carries
Branson. amend motion + failed - Amend.

ON HOLD MOT. TO AMEND

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signature and residence addresses of at least 10 municipal voters who will sponsor the petition;

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

EXPLANATION: This is a new section which describes the requirements for an application for recall petition.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) the name of the official sought to be recalled;

(2) the statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section sets out requirements similar to those relating to the content of initiative and referendum petitions. Requiring the clerk to prepare the petition and supply copies insures that each copy is complete and legible. A petition must be filed within 60 days after the petition is issued rather than 60 days after the date of the earliest signature on the petition.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by 35 percent of the voters residing within the municipality based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by 35 percent of the voters residing within the district based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: Which election to be used as a standard for determining the number of signatures required is clarified. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that this number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public recond.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.260. NEW RECALL PETITION. The rejection of a recall petition for any reason does not preclude the filing of a new petition. However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficient signatures alone triggers the waiting period.

Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall submit it to the assembly or council at its next regular meeting.

EXPLANATION: This section requires the clerk to submit the petition at the next regular meeting rather than immediately as required under existing law.

OK

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election occurs within 75 days the assembly or council shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The assembly or council may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

EXPLANATION: The 45 day requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

EXPLANATION: This section makes reference to the fact that each statement is limited to 200 words or less and provides that the statement of the official if published before the election will appear on the ballot.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote is required to recall an official. Only those voters residing in the district or area which elects an official may vote on the recall of the official.

EXPLANATION: This section adds a new sentence which makes it clear that if an official is elected by the voters of a district, then only those voters may vote to recall him.

OK?

Sec. 29.30.320. EFFECT. If a majority votes to recall an official, the official's seat shall become vacant immediately upon certification of the result of the election. If an incumbent is not recalled at a recall election, an new application for a petition to recall the same incumbent may not be filed sooner than six months after the date the election is certified.

EXPLANATION: The first sentence was added to make it clear when a recalled official looses his seat. The second sentence clarifies the fact that the commencement of the six month period is the date of certification of the election results.

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the assembly or council, the assembly or council, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the assembly or council are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the assembly or council, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Subsections (f) and (g) were changed to take into account time periods required for election notice and nominations.

Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. If possible, a judge shall be a voter of the precinct for which he is appointed.

LARSON move elim. last sentence
second
PARR obj. feels it is desireable
BERNS agrees "unless no qual. voter is willing to serve"...

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. "The municipality may not alter voter qualification requirements of this title" was deleted because that issue is addressed in AS 29.28.030. Subsection (b) which makes this applicable to home rule municipalities was deleted to conform to the change suggested in the proposed draft of AS 29.15.110.

29.30.040

A judge shall be a res. unless no qual. is willing to serve.
Motion Carries

OK

Sec. 29.30.050. MAJORITY ELECTIONS. (a) A municipality may by ordinance provide for a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of officials. A runoff election or other means of obtaining a majority may be used.

(c) Unless provided otherwise by ordinance, a runoff election shall be held within three weeks from the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

Not binding on HR
No objection.

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This has been liberalized to allow a municipality to provide for this by ordinance for certain offices only. Otherwise, the person who receives the greatest number of votes is elected. The provisions specifying when a runoff must be held and the notice requirements is no longer mandatory. In addition, the procedure set out in (c) for municipalities which desire more procedural guidance allows three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoffs and hold them at the same time.

40% runoff: What happens if mun. doesn't have any ordinance? Intent is to provide if no ordinance. Motion by Beens to accept intent. Amend. carried

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 20.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by an application containing the bill to be initiated or the act to be referred. The application shall be signed by at least ten municipal voters who will sponsor the petition, shall contain the address to which all correspondence relating to the application may be sent and shall be filed with the municipal clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form, and, for an inititative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would not be unenforceable as a matter of law. ASK TAM re: (4) dble neg?

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

EXPLANATION: This section is new. The first part is modeled after section 2 of the intiative article in the state constitution. As drafted, the section would require the clerk to review an initative for substantive legality, with his decision subject to appeal. This would allow for a judicial determination of the legality of an initiative prior to incurring the expense of an election.

(3) explained as putting in proper place in process. SHORTEN process. Issue is one of timing. No objections.

Add wording sponsors before filing of petition
other may be added

Berns move passed

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.110. PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. The petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days of the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing address of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, that each signer had an opportunity before signing to read the petition, that he believes each signer to be a municipal voter, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

Parr moves to delete: Motion w/d.

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit.

Parr - (6) objects. Unnecessary restrictures
Cook - agrees. MORE RESTRICTIVE THAN State.

Dimmick - Move: delete - " * vote - ayes

Burns moves to add (c) each pg will contain summary carried

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980 2.

Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.110 (a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

MOTION WALKER CARRIED

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular municipal election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

?

EXPLANATION: This section carries forward the 60 day signature gathering period. It does not eliminate the possibility of an initiative or referendum on a matter which affects only a service area, but it does require that such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate and vote on a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body, and service areas will then have the authority to become essentially automomous units of government. Changes have been made to require rejection of a signature not accompanied by a legible residence address and to allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

PARR - why 25 & 15, not (15) ACROSS the BOARD?
moved: voted on - failed

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) The pages of a petition shall be assembled and filed as a single instrument. Within ten days of the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be amended or supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures, the sponsors have only ten days to gather the signatures and may not use signatures which were gather prior to the first filing but not submitted, and that they may not use signatures gathered during the period in which the clerk is checking the petition.

Walker (b) "amended or" deleted
Motion. Amend carries.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council the clerk, after certifying it, shall present it to the assembly or council at its next regular meeting or special meeting called for that purpose.

(b) Unless substantially the same measure is adopted, an initiative measure presented to the assembly or council shall be submitted to the voters at the next regular municipal election held more than 45 days after the measure was presented to the assembly or council. If the assembly or council adopts substantially the same measure and if it is not vetoed, the petition is void and the question shall not be submitted to the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

EXPLANATION: The changes allow for the submission of a measure at any time of the year, but provides it would be placed before the voters at the first regular election occurring 45 days after submission to the assembly or council. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer makes that determination. This section requires an areawide vote whether the mattter is areawide or nonareawide because a service area should not be allowed to become automonous.

Discussion:

Branson motion. Sec 160 will be amended to follow procedures as stated in sec. 170 "tracking" for putting on

Berns motion - clarify fact of areawide vote. no obj. carried

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote, the clerk shall submit the matter to the voters at the next regular or special election. If no regular or special election occurs within 75 days of the certification of a petition, the assembly or council shall hold a special election within 75 days of filing. ALL VOTERS. Berns motion carried

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it is suspended, becomes immediately effective. upon certification of the election. Berns motion ↑ carries

EXPLANATION: The ability to suspend an ordinance or resolution which had taken effect when a petition is filed within ~~20~~ 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as it is covered under AS 29.13.080. This section once again requires submission of the question to the areawide voters.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.180. EFFECT. (a) An ordinance or resolution adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed may not be repealed ~~(or amended)~~ by the assembly or council within two years of its effective date. PARR. MOTION: It may be amended at any time carries

(b) If an ordinance or resolution is repealed in an referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified by the assembly or council.

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition application process.

Discussion:

Why bar assembly or council 2yrs as opposed to group only 6mo.? KOHLER

Steicter than state.

Inconsistent between initiative (2yrs) & ref (1yr) (State law).

Override

Parr: moved I&R, assy or council, 1yr prior to being altered or amended. carries.

Berrien: Issue: Amend but not repeal by legislative body (STATE).

Motion: ~~Amend to motion.~~ Conforms to state const.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.210. RECALL. An application for a petition for the recall of a mayor or a member of the assembly, council, or school board may be filed with the municipal clerk after the official has served six months of the term for which elected or appointed.

EXPLANATION. This section lists the municipal officials which may be recalled rather than providing for the recall of an elected official in order to avoid the possibility of recalling service area board members who may be elected officials. It clarifies the dates to be used in determining when the six month period has run and includes the possibilility of recalling officials who are appointed to elected positions.

KOHLER: Any elected body should be subject to recall.

Adminstrative functions certainly have direct effects on populace.

Without recall, no recourse to get rid of person unhappy with.

Tesche:

Level of matters handled not worth expensive process.

Gair directs bring wording 11 Nov to clarify Berrier

KOHLER: Motion - ~~Dft lng. as presented~~ delete sugg. draft language and retain current language.

Parr: amend to add six mon. prov.

Motion carried (Kohler)

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. An application for a recall petition shall contain

(1) the signature and residence address of at least ten voters who will sponsor the petition;

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity as to specific actions; ~~pertinent ordinances, laws, regulations, or judicial decrees.~~ Tech recc. Plain words used by chair

EXPLANATION: This section requires a submission of an application to the clerk for a recall petition. The clerk will provide petition forms and the application procedure is necessary in order to allow the official sought to be recalled to be given an opportunity to have his statement included on the petition.

Pam moved to amend (1) to provide for additional sponsors (see language 29.30.095)
no obj. passed.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall submit a copy of the application to the official who is the subject of the application. ~~The official shall have ten days from receipt of the application to provide the clerk with a statement of 200 words or less if he so chooses.~~

(b) The clerk shall prepare a recall petition containing

(1) the name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application;

~~(3) if provided, the statement of the official sought to be recalled;~~

(4) the date the petition is issued by the clerk;

(5) ~~notice that signatures~~ signatures must be secured within ~~30~~ 60 days of the date the petition is issued;

(6) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing address of each signer;

(7) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, * that each signer had an opportunity before signing to read the petition, that he believes each signer to be a municipal voter, * (1) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

*. delete to conform to 29.30.110

EXPLANATION: This section sets forth requirements similar to those proposed under the initiative and referendum procedures as it relates to petition content. Requiring the clerk to prepare the petition insures that it is complete and legible. The period of time within which signatures must be collected has been reduced to 30 days to minimize the period of disruption in government created by a recall effort.

KOHLER moves: clerk only certifies petition, does not prepare: TABLED FOR 200 word discuss.

Discussion MOTION FAILED VOTE #1

— TECH Comm. wording for clerk not present

KOHLER - moves to delete allowed to recallee being able to submit. Discussion - passed

Pam: 30 days, 35% too heavy a burden move: 30 to 60 days change. - carries

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within ~~30~~ 60 days of the date the clerk issues the petition. The statement provided under AS 29.30.230(b)(7) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by 35 percent of the voters residing within the municipality based on the number of votes cast at the last regular election for that office. If a petition seeks to recall an official who represents a district, the petition shall be signed by 35 percent of the voters residing within the district based on the number of votes cast at the last regular election for that office.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

Motion
Parr: ~~How~~ What is the number of signatures)? Clerk's responsibility to determine & inform the petitioner. carries (see pg 26).

EXPLANATION: This section continues the 30 day signature gathering period and clarifies which election is to be used as a standard for determining the number of signatures required. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that is number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

Moved (5) pg 26. carried

Walker add (b). for that office "prior to ~~fixing~~ issuance of the petition" amend. carries

LARSON: ~~motion~~ "last regular municipal election" WITHDRAWN. Solomon objects. LARSON objects to objection.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The page of a petition shall be assembled and filed as a single instrument. Within ten days ~~of~~ after *2 the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient. *1

(b) If a petition is insufficient, it may be amended or supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which is insufficient on its face may not be supplemented. It shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

Dimmick moved *1 carries
Walker moved *2 carries

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

KOHLER: better language than "on its face" to TECH

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.260. NEW RECALL PETITION. The rejection of a petition for any reason does not preclude the filing of a new recall petition. However, a new application may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficent signatures alone triggers the waiting period.

OK

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days, but not sooner than ~~40~~ 45* days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days but not sooner than ~~40~~ 45* days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the petition shall not be submitted to the voters. The assembly or council may not appoint the official who resigns from an office after a sufficient recall petition is filed naming him to the same office.

EXPLANATION: The 40 days requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

Parr Lakosh moves*, carries.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) the statement of the official ~~which appeared on the recall petition or a statement~~ of 200 words or less which is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES () NO ()".

EXPLANATION: This section makes reference to the fact that the statement of the grounds is limited to 200 words or less and provides that the statement of the official used on the petition will appear on the ballot unless the official provides a different statement.

Sub (2) will be deleted to conform to (see pg 26).
Parr moves ~~*~~ 1, carries

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that 20 days notice shall be given notwithstanding an ordinance or charter provision to the contrary.

*, nothless than *.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

Beans moves *, carried.

Notice of election vs. 45 day req.
Tech comm review.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.30.330. SUCCESSORS. (a) If one or more officials is recalled from an assembly or council, the assembly or council, by the affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If one or more officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall. *1

(d) A person appointed under (a) - (c) of this section shall serve until a successor is elected and takes office.

(e) If an official is recalled the clerk *a Kohler shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date of certification of the recall election, except that if a regular or special election occurs within 75 days of the certification of the recall election and the certification occurs at least 20 days prior to the latest date upon which first notice of the election must be published, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the elction conducted under this section; provided, nominations may be filed until the later of seven days before the latest date upon which first notice of the election must be published or the deadline for the filing of nominations for regular elections. Nominations may not be filed before the certification of the recall election.

Parr. moves to direct Tech Comm to clean up (e) carries

moves to direct Tech Comm to clarify clerk's independent action *1 carries

Dimmick moves to have Tech Comm redraft carries

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Section (e) was changed to take into account times required for election notice and nominations.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

EXPLANATION: Adds the provision that judges be appointed from among precinct voters in order to conform to the 1980 revision of AS 15.10.120. The following language was deleted as a duplication of AS 29.30.040: "The municipality may not alter voter qualification requirements of this title." Subsection (b), making this applicable to home rule municipalities, was deleted.

# CHAPTER 30. ELECTIONS

~~(CHAPTER 28. ELECTIONS)~~

## Article 1. REGULAR AND SPECIAL ELECTIONS

Sec. 29.30.010. (Sec. 29.28.010.) ADMINISTRATION. (a) The borough assembly or city council shall prescribe the general rules for conducting municipal elections and appoint at least three judges for each polling place. The municipality may not alter voter qualification requirements of this title.

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

Sec. 29.30.020. (Sec. 29.28.015.) NOMINATIONS. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Sec. 29.30.030. (Sec. 29.28.020.) ELECTION DATES. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

(b) The assembly or council may call a special election upon at least 20 days notice.

Sec. 29.30.040. (Sec. 29.28.030.) VOTER QUALIFICATION. A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

EXPLANATION: Under existing law a runoff election is required if no candidate receives over 40 percent of the votes cast for his office. This requirement has been altered to apply to certain offices only and liberalized to allow a municipality to provide otherwise by ordinance. The provisions specifying when a runoff must be held and notice requirements are no longer mandatory. In addition, the procedure set out in (c), for the benefit of a municipality which desires specific procedural guidance, has been changed to provide three weeks before the runoff is held rather than two. The additional time would enable cities within boroughs to coordinate their runoff elections.

Sec. 29.30.050. (Sec. 29.28.040.) MAJORITY ELECTIONS. If in a municipal election no candidate receives in excess of 40 per cent of the votes cast for his respective office, the assembly or council shall hold a runoff election within two weeks from the date of certification of the election between the two candidates receiving the greatest number of votes for the office. Notice of a runoff election shall be published at least five days before the election. The assembly or council may by ordinance require a majority vote for election of officials. A runoff election or other means of obtaining a majority may be used.

Sec. 29.30.060. (Sec. 29.28.050.) ELECTION CONTEST AND APPEAL. (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the assembly or council, by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the

EXPLANATION: This is a new section. The first part is modeled after section two of the initiative article in the state constitution. Sponsors of a petition would be required to register with the clerk. The clerk would review an initiative for substantive legality, with his decision subject to immediate appeal. This allows for a judicial determination of the legality of an initiative prior to incurring the expense of an election on it.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10

Sec. 29.30.110. PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section would require the clerk to provide the petition forms to the petitioners to insure that they are complete and legible. This is similar to the requirement imposed upon the Lieutenant Governor in state initiative proceedings. The petition contents are essentially the same as those provided in present law, with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the signers must provide, and the addition of the circulator's affidavit.

superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.24.150(c) [AS 29.23.060(c)], of a member of a city council under AS 29.24.290(b) [29.23.210(b)], of a borough mayor under AS 29.24.200(f) [29.23.130(f)], or of a city mayor under AS 29.24.350 (29.23.255) is final and is not subject to judicial review.

Article 2. INITIATIVE AND REFERENDUM

Sec. 29.30.090. (Sec. 29.28.060.) RESERVATION OF POWERS. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by Sec. 7, art. XI, of the state constitution.

Sec. 29.30.100. (Sec. 29.28.062.) PETITION. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election.

Sec. 29.30.110. (Sec. 29.28.065.) CONTENTS OF PETITION. A petition for an initiative or referendum shall

(1) embrace only a single comprehensive subject;

(2) set out fully the ordinance or resolution sought by the petition;

(3) state upon the petition, when circulated, the date of first circulation of the petition;

(4) contain the statement, when circulated, that the signatures on the petition must be secured within 90 days from the date of the first circulation;

EXPLANATION: The 60 day signature gathering period is carried forward. While the possibility of an initiative or referendum on a matter which affects only a service area is not eliminated, such petitions contain the same number of signatures as a petition on an areawide matter. Permitting a service area to initiate a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body. Additional changes require rejection of a signature not accompanied by a legible residence address and allow a signer to withdraw his name up until the time the petition is certified, whereas now he must withdraw within seven days after the petition is filed.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: The only significant change makes it clear that in providing supplementary signatures the sponsors have only 10 days to gather the signatures. They may not use signatures which were gathered prior to the first filing but not submitted, and they may not use signatures gathered during the period in which the clerk is checking the petition.

(5) have the required signatures, dates of signatures and resident addresses of the signers.

Sec. 29.30.120. (Sec. 29.28.070.) REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 90 days from the date of the first circulation of the petition. The petition shall be signed in ink or indelible pencil.

(b) Every petition for either the initiative or referendum in the government of a municipality shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities or to a service area, by a number of qualified voters residing within the area outside cities or within the service area, as the case may be, equal to the following percent of the total number of votes cast at the last general election in the city or borough or borough area concerned, or special election called for the purpose of electing city or borough officers:

(1) 25 percent, when a city or borough has fewer than 7,500 persons, or

(2) 15 percent, when a city or borough has 7,500 persons or more.

(c) When signing a petition each voter shall write or print after his signature the date of signing the petition and his resident address.

(d) Illegible signatures unless accompanied by a legible printed name may be rejected by the municipal clerk.

(e) A petition signer may withdraw his signature upon written application to the clerk within seven days after the petition has been filed with the clerk.

Sec. 29.30.130. (Sec. 29.28.073.) SUFFICIENCY OF PETITION. (a) Within 10 days from the filing date, the municipal clerk shall certify on the petition whether or not it is sufficient.

(b) If the petition is insufficient, it may be amended or supplemented within 10 days after the date on which the petition is rejected as insufficient.

(c) Within 10 days after supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

Sec. 29.30.140. (Sec. 29.28.075.) PROTEST. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting to the assembly or council which shall hear and decide the protest.

Sec. 29.30.150. (Sec. 29.28.077.) NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

Sec. 29.30.160. (Sec. 29.28.080.) PRESENTATION OF INITIATIVE. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council and not otherwise restricted by Sec. 60 of this chapter, the clerk shall present it to the assembly or council at its next meeting after certification. The assembly or council may reject the petition if the subject matter of the initiative or referendum is within the restrictions of Sec. 090 (Sec. 60) of this chapter.

(b) Unless the petition is granted within 30 days of its submission to the assembly or council, the clerk shall, with the assistance of the municipal attorney, prepare an ordinance or resolution to implement the petition and shall submit it to the voters at the next regular election. The ordinance or resolution shall be published in full in the notice of election but may be summarized on the ballot to indicate clearly the

LA-Lp20posal submitted.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If the assembly or council adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

EXPLANATION: The changes allow for the submission of an initiative measure to the voters within 75 days after certification of a petition rather than requiring that the vote be delayed until the next regular election. The 45 day requirement was added to insure that a petition certified after the legal notices of a regular election were published does not complicate the election. Since the clerk determines whether the subject is within the restrictions and since this determination is subject to judicial review, the assembly or council no longer may reject a petition. An areawide vote is required whether the matter initiated is areawide or nonareawide because a service area should not be allowed to become autonomous.

(c) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared.

(d) The assembly or council may at any time not less than 10 days from the date of election adopt an ordinance or resolution to implement the petition. In that event an election shall not be held.

Sec. 29.30.170. (Sec. 29.28.090.) PRESENTATION OF REFERENDUM. (a) When a petition seeks a referendum vote on an ordinance or resolution, the clerk shall submit the ordinance to the voters of the municipality at the next regular or special election. If no regular or special election occurs within 75 days of the filing of a sufficient petition with the clerk, the assembly or council shall hold a special election within 75 days of filing.

(b) If a sufficient petition for referendum is filed within 30 days after final passage of the ordinance, or before the effective date of the ordinance, the ordinance against which the petition is filed shall be suspended pending the referendum on the ordinance. During the period of suspension the assembly or council may not enact an ordinance substantially similar to the suspended ordinance but may repeal the suspended ordinance.

(c) If a majority of those voting favor the referendum legislation, it remains in effect. If a majority rejects the legislation, it is repealed. A municipal charter may be amended as provided in the charter or by initiative and referendum as provided in Secs. 090-180 (Secs. 60-110) of this chapter.

Sec. 29.30.180. (Sec. 29.28.110.) EFFECT. (a) The assembly or council may not, within two years, act in any way to modify or negate the effect of a successful initiative or referendum. If an ordinance against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum, the council or assembly may not enact substantially similar legislation for a period of one year after repeal.

EXPLANATION: The ability to suspend an ordinance or resolution which has taken effect when a petition is filed within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to exercise a temporary repeal. The reference to amending a charter by initiative or referendum was deleted as that is covered under AS 29.13.080. All questions are submitted to an areawide vote.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of certification of a petition, the assembly or council shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the assembly or council repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the assembly or council after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be be enacted by the assembly or council for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

EXPLANATION: Technical revisions and a change in (c) to accommodate the petition process.

See notes for Larson's (C). pg 23.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

EXPLANATION: The possibility of recalling an official who has been appointed to an elective position has been added. The date to be used in determining when the six month period has run has been clarified.

EXPLANATION: This is a new section which describes the requirements for an application for recall petition.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) the name of the official sought to be recalled;

(2) the statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section sets out requirements similar to those relating to the content of initiative and referendum petitions. Requiring the clerk to prepare the petition and supply copies insures that each copy is complete and legible. A petition must be filed within 60 days after the petition is issued rather than 60 days after the date of the earliest signature on the petition.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signature and residence addresses of at least 10 municipal voters who will sponsor the petition;

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by ~~35~~ a number ~~percent~~ of the voters residing within the municipality ~~based on~~ equal to 35 percent of the number of votes cast at the last regular election for that office held prior to issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by ~~35 percent~~ a number of the voters residing within the district ~~based on~~ equal to 35 percent of the number of votes cast at the last regular election for that office held prior to issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: Which election to be used as a standard for determining the number of signatures required is clarified. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that this number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

(b) An unsuccessful initiative or referendum precludes the filing of a new petition for the same purpose sooner than six months after voter disapproval of the initiative or referendum.

Article 3. RECALL

Sec. 29.30.210. (Sec. 29.28.130.) RECALL. An elected official of a home rule or general law municipality may be recalled by the voters after he has served six months in office.

Sec. 29.30.220. (Sec. 29.28.140.) GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

Sec. 29.30.230. (Sec. 29.28.150.) PETITION. (a) A petition seeking recall of one or more municipal officials is filed with the municipal clerk. The petition shall contain

(1) the signatures and resident addresses of a number of voters as prescribed in Sec. 120(b) [Sec. 70(b)] of this chapter for initiative and referendum;

(2) the date each voter signed the petition; and

(3) a statement of the grounds of the recall stated with particularity as to specific instances.

(b) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition.

Sec. 29.30.240. (Sec. 29.28.160.) EXAMINATION FOR SUFFICIENCY. The municipal clerk shall review the petition for content and signatures and shall certify on the petition within 10 days of the filing date whether it is accepted or rejected. Until the petition is accepted, a petition signer may withdraw his signature upon written application to the clerk.

Sec. 29.30.250. (Sec. 29.28.170.) SUPPLEMENTAL PETITION. (a) If the petition is rejected because of insufficient signatures, it may be supplemented by additional signatures within 10 days after the date of rejection. If the petition is insufficient for any other reason, it shall be rejected and filed as a public record.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficient signatures alone triggers the waiting period.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.260. NEW RECALL PETITION. The rejection of a recall petition for any reason does not preclude the filing of a new petition. However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

EXPLANATION: The 45 day requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election occurs within 75 days the assembly or council shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The assembly or council may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

(b) Within 10 days after supplementary filing, the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

Sec. 29.30.260. (Sec. 29.28.180.) NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new recall petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

Sec. 29.30.270. (Sec. 29.28.190.) SUBMISSION. If a recall petition is sufficient, the clerk shall immediately submit it to the assembly or council.

Sec. 29.30.280. (Sec. 29.28.200.) ELECTION. (a) If a regular election occurs within 75 days of the submission, the assembly or council shall submit the recall at that election.

(b) If no regular election will occur within 75 days, the assembly or council shall hold a special election within 75 days of submission.

(c) If a vacancy occurs in the office after a recall petition is filed, the petition shall not be submitted to the voters.

Sec. 29.30.290. (Sec. 29.28.210.) FORM OF RECALL BALLOTS. A recall ballot contains:

(1) the grounds as stated in the recall petition;

(2) the officer's statement of 200 words or less, if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? Yes [ ] No [ ]".

Sec. 29.30.300. (Sec. 29.28.220.) ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular election.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the assembly or council, the assembly or council, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the assembly or council are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the assembly or council, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

Sec. 29.30.310. (Sec. 29.28.230.) MAJORITY REQUIRED. A majority vote on the question is required to recall an officer.

Sec. 29.30.320. (Sec. 29.28.240.) EFFECT. If an incumbent is not recalled at the recall election, a petition to recall the same incumbent may not be filed sooner than six months after the recall election.

Sec. 29.30.330. (Sec. 29.28.250.) ELECTION OF SUCCESSOR. If the voters recall an officer, the clerk shall conduct an election for a successor to fill the unexpired term. The election shall be held at least 10 but not more than 45 days from the date of the recall election. However, if a regular or special election occurs within 75 days of the recall election, the successor to the recalled official shall be chosen at that regular or special election. The procedures and requirements for the regular election for the office from which the incumbent is recalled apply to the election conducted under this section.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Subsections (f) and (g) were changed to take into account time periods required for election notice and nominations.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

~~Bruce~~ Lee Sharp

TITLE 29 REVISION

PROPOSAL FOR INITIATIVE AND REFERENDUM
(Formerly AS 29.28.060-110)

October 20, 1980

29.30.090 Reservation of Powers. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by §7, art. XI of the State Constitution.

(Unchanged.)

29.30.095 Application. An initiative or referendum is proposed by an application containing the legislative matter to be initiated or referred. The application shall be signed by not less than ten qualified voters as sponsors, shall contain the address to which all correspondence relating to the application may be sent, and shall be filed with the clerk. The clerk shall certify the application if he finds that the application is in proper form, and in addition, if the application is for an initiative, that the matter to be initiated is not restricted by §90, embraces only a single subject, and as to each part, would not be unenforceable as a matter of law. The clerk's certification or denial of certification shall be subject to judicial review.

(This section is new. The first part is modeled after §2 of the initiative article in the state constitution. As drafted, this section would also make it clear that the clerk is to review initiatives for substantive legality and that the clerk's decision is subject to appeal. This procedure will allow for a judicial determination of the legality of an initiative prior to the expense of an election.)

29.30.110 Petition. After certification of the application, a petition containing a summary of the subject matter shall be prepared by the clerk for circulation by the sponsors. The petition shall

(1) set out fully the ordinance or resolution sought to be initiated or referred by the petition;

(2) state upon the petition the date first issued by by the clerk;

(3) contain the statement, when circulated, that the signatures on the petition must be secured within 60 days of the date first issued;

(4) contain spaces for the required signatures, the printed name of each person signing the petition, the date of each signature, and both the resident and the mailing address of each signer;

(5) contain a statement to be signed and sworn to by the circulator stating the number of signatures on the petition page or pages, that the circulator personally circulated the page or pages, that all signatures were affixed in his presence, that he believes them to be genuine signatures of the persons whose names they purport to be, that each signer had an opportunity before signing to read the full text of the proposed initiative or referred measure, and that he believes each signer to be a qualified municipal voter.

(This section would require the clerk to provide the petition forms to the petitioners. This is similar to the requirement levied upon the Lieutenant Governor in state

initiative proceedings. The petition contents are essentially the same as present law (AS 29.28.065) with a shortening of the petition circulation time from 90 to 60 days, some expansion of the information the petition signers must provide, and the addition of the circulator's affidavit in (5) of the section.)

29.30.120 Required Signatures. (a) The necessary signatures on a petition shall be secured within 60 days of the date the clerk first issues the petition. The petition shall be signed in ink or indelible pencil.

(b) Every petition, whether dealing with an areawide

or a non-areawide matter, shall be signed by a number of registered voters residing within the territorial limits of the municipality equal to 25 percent of the number of votes cast at the last regular municipal election in the municipality which was held on or prior to the date of the first issuance of the petition.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk at any time prior to certification of the petition by the clerk.

(e) The petition pages shall be assembled and filed as a single instrument.

(This section carries forward the 60 day signature gathering period. Although it does not eliminate the possibility of an initiative or referendum on a matter which affects only a service area, it does require that such petitions contain the same number of signatures as a petition on an areawise matter. Permitting a service area to initiate and vote upon a matter on a service area basis is contrary to the concept of the service area being under the control of the entire legislative body. If service areas are permitted to initiate and vote upon service area only initiatives, service areas will have the authority to become essentially autonomous units of government without a governing body. Other minor changes were made to require rejection of signatures which were illegible or failed to have additional legible information accompanying the signature.)

29.30.130 Sufficiency of Petition. (a) Within ten days of the date the petition is filed, the municipal clerk shall certify on the petition whether or not it is sufficient.

(b) If the petition is insufficient, it may be amended or supplemented with additional signatures which are obtained within ten days after the date on which the petition is rejected as insufficient.

(c) Within ten days after the supplementary filing, the clerk shall recertify the petition. If the petition is still insufficient, the petition is rejected and filed as a public record.

(The only significant change is to make it clear that in providing supplementary signatures, the petitioners have only ten days to gather the signatures and may not use petition signatures which were gathered prior to the first filing but not submitted, and that they may not use signatures gathered during the period in which the clerk is checking the petition.)

29.30.140 Protest. If the clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the municipal executive shall present the protest at the next regular meeting of the assembly or council which shall hear and decide the protest.

(No change.)

29.30.150 New Petition. Failure to secure sufficient signatures does not preclude the filing of a new application for an initiative or referendum petition. However, a new application for a petition may not be filed sooner than six months after the petition is rejected by the clerk.

(This section was changed slightly to take into account the application procedure and to indicate that the rejection from which the six months is counted is a rejection by the clerk, not a rejection which might be deemed to have occurred if the matter is appealed to the assembly and the assembly sustains the clerk's rejection.)

29.30.160 Presentation of Initiative. (a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council and not otherwise restricted by §90 of this chapter, the clerk shall present it to the assembly or council at its next meeting after certification. The assembly or council may reject the petition if it determines the subject matter of the initiative or referendum is within the restrictions of §90 of this chapter or is unlawful.

(b) An initative measure presented to the assembly or council and not rejected under section (a) shall be submitted to all the voters of the municipality at the next regular municipal election held more than 45 days after submission of the petition to the assembly or council, unless the assembly or council adopts substantially the same measure. If the assembly or council adopts substantially the same measure, the petition shall be void and the question shall not be submitted to the voters.

(c) The ordinance or resolution shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(The changes here allow for the submission of an initiative measure at any time during the year, but it would be placed before the voters at the first regular municipal election occuring 45 days after submission to the assembly or council, unless rejected for cause or adopted in substantially the same form as presented. It also requires an areawide vote whether the matter is areawide or non-areawide for reasons outlined above.)

29.30.170 Presentation of referendum. (a) When a

petition seeks a referendum vote on a legislative ordinance or resolution, the clerk shall submit the ordinance or resolution to all the voters of the municipality at the next regular or special election unless the assembly or council repeals the ordinance or resolution to be referred. If no regular or special election occurs within 75 days of the certification of a sufficient petition by the clerk, the assembly or council shall hold a special election within 75 days of filing.

(b) If a sufficient petition for referendum is certified before the effective date of the ordinance or resolution, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum on the matter. During the period of suspension, the assembly or council may not enact an ordinance or resolution substantially similar to the suspended measure but may repeal the suspended ordinance or resolution.

(c) If the assembly repeals the ordinance or resolution before the election, the petition shall be void and the referred measure shall not be placed before the voters.

(d) If a majority of those voting favor the repeal of the referred measure, it is repealed; otherwise, it remains in effect or, if suspended under section (b), it shall become effective upon certification of the election results by the assembly or council.

(The ability to suspend an ordinance or resolution which had taken effect if a referendum petition was filed

within 30 days of the passage of the ordinance or resolution has been deleted to avoid the apparent ability of a part of the voters to be able to exercise a temporary repeal of the measure. The reference to amending a charter by initiative or referendum was deleted as it is already covered under AS 29.13.080. This also requires submission of the question to the areawide voters for reasons outlined above.)

29.30.180 Effect. (a) The assembly or council may not, within two years of its effective date, repeal an ordinance or resolution adopted through the initiative process nor may it amend such an ordinance or resolution in a way to substantially modify or negate the effect of the successful initiative.

(b) If an ordinance or resolution against which a referendum is directed has been repealed by the assembly or council after a petition has been filed but before the referendum election, or if an ordinance or resolution is repealed by the voters in a referendum election, the council or assembly may not enact substantially similar legislation for a period of one year after the repeal. A measure which is repealed in a referendum election shall be repealed effective upon the certification of the election results by the assembly or council.

(c) An unsuccessful initiative or referendum precludes the filing of a new application for the same or substantially the same purpose sooner than six months after the initiative or referendum election results are certified by the assembly or council.

(Minor changes to make dates more certain and to accommodate the petition application process.)

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Prepared by: Theodore D. Berns
Title 29 Technical Committee
January 2, 1981

CHAPTER 33. MUNICIPAL POWERS AND DUTIES

(CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

Article 1. GENERAL POWERS

Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

29.33.090 a.

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments and to impose liens for the enforcement thereof;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property, whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

.010 - out

(13) regulate operation and use of rights-of-way see pg 93N

Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL JURISDICTION. (a) A municipality may, to the extent otherwise authorized or permitted by law, provide parks, roads (including ice roads), trails, playgrounds, solid and septic waste disposal, wharves, harbors and other marine facilities, emergency medical services, cemeteries, airports, transportation systems and utility services outside its boundaries, and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality.

sentence missing on draft to the extent...

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030 (Sec. 29.73.020.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside cities in the borough.

OK

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS_____.

(c) Powers granted by this section must be initiated within a period of not more than five years from the date of

declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

Sec. 29.33. . (Sec. 29.48.033.) GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance, award contracts for collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The ~~council or~~ governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier

or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

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

Sec. 29.33.110. FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, and may grant permits for the use of streets & other public places.

(b) No exclusive franchise is valid until it has been ratified by a majority of the qualified voters voting on the question at a regular or special municipal election.

Sec. 29.33. ___. (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a [municipally owned] utility not regulated under AS 42.05 and [may regulate and provide what is a reasonable deposit for meters and security for service to be given,] provided that interest ~~is~~ must be paid on ~~the~~ any required deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return in invested capital.

Sec. 29.33. ___. MUNICIPAL PROPERTY.

The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land of the municipality. [Each disposal of land or an interest in land shall be by ordinance unless the assembly or council finds by resolution that the land or interest in land is without substantial value to the municipality.] See NOTES

Sec. 29.33. ___. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

(b) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

Repeal

Sec. 29.33. . (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues levied and collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes and levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to unified municipalities.

Sec. 29.33.230. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 2. MANDATORY AREAWIDE POWERS

Sec. 29.33. . (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this article on an areawide basis, both inside and outside cities within their boundaries.

(b) No city may exercise an areawide power once that power is being exercised by a borough.

Sec. 29.33. . (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the

borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.33.___. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess and collect property, sales and use taxes levied within their boundaries, subject to ~~ch. 45~~ (AS 43) of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

Sec. 29.33.___. LAND USE REGULATION.

First and second class boroughs shall provide for land use regulation in accordance with AS 29.42._____.

Article 3. ADDITIONAL CITY AND BOROUGH POWERS

Sec. 29.33.___. FIRST CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 ~~and~~ through _____, a first class borough in the areas outside cities, may exercise any power and may provide any service or facility not otherwise prohibited by law.

(b) A first class borough may, by ordinance, exercise the following powers ~~and provide the following services on~~ MAY an areawide basis:

1. Transportation ~~services~~ providing systems
2. Water pollution control
3. Air pollution control as provided in AS 46.03.140-.240
4. Licensing of day care facilities
5. ~~Licensing~~ regulation of animals;

(c) In addition to powers conferred by (b) of this section, a first class borough may, ~~on an areawide basis~~, exercise any ~~other~~ power and may provide any ~~other~~ ~~service or facility~~ ~~not otherwise prohibited by law provided that such power,~~ ~~service~~ Keep

~~or facility~~ has been transferred by a city and approved by the borough assembly or has been acquired pursuant to sec. _____.

Sec. 29.33. . SECOND CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 and _____, a second class borough, in the area outside cities, may, by ordinance, exercise the following powers ~~and may provide the following services:~~

providing systems

1. Transport~~ation services~~
2. Regulation of fireworks
3. Regulation of animals
4. Regulation of drivers and motor vehicles, including snow vehicles and off highway vehicles, to the extent allowed under AS 28.01.010.
5. Provision of garbage and solid waste collection and disposal.
6. Air and water pollution control
7. Participation in federal or state loan programs for housing rehabilitation and improvement for energy conservation.
8. Economic development programs and activities.

(b) A second class borough may, by ordinance, exercise the following powers ~~and provide the following services~~ or ~~facilities~~ on an areawide basis:

1. Transportation services
5. Regulation of animals
3. Air and water pollution control
4. Licensing of day care facilities

MAKE consistent w/ 1st class wording (ordd)

(c) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis or in the area outside cities, exercise any other power ~~and may provide other services or facilities~~ not otherwise prohibited by law provided that such power, ~~service or facility~~ has been transferred by a city and approved by the borough assembly for exercise within the city or has been by election under Sec. _____.

on an areawide basis

acquired. * or in the area outside cities

In addition to powers conveyed by AS

Sec. 29.33. . CITIES WITHIN ORGANIZED BOROUGHS. (a) A first or second class city within an organized borough may exercise any power ~~and may provide any service or facility~~ not otherwise prohibited by law. In accordance with Sec. _____, a city may not exercise a power once that power is being exercised by a borough.

In addition to powers conveyed by AS

Sec. 29.33. . CITIES OUTSIDE ORGANIZED BOROUGHS. (a) Cities outside an organized borough may exercise any power and ~~may~~ provide any service or facility ~~or facility~~ not otherwise prohibited by law.

(b) Cities outside an organized borough may assess, levy and collect a general property tax and a sales or use tax. A property, sales or use tax if levied must be assessed, levied and collected as provided by Chapter 45 of this title for boroughs. Cities may, by ordinance, establish, alter and abolish differential tax zones for property taxes for services not provided in the entire city or provided at a different level than provided generally within the city.

(c) Home rule and first class cities outside an organized borough shall constitute city school districts and shall establish, operate and maintain a system of public schools as provided by AS 29.36.040 for boroughs.

(d) Home rule and first class cities outside an organized borough shall, and second class cities outside an organized borough may, provide for land use regulation as provided by AS 29.42.010-.245 for boroughs.

Sec. 29.33. . ACQUISITION OF ADDITIONAL POWERS. (a) A ~~city or~~ borough ~~may~~ acquires additional powers, ~~services or facilities~~ as provided by sec. _____ by holding an election on the question as provided by this section. For acquisition of areawide powers, the election shall be held areawide. For acquisition of powers in the area outside cities ~~or within a city~~ only. the election shall be held in the area outside cities ~~or within the city~~.

the assembly OR

(b) An election under this section may be initiated by a petition signed by a number of voters equal to 15% of the number of votes cast at the preceeding regular election in the area in

which the election is to be held, ~~or by an ordinance adopted by the assembly or council~~. A petition under this section shall be filed with the borough or ~~city clerk~~ who shall certify to the assembly ~~or council~~ whether the petition contains sufficient signatures. Upon certification, the assembly ~~or council~~ shall, at the next regular meeting, order an election on the question to be held within 60 days of the order. If more than one power, service or facility is proposed, each shall appear separately on the ballot.

(c) In the case of acquisition of additional areawide borough powers, the borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties

and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33.___. (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.___. (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.___. (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title area illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

CHAPTER 33. POWERS AND DUTIES APPLICABLE TO.

HOME RULE AND GENERAL LAW MUNICIPALITIES.

ARTICLE 1. GENERAL POWERS.

Sec. 29.33.010. GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

**** (7) to levy taxes and special assessments, and impose liens for their enforcement;

(8) to enforce ordinances and to prescribe penalties for violations;

**** (9) to acquire, manage, control, use and dispose of real and personal property, irrespective of weether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under AS 29.36.270(f).

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

Sec. 29.33.010(1) COMBINING OFFICES. The assembly or council may combine two or more appointive or administrative offices.

Sec. 29.33.020. EXTRATERRITORIAL JURISIDICTION. ****(a) A municipality may provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, transportation facilities, airports, utility services, solid and septic waste disposal, and wharves, harbors and other marine facilities outside its boundaries, subject to AS 29.36.010 and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030. EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250 - 09.55.460.

Sec. 29.33.040. EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.36.100.

(c) AS 29.36.170 - 29.36.200 are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President, but these powers may be extended for an additional period of not more than three years.

ARTICLE 2. FACILITIES, SERVICES AND REGULATION.

Sec. 29.33.070. MUNICIPAL FACILITIES AND SERVICES.

****(a) To the extent that a municipality may exercise the powers necessary to provide the service or facility and subject to other provisions of law a municipality may exercise the powers necessary to provide the following:

(1) streets and sidewalks;

(2) sewers and sewage treatment facilities;

(3) harbors, wharves, and other marine facilities;

(4) watercourse and flood control facilities;

(5) health services and hospital facilities;

(6) cemeteries;

(7) police protection and jail facilities;

(8) cold storage plants;

(9) telephone systems;

(10) light, power and heat;

(11) water;

(12) transportation systems;

(13) community centers;

(14) libraries, visual or performing arts centers, or museums;

(15) recreation facilities;

(16) airport and aviation facilities;

(17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 of this chapter;

(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;

(19) parking and parking facilities;

(20) housing and urban renewal, rehabilitation and development;

(21) preservation, maintenance and protection of historic sites, buildings and monuments;

**** (22) Repeal.

(23) emergency medical services and facilities.

**** (24) provide any other facility or service necessary to carry out a public purpose.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec.20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.080. GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance; award contracts for

collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by Sec. 6 ch 76 SLA 1973.

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

Sec. 29.33.090. REGULATORY POWERS. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(13) pg 2 Beer

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

**** (4) Repeal.

(5) ~~licensing, impounding and disposition~~ regulation of animals;

**** (6) Repeal.

**** (7) Repeal.

**** (8) Repeal.

**** (9) Repeal.

(10) alcoholic beverages as provided by AS 04.15.070;

(11) recreational devices as provided by AS 05.20.100;

**** (12) Repeal.

**** (13) Repeal.

**** (14) building, housing and related codes, which may be provided by cities within boroughs or, in the manner required in (b) of this section, by first or second class boroughs in the area outside cities or areawide;

(15) condemnation and abatement of public nuisances and hazards;

**** (16) Repeal.

(17) water pollution control;

(18) air pollution control as provided in AS 46.03.140 - 46.03.230;

**** (19) to the extent not otherwise prohibited, any activity affecting the general health, safety, well-being and welfare of its inhabitants;

(20) licensing of day care facilities.

**** (21) municipally owned utilities to the extent not prohibited by AS 42.05.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec. 20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (15), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

sub(c) missing

****Sec. 29.33.100. MUNICIPALLY-OWNED UTILTIES. Repeal.

Sec. 29.33.110. FRANCHISES AND PERMITS. ****(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, and may permit them the use of streets and other public places under regulations prescribed by ordinance.

exclusive

See Beens wording: )

**** (b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least a majority of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The

ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.33.120. PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a [municipally owned] utility not regulated under AS. 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

****Sec. 29.33.130. HEARING FOR REGULATION OF UTILITIES RATES. Repeal.

****Sec. 29.33.140. RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. Repeal.

****Sec. 29.33.150. FURTHER PROCEEDINGS. Repeal.

****Sec. 29.33.160. APPLICATION. Repeal.

ARTICLE 3. FISCAL DUTIES.

****Sec. 29.33.190. CENTRALIZED PURCHASING. Repeal.

Sec. 29.33.200. MUNICIPAL PROPERTIES. ****(a) Repeal.

**** (b) Repeal.

**** (c) Repeal.

**** (d) The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality. Each transaction disposing of land or an interest in land which is not subject to a competitive process shall be by ordinance.

**** (e) Repeal.

**** (f) Repeal.

Sec. 29.33.210. BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

**** (b) Repeal.

(c) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

**** (d) Repeal.

****Sec. 29.33.220. EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to a unified municipality.

Sec. 29.33.230. POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council

shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

ARTICLE 4. CONSTRUCTION OF POWERS.

Sec. 29.33.260. GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.270. EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.280. ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

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CHAPTER 33. POWERS AND DUTIES APPLICABLE TO HOME RULE AND GENERAL LAW MUNICIPALITIES.

Article 1. GENERAL POWERS.

Sec. 29.33.010. GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

**** (7) to levy taxes and special assessments, and impose liens for their enforcement;

(8) to enforce ordinances and to prescribe penalties for violations;

**** (9) to acquire, manage, control, use and dispose of real and personal property, irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under AS 29.36.270(f).

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

to issue franchises and permits for the use of ?

(12) to borrow money and issue evidences of indebtedness.

(13) ?

Sec. 29.33.010(1) COMBINING OFFICES. The assembly or council may combine two or more appointive or administrative offices.

Sec. 29.33.020. EXTRATERRITORIAL JURISIDICTION. ****(a) A municipality may provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, transportation facilities, airports, utility services, solid and septic waste disposal, and wharves, harbors and other marine facilities outside its boundaries, subject to AS 29.36.010 and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030. EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

Sec. 29.33.040. EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.36.100.

(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;

(19) parking and parking facilities;

(20) housing and urban renewal, rehabilitation and development;

(21) preservation, maintenance and protection of historic sites, buildings and monuments;

**** (22) Repeal.

(23) emergency medical services and facilities.

**** (24) provide any other facility or service necessary to carry out a public purpose.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-130 for areawide exercise or in the manner required under AS 29.36.160-29.36.200 for exercise in the borough area outside cities or are conferred by Sec. 20 of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.080. GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance; award contracts for

(c) AS 29.36.170-29.36.200 are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President, but these powers may be extended for an additional period of not more than three years.

Article 3. FACILITIES, SERVICES AND REGULATION.

Sec. 29.33.070. MUNICIPAL FACILITIES AND SERVICES.

****(a) To the extent that a municipality may exercise the powers necessary to provide the service or facility and subject to other provisions of law a municipality may exercise the powers necessary to provide the following:

(1) streets and sidewalks;

(2) sewers and sewage treatment facilities;

(3) harbors, wharves, and other marine facilities;

(4) watercourse and flood control facilities;

(5) health services and hospital facilities;

(6) cemeteries;

(7) police protection and jail facilities;

(8) cold storage plants;

(9) telephone systems;

(10) light, power and heat;

(11) water;

(12) transportation systems;

(13) community centers;

(14) libraries, visual or performing arts centers, or museums;

(15) recreation facilities;

(16) airport and aviation facilities;

(17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 ~~(Sec. 33)~~ of this chapter;

collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by Sec. 6 ch 76 SLA 1973.

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

Sec. 29.33.090. REGULATORY POWERS. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

**** (4) Repeal.

(5) licensing, impounding and disposition of animals;

**** (6) Repeal.

**** (7) Repeal.

**** (8) Repeal.

**** (9) Repeal.

(10) alcoholic beverages as provided by AS 04.15.070;

(11) recreational devices as provided by AS 05.20.100;

**** (12) Repeal.

**** (13) Repeal.

**** (14) building, housing and related codes, which may be provided by cities within boroughs or, in the manner required in (b) of this section, by first or second class boroughs in the area outside cities or areawide;

(15) condemnation and abatement of public nuisances and hazards;

**** (16) Repeal.

(17) water pollution control;

(18) air pollution control as provided in AS 46.03.140 - 46.03.230;

**** (19) to the extent not otherwise prohibited, any activity affecting the general health, safety, well-being and welfare of its inhabitants;

(20) licensing of day care facilities.

**** (21) municipally owned utilities to the extent not prohibited by AS 42.05.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-29.36.130 for areawide exercise or in the manner required under AS 29.36.160-29.36.200 for exercise in the borough area outside cities or are conferred by ~~Sec. 20~~ of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (15), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

****Sec. 29.33.100. MUNICIPALLY-OWNED UTILTIES. Repeal.

Sec. 29.33.110. FRANCHISES AND PERMITS. ****(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, and may permit them the use of streets and other public places under regulations prescribed by ordinance.

**** (b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least a majority of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The

ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.33.120. PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS. 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

****Sec. 29.33.130. HEARING FOR REGULATION OF UTILITIES RATES. Repeal.

****Sec. 29.33.140. RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. Repeal.

****Sec. 29.33.150. FURTHER PROCEEDINGS. Repeal.

****Sec. 29.33.160. APPLICATION. Repeal.

upper case Article 3. FISCAL DUTIES.

****Sec. 29.33.190. CENTRALIZED PURCHASING. Repeal.

Sec. 29.33.200. MUNICIPAL PROPERTIES. ****(a) Repeal.

**** (b) Repeal.

**** (c) Repeal.

**** (d) The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality. Each transaction disposing of land or an interest in land which is not subject to a competitive process shall be by ordinance.

**** (e) Repeal.

**** (f) Repeal.

Sec. 29.33.210. BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

**** (b) Repeal.

(c) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

**** (d) Repeal.

****Sec. 29.33.220. EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes ~~levied~~ O.K. collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to a unified municipality.

Sec. 29.33.230. POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council

shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

upper case Article 4. CONSTRUCTION OF POWERS.

Sec. 29.33.260. GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.270. EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.280. ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.33.010. GENERAL POWERS. Section unchanged to:

(7) to levy taxes and special assessments, and impose liens for their enforcement;

(9) to acquire, manage, control, use and dispose of real and personal property, irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a ~~second class~~ borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under AS 29.36.270(f).

Adds:

~~(13) issue franchises and permits for the use of municipal property; including exclusive franchise privileges.~~

All other paragraphs the same.

EXPLANATION: (7) allows for imposition of liens; (9) deletes material referring to purposes for which property may be acquired, managed, or disposed of; ~~(13) is new~~.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 198

Sec. 29.33.020. EXTRATERRITORIAL JURISDICTION. (a) A municipality may provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, ~~small boat harbors and marinas~~, and ~~airports outside its boundaries~~, subject to AS 29.36.010, and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) No change.

EXPLANATION: Adds ~~"small boat harbors and marinas"~~ and provides that jurisdiction in which a facility is located may regulate it.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.33.030. EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

EXPLANATION: The limitation imposed on a second class city is eliminated broadening its power to exercise eminent domain.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

To the extent that a municipality may exercise the powers necessary to provide a service or facility and

Sec. 29.33.070. FACILITIES AND PROGRAMS. (a) Subject to other provisions of law, a municipality may exercise the powers necessary to provide the following:

The same to:

(22) Repeal.

Add:

(24) provide any other facility or service necessary to carry out any public purpose.

The rest of this section is the same.

EXPLANATION: (22) is more properly a regulatory power. Covered under AS 29.33.090(a)(~~11~~); (24) is added so that a municipality is not "limited" by the laundry list.



Sec. 29.33.090. REGULATORY POWERS. (a) No cnange.

(1) No change.

(2) No change.

(3) No change.

(4) Repeal.

(5) No change.

(6) Repeal.

(7) Repeal.

(8) Repeal.

(9) Repeal.

(10) No change.

(11) No change.

(12) Repeal.

(13) Repeal.

(14) building, housing and related codes, which may be provided by cities within boroughs or, in the manner required in (b) of this section, by first or second class boroughs in the area outside cities or areawide;

(15) ~~Repeal.~~ No change.

(16) Repeal.

(17) No change.

(18) air pollution control as provided in AS 46.03.140-46.03.230;

(19) to the extent not otherwise prohibited, any activity affecting the general health, safety, well-being and welfare of its inhabitants;

(20) No change.

(21) municipally owned utilities to the extent not prohibited by 42.05.

(M. continue with (b))

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
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INSERT (14) But not A) & (B)

Sec. 29.33.090. REGULATORY POWERS. (a) No change.

(1) No change

(2) No change

(3) licensing, No change impounding and disposition of animals; no change

(4) alcoholic beverages as provided by AS 04.15.070; to reference

(5) recreational devices as provided by AS 05.20.100; No change

(6) condemnation and abatement of public nuisances and hazards;

(7) water pollution control;

(8) air pollution control as provided in AS 46.03.140-46.03.240;

~~(9)~~ No change

(10) municipally owned utilities to the extent not prohibited by 42.05; to the extent not otherwise prohibited,

(11) any activity affecting the general health, safety, well-being and welfare of its inhabitants.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-29.36.130 for areawide exercise or in the manner required under AS 29.36.160-29.36.200 for exercise in the borough area outside cities or are conferred by Sec. 020 of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(1), (6), (7), ~~(8)~~ and (10) of this section, exercise of the powers areawide or, as to (a)(3), (5) and (9), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on the acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

EXPLANATION: Laundry list shortened to include only those items containing cross-references and those specifically treated under (b). (10) is new. ~~(8) dealing with air pollution control~~ is added to (b) so that the power ~~must be exercised on an areawide basis~~.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
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29.33.100 Repeal.

~~Sec. 29.33.110. FRANCHISES AND PERMITS. Repeal.~~

~~EXPLANATION: The right to issue franchises and permits has been added to the general powers section, AS 29.33.010 (13). It is not felt that it is necessary to circumscribe this power.~~

Not accepted
use 29.33.110, but strike some language

(b) change to 'a majority'

Sec. 29.33.110. FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, and may permit them the use of streets and other public places under regulations

(b) No franchise is valid until it has been submitted to the voters of the city or borough area outside cities in which it applies, and at least a majority of the votes cast are in favor of the franchise.

(The rest of the section remains the same)

Explanation:

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
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~~Sec. 29.33.120. PUBLIC UTILITIES RATES. Repeal.~~ ← leave in only

Sec. 29.33.130. HEARING FOR REGULATION OF UTILTIES. Repeal.

Sec. 29.33.140. RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. Repeal.

Sec. 29.33.150. FURTHER PROCEEDINGS. Repeal.

Sec. 29.33.160. APPLICATION. Repeal.

EXPLANATION: The regulation of municipally owned utilties is allowed under the new draft of AS 29.33.010 as (10). It is felt that it is not necessary to include elaborate details concerning that regulation.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.33.190. CENTRALIZED PURCHASING. Repeal.

EXPLANATION: Not needed. A municipality has this power without this provision.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.33.200. MUNICIPAL PROPERTIES. (a) Repeal.

(b) Repeal.

(c) Repeal.

(d) The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality. ~~If a competitive process for the acquisition and disposal of land and interests in land by the municipality is not provided by ordinance, each land transaction by the municipality shall be approved by ordinance.~~

(e) Repeal.

(f) Repeal.

EXPLANATION: Since other laws, both federal and state, which provide land to municipalities contain conflicting requirements for use and disposal it is felt that this section created undue complexities as it now reads. It is eliminated in favor of a simple requirement that a procedure be established by ordinance.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.33.210. BUDGET AND CAPITAL PROGRAM. (a) No change.

(b) Repeal.

(c) No change.

(d) Repeal.

EXPLANATION: (a) and (d) are repealed as misleading. Bonds may only be used to finance capital projects.

**DRAFTED CHANGES** RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.33.220. EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes ~~levied and~~ collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes ~~levied and~~ collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to a unified municipality.

EXPLANATION: Technical drafting clean-up. The last sentence added to make it clear that areawide/nonareawide distinctions do not apply to unified municipalites.

CHAPTER 33. POWERS AND DUTIES APPLICABLE TO
HOME RULE AND GENERAL LAW MUNICIPALITIES
~~(CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)~~

Article 1. GENERAL POWERS

Sec. 29.33.010. ~~(Sec. 29.48.010.)~~ GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments; & impose liens for the enforcement thereof.

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property, ~~for any purpose authorized under this title, federal law, or other law, or in accordance with such law~~, and irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a second class borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

(13) issue franchises & permits for use of muni prop

Sec. 29.33.010(1) (Sec. 29.23.510.) COMBINING OFFICES. The assembly or council may combine two or more appointive or administrative offices.

Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL JURISIDICTION. (a) A municipality may provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, harbors & marinas and airports outside its boundaries, subject to AS 29.36.010 (AS 29.33.010), and may regulate their use and operation. provided w/in boundaries of another mun must A regulation adopted under this section must state that it applies outside the municipality. transportation instead inc.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030. (Sec. 29.73.020.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460. ~~In the case of a second class city, before exercising the power, the council shall request or petition the~~ Department of Community and Regional Affairs ~~for permission to exercise the power.~~ The council may not exercise the power of eminent domain or declaration of taking without the formal approval of the Department of Community and Regional Affairs. The exercise of the power of eminent domain or declaration of taking shall be by ordinance which shall be submitted to the qualified voters at the next regularly scheduled general

election or special election called for that purpose. A majority of the qualified voters voting on the question is required for approval of the ordinance.

Sec. 29.33.040. ~~(Sec. 29.48.270.)~~ EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS ~~29.36.100~~ ~~(AS 29.33.260)~~.

(c) AS 29.36.170-29.36.200 ~~(AS 29.38.020-29.38.050)~~ are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President, but these powers may be extended for an additional period of not more than three years.

Article 2. FACILITIES, SERVICES AND ~~REGULATION~~ REGULATIONS

Sec. 29.33.070. ~~(Sec. 29.48.030.)~~ MUNICIPAL FACILITIES ~~AND~~ SERVICES. Subject to other, nov. of. law PROGRAMS!
(a) A municipality may exercise the powers necessary to provide the following ~~public facilities and services~~:

(1) streets and sidewalks;

(2) sewers and sewage treatment facilities;

(3) harbors, wharves, and other marine facilities;

(4) watercourse and flood control facilities;

(5) health services and hospital facilities;

(6) cemeteries;

(7) police protection and jail facilities;

(8) cold storage plants;

(9) telephone systems;

(10) light, power and heat;

(11) water;

(12) transportation systems;

(13) community centers;

(14) libraries, visual or performing arts centers, or museums;

(15) recreation facilities;

(16) airport and aviation facilities;

(17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 (Sec. 33) of this chapter;

(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;

(19) parking and parking facilities;

(20) housing and urban renewal, rehabilitation and development;

(21) preservation, maintenance and protection of historic sites, buildings and monuments;

move (22) consumer protection;

(23) emergency medical services and facilities.

(24) perform public purpose

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-130 (AS 29.33.250-29.33.290) for areawide exercise or in the manner required under AS 29.36.160-29.36.200 (AS 29.38.010-29.38.050) for exercise in the borough area outside cities or are conferred by (Sec.20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17) and (20),

in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.080. (Sec. 29.48.033.) GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance; award contracts for collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political

subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by Sec. 6 ch 76 SLA 1973.

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

Sec. 29.33.090. (Sec. 29.43.035.) REGULATORY POWERS. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

(4) transportation fares;

(5) licensing, impounding and disposition of animals;

(6) selling of goods;

(7) selling of food;

(8) abandoned property;

~~(9) dangerous and disorderly conduct~~; Delete

(10) alcoholic beverages as provided by AS 04.15.070;

(11) recreational devices as provided by AS 05.20.100;

(12) control of insects and rodents;

(13) offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(14) building, housing and related codes, which may be provided by cities within cities or, in the manner required in (b) or (c) of this section, by first or second class boroughs in the borough area outside cities or areawide, subject to the following;

(A) exceptions to requirements of the codes may be made in the codes among other reasons, in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments;

(B) codes may not be used to prohibit or restrict the development or use of solar or wind energy unless the assembly or council finds that the development or use of solar or wind energy would endanger the health or safety of the public;

(15) condemnation and abatement of public nuisances and hazards;

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

(17) water pollution control;

(18) air pollution control as provided in AS 46.03.140-46.03.240;

(19) other powers and functions affecting the general health, safety, well-being and welfare of its inhabitants;

(20) licensing of day care facilities.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-29.36.130 (AS 29.33.250-29.33.290) for areawide exercise or in the manner required under AS 29.36.160-29.36.200 (AS 29.38.010-29.38.050) for exercise in the borough area outside cities

or are conferred by (Sec. 20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power. Sub(c) missg REDEALED OK

Sec. 29.33.100. (Sec. 29.48.040.) MUNICIPALLY-OWNED UTILTIES. A municipality owning or operating utilities may extend service to adjacent areas outside its municipal limits. ~~For that purpose the municipality may acquire, maintain and operate utility facilities together with necessary real property interests in real property outside its limits.~~ This section applies to home rule and general law municipalities. MOVE TO EXTRA TERRITORIAL JURISDICTION

Sec. 29.33.110. (Sec. 29.48.050.) FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by ordinance. (MOVE TO GEN POWERS) Berns amend: Parr motion municipal public property!

(b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least 55 percent of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The Berns — simple maj. — carries

ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission.

more to gen powers section

Sec. 29.33.120. (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned public utility not prohibited regulated under AS. 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

Sec. 29.33.130. (Sec. 29.48.070.) HEARING FOR REGULATION OF UTILITIES RATES. If the assembly or council considers it advisable to regulate, change, or fix the rates to be charged by a public service corporation, association or individual not regulated under AS 42.05, it shall order a hearing to be held before the governing body at a time and place specified. Notice of the hearing shall be given by at least one publication in a newspaper of general circulation distributed within the municipality or, if no newspaper of general circulation is distributed within the municipality,

notice shall be given by posting a notice in three public places within the city or borough area outside cities receiving the utilities services and by serving written notice upon the corporations, associations and individuals whose rates are to be regulated, fixed, or changed in the same manner that summonses are served. The notices shall be published or posted and served at least 15 days before the hearing.

Sec. 29.33.140. DELETE (Sec. 29.48.080.) RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. At a hearing held under Sec. 70 of this chapter, all public service corporations, associations, or individuals affected by or interested in the matters to be heard may be present and may be represented by counsel. The municipality and all interested parties may produce witnesses and examine them and introduce evidence to prove or disprove the facts in issue or matters to be established or inquired into at the hearing. All parties may compel the attendance of witnesses, and subpoenas requiring attendance shall be issued by the municipal clerk under his hand and the seal of the municipality. Subpoenas duces tecum requiring the production of books and papers shall be issued in like manner upon request. If a person fails to obey a subpoena, the party at whose request the subpoena issued may petition the superior court for an order compelling the attendance of the disobedient witness or the production of the books or papers referred to in a subpoena duces tecum. The superior court shall order the witness to appear and testify or compel the production of the books or papers. A violation of the order of the court is a contempt of court. If a witness appears and refuses to testify concerning a matter material to the facts inquired about at the hearing and to establish or determine which the hearing was had, an application may be made to the superior court to compel the witness to testify and answer questions put to him concerning the matters inquired about, and the court shall make an order compelling the witness to testify. Violation of the order is contempt of court.

DELETE

Sec. 29.33.150. (Sec. 29.48.090.) FURTHER PROCEEDINGS. A hearing under Sec. 70 of this chapter shall begin at the time stated in the notice but may be continued from time to time. At least a quorum of the assembly or council shall be present at the hearing. At the conclusion of the hearing the parties interested may make such arguments before the assembly or council, either in person or by attorney, as they consider proper, touching the matters at issue, and thereafter the assembly or council shall proceed to regulate and fix the rates by ordinance. The date upon which the rates fixed or regulated take effect shall be stated in the ordinance and shall be at least 10 days after passage and approval of the ordinance.

DELETE

Sec. 29.33.160. (Sec. 29.48.100.) APPLICATION. (a) In the case of conflict between the provisions of Secs. 110-130 (Secs. 50-70) of this chapter and the provisions of AS 42.05 as to the regulation of rates of a utility, the provisions of AS 42.05 shall prevail.

(b) Sections 110-160 (Sections 50-100) of this chapter apply to home rule and general law municipalities.

Article 3. FISCAL DUTIES

Sec. 29.33.190. (Sec. 29.48.250.) CENTRALIZED PURCHASING. The assembly or council may provide for centralized purchasing, storage and distribution of supplies, material and equipment for the municipality and its departments.

see (d) move to [illegible] with [illegible]

Sec. 29.33.200. (Sec. 29.48.260.) MUNICIPAL PROPERTIES. (a) A municipality may acquire and hold real and personal property or interest in property, and may sell, lease or otherwise dispose of property no longer required for municipal purposes.

(b) Notwithstanding the provisions of (c) of this section, a municipality may sell, lease, donate or exchange with the United States, the state, or a political subdivision real estate or other property, or interest in property, when in the judgment of the assembly or council it is advantageous to the municipality to do so.

(c) The assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, or posted within that time in at least three public places in the municipality; (3) public auction or opening of sealed bids, if any; and (4) other terms and conditions fixed by the assembly or council. However, no ordinance for the sale, lease, or disposition of real property or interest in real property valued at $25,000 or more is valid unless ratified by a majority of the qualified voters voting at a regular or special election at which the question of the ratification of the ordinance is submitted. Thirty days notice shall be given of the election and during that period the assembly or council shall have published at least once a week in a newspaper of general circulation distributed within the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, and stating the title and date of passage of the ordinance. Notice shall also be given by posting a copy of it in at least three public places in the municipality at least 30 days before the election. If no newspaper of general circulation is distributed within the municipality, the notice given by posting is sufficient for the purposes of this section.

(d) The assembly or council ~~may~~ shall by ordinance establish a formal procedure for acquisition ~~from the state of land or rights in land~~ and ~~the~~ disposal of the land or ~~rights~~ interests in land. ~~In which event the provisions of (c) of this section do not apply.~~ See Tami's notes re: competitive selling prop ordinance

(e) ~~A municipality, in order to make~~ sites available for ~~beneficial~~ new ~~industries, may acquire and hold real property, either inside or outside~~

the corporate limits, and may sell, lease or dispose of it to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality.

DELETE (f) A deed, contract of sale, lease, or other instrument evidencing disposition by a borough of land or interest in land classified by the borough as agricultural land shall include, among other terms, conditions and limitations which may be required by law or which the assembly may elect to include, a condition that the land is restricted to agricultural use. The assembly may not by subsequent action waive or abrogate the condition for a period of 50 years. An abrogation of the restriction to agricultural use after the 50-year period requires the consent of any party having an interest in the land. The assembly shall provide for enforcement by appropriate legal means, including but not limited to forfeiture of the purchaser's interest for violation of the condition.

Sec. 29.33.210. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

DELETE (b) A bond, contract, lease, or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year shall be made or approved by ordinance adopted by a majority of the votes authorized on the question.

(c) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

DELETE (d) Nothing in this section is intended to prevent the authorizing of payment or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds.

Sec. 29.33.220. (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues ~~levied and~~ received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Revenues ~~levied and~~ received through taxes collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to unified muni.

Sec. 29.33.230. ~~(Sec. 29.48.220.)~~ POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

## Article 4. CONSTRUCTION OF POWERS

~~(Chapter 48. Article 5. CONSTRUCTION OF POWERS)~~

Sec. 29.33.260. ~~(Sec. 29.48.310.)~~ GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.270. ~~(Sec. 29.48.320.)~~ EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.280. ~~(Sec. 29.48.330.)~~ ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

Fm Wallen

Sec. 29.33.200 MUNICIPAL PROPERTIES. (a) A municipality may acquire and hold real or personal property or interest in real or personal property. A municipality may sell lease or otherwise dispose of property no longer required for municipal purposes or to achieve a public purpose.

(b) Except as provided in (c) of this section, the assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require: (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, or if no such newspaper of general circulation exists, posted within that time in at least three public places in the municipality; (3) public auction or opening of sealed bids or lottery; and (4) other terms and conditions fixed by the assembly or council. However, no ordinance for the sale, lease, or disposition of real property or interest in real property valued at $25,000 or more is valid unless ratified by a majority of the qualified voters voting at a regular or special election at which the question of the ratification of the ordinance is submitted. Thirty days notice shall be given of the election and during that period the assembly or council shall have published at least once a week in a newspaper of general circulation distributed within the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, and stating the title and date of passage of the ordinance. Notice shall also be given by posting a copy of it in at least three public places in the municipality at least 30 days before the election. If no newspaper of general circulation is distributed within the municipality, the notice given by posting is sufficient for the purposes of this section.

(c) When in the judgment of the assembly or council it is advantageous to the municipality, a municipality may by ordinance:

1) sell, lease, donate or exchange with the United States, the state, a Native village government or political subdivisions thereof real estate or other property or interests in such property;

2) establish a formal procedure for acquisition of real property or interests in real property from the state, or a village corporation formed pursuant to the Alaska Native Claims Settlement Act (43 USC 1601 et. seq.); or

3) sell, lease or dispose of real property or interests in real property to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality.

The provisions of this section shall not apply to acquisitions and disposals of real property or interests in real property made pursuant to this subsection.

(d) A deed, contract of sale, lease, or other instrument evidencing disposition by a borough of land or interest in land classified by the borough as agricultural land shall include, among other terms, conditions and limitations which may be required by law or which the assembly may elect to include, a condition that the land is restricted to agricultural use. The assembly may not by subsequent action waive or abrogate the condition for a period of 50 years. An abrogation of the restriction to agricultural use after the 50-year period requires the consent of any party having an interest in the land. The assembly shall provide for enforcement by appropriate legal means, including but not limited to forfeiture of the purchaser's interest for violation of the condition.

(e) For the purposes of this section, a Native village government is a government organized under the Indian Reorganization Act (49 Stat. 1250 as amended) or a traditional Native government for a community eligible for benefits under the Alaska Native Claims Settlement Act. (43 USC 1601 et. seq.).

## COMMENTS

This redraft of 29.48.260 solves several problems which occur under current law.

1) The new section is reorganized to state a general principle governing disposals (subsection b) and gathers together all the exceptions (subsection c). Under this version, the ambiguity which arose in the Libby case is eliminated and it becomes clear that the rule regarding disposals does not apply to any exception.

2) Adds disposals for public purposes to current authorization for surplus disposals.

3) Clarifies that posting notice is acceptable only when no newspapers of general circulation exists.

4) Clarifies that disposals accepted from the general rule must also be made pursuant to an ordinance.

5) Clarifies that disposals of land to a Native government is authorized in light of controversy as to whether a Native Government is a federal instrumentality.

6) Provides for exception for management of 14(c)(3) lands similar to municipal land grants. Currently existing and future cities for ANCSA communities will not receive municipal land grants. Instead they will receive 14(c)(3) reconveyances. There is no logical reason to distinguish the two types of municipal land grants.

7) Overrules Libby case.

OFFICE OF THE MUNICIPAL ATTORNEY
KETCHIKAN GATEWAY BOROUGH
AND
CITY OF KETCHIKAN

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(907) 225-3111 EX. 327

November 4, 1980

State of Alaska
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Attn: Tamara Cook

Re: Title 29 Review - Inclusion of Harbors and Marinas under Extraterritorial Jurisdiction

Dear Tamara:

Please find enclosed a proposed amendment to existing Section 29.48.037 [Extraterritorial Jurisdiction] (new 29.33.020) to clarify the authority of municipalities to provide harbors and marinas outside their boundaries.

As we have mentioned, the City of Ketchikan has for many years leased from the State of Alaska, and operates and regulates, several small but important boat harbors and marinas outside the boundaries of the City.

Yours very truly,

Russell W. Walker

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

cc: City Manager
Ted Berns, Esq.
Lee Sharp, Esq.
Allen Tesche, Esq.
Jim Nordale, Esq.
Ginny Chitwood

Notes OK

Sec. 29.33.020. Extraterritorial jurisdiction.

(a) A municipality may provide parks, roads, trails, playgrounds, cemeteries, harbors, marinas, and airports outside its boundaries, subject to AS 29.33.010, and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Formerly: As 29.48.037

Comments: Expands existing law to include harbors and marinas as facilities a municipality may acquire, operate and regulate outside its boundaries.

CHAPTER 33. POWERS AND DUTIES APPLICABLE TO HOME RULE AND GENERAL LAW MUNICIPALITIES

(CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

Article 1. GENERAL POWERS

Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS. Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments, and impose liens;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property for ~~a purpose authorized under this title, federal law, or other law, or in accordance with such~~ law, and irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a second class borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(13) issue franchises and permits for the use of municipal property;

~~(14) [illegible] utilities owned by the municipality.~~

(all other pur[illegible] (9) deletes material [illegible] (13) ~~[illegible]~~ is new.

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

Sec. 29.33.010(1) (Sec. 29.23.510.) COMBINING OFFICES. The assembly or council may combine two or more appointive or administrative offices.

Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL JURISIDICTION. (a) A municipality may provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries and airports outside its boundaries, subject to AS 29.36.010 (AS ~~29.33.010~~), and may regulate their use and operation. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030. (Sec. 29.73.020.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460. In the case of a second class city, before exercising the power, the council shall request or petition the Department of Community and Regional Affairs for permission to exercise the power. The council may not exercise the power of eminent domain or declaration of taking without the formal approval of the Department of Community and Regional Affairs. The exercise of the power of eminent domain or declaration of taking shall be by ordinance which shall be submitted to the qualified voters at the next regularly scheduled general

election or special election called for that purpose. A majority of the qualified voters voting on the question is required for approval of the ordinance.

Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.36.100 (AS 29.33.260).

(c) AS 29.36.170-29.36.200 (AS 29.38.020-29.38.050) are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President, but these powers may be extended for an additional period of not more than three years.

Article 2. FACILITIES, SERVICES AND REGULATION

Sec. 29.33.070. (Sec. 29.48.030.) ~~MUNICIPAL~~ FACILITIES, ~~AND~~ SERVICES. (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

(1) streets and sidewalks;

(2) sewers and sewage treatment facilities;

(3) harbors, wharves, and other marine facilities;

(4) watercourse and flood control facilities;

(5) health services and hospital facilities;

(6) cemeteries;

(7) police protection and jail facilities;

(8) cold storage plants;

(9) telephone systems;

(10) light, power and heat;

(11) water;

(12) transportation systems;

(13) community centers;

(14) libraries, visual or performing arts centers, or museums;

(15) recreation facilities;

(16) airport and aviation facilities;

(17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 (Sec. 33) of this chapter;

(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;

(19) parking and parking facilities;

(20) housing and urban renewal, rehabilitation and development;

(21) preservation, maintenance and protection of historic sites, buildings and monuments;

(22) ~~consumer protection;~~

(23) ~~emergency medical services and facilities.~~

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-130 (AS 29.33.250-29.33.270) for areawide exercise or in the manner required under AS 29.36.160-29.36.200 (AS 29.38.010-29.38.080) for exercise in the borough area outside cities or are conferred by (Sec.20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17) and (20),

in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.080. (Sec. 29.48.033.) GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance; award contracts for collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political

subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by Sec. 6 ch 76 SLA 1973.

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

Sec. 29.33.090. (Sec. 29.48.035.) REGULATORY POWERS. (a) A ~~municipality~~ may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and ~~operation~~ of motor vehicles, including snow vehicles and off-highway ~~vehicles~~, and operators not inconsistent with AS 28.01.010;

(2) ~~licensing~~ of drivers of taxicabs, for-hire automobiles, ~~motor buses~~, or other vehicles for the transportation of passengers or ~~baggage not~~ inconsistent with AS 28.01.010;

~~(3) vehicle~~ parking not inconsistent with AS 28.01.010;

~~(4) transportation fares;~~

(5) licensing, impounding and disposition of animals;

~~(6) selling of goods;~~

~~(7) selling of food;~~

~~(8) abandoned property;~~

~~(9) dangerous and disorderly conduct;~~

(10) alcoholic beverages as provided by AS 04.15.070;

(11) recreational devices as provided by AS 05.20.100;

(12) control of insects and rodents;

~~(13) offering~~ for sale, exposure for sale, sale, use, or explosion of fireworks;

~~(14) building~~, housing and related codes, which may be provided by cities within cities or, in the manner required in (b) or (c) of this section, by first or second class boroughs in the borough area outside cities or areawide, subject to the following;

(A) exceptions to requirements of the codes may be made in the codes among other reasons, in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments;

(B) codes may not be used to prohibit or restrict the development or use of solar or wind energy unless the assembly or council finds that the development or use of solar or wind energy would endanger the health or safety of the public;

~~(15)~~ 6 condemnation and abatement of public nuisances and hazards;

~~(16) garbage~~ and solid-waste collection and disposal;

~~(17)~~ 7 water pollution control;

(18) air pollution control as provided in AS 46.03.140-46.03.240;

~~(19)~~ 11 ~~other powers and functions~~ affecting the general health, safety, well-being and welfare of its inhabitants;

~~(20)~~ licensing of day care facilities.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-29.36.130 (AS 29.33.250-29.33.290) for areawide exercise or in the manner required under AS 29.36.160-29.36.200 (AS 29.38.010-29.38.050) for exercise in the borough area outside cities

or are conferred by (Sec. 20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(3), (6), (7)(8) and (9)(10) of this section, exercise of the powers areawide or, as to (a)(3), (6) and (9), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.100. (Sec. 29.48.040.) MUNICIPALLY-OWNED UTILITIES. A municipality owning or operating utilities may extend service to adjacent areas outside its municipal limits. For that purpose the municipality may acquire, maintain and operate utility facilities together with necessary real property interests in real property outside its limits. This section applies to home rule and general law municipalities.

Sec. 29.33.110. (Sec. 29.48.050.) FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, for the construction, operation and maintenance of bus transportation systems and public utilities not regulated under AS 42.05 and may permit them the use of streets and other public places under regulations prescribed by ordinance.

(b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least 55 percent of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The

ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.33.120. (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS. 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

Sec. 29.33.120. (Sec. 29.48.070.) HEARING FOR REGULATION OF UTILITIES RATES. If the assembly or council considers it advisable to regulate, change, or fix the rates to be charged by a public service corporation, association or individual not regulated under AS 42.05, it shall order a hearing to be held before the governing body at a time and place specified. Notice of the hearing shall be given by at least one publication in a newspaper of general circulation distributed within the municipality or, if no newspaper of general circulation is distributed within the municipality,

notice shall be given by posting a notice in three public places within the city or borough area outside cities receiving the utilities services and by serving written notice upon the corporations, associations and individuals whose rates are to be regulated, fixed, or changed in the same manner that summonses are served. The notices shall be published or posted and served at least 15 days before the hearing.

Sec. 29.33.140. ~~(Sec. 29.48.080.)~~ RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. At a hearing held under Sec. 70 of this chapter, all public service corporations, associations, or individuals affected by or interested in the matters to be heard may be present and may be represented by counsel. The municipality and all interested parties may produce witnesses and examine them and introduce evidence to prove or disprove the facts in issue or matters to be established or inquired into at the hearing. All parties may compel the attendance of witnesses, and subpoenas requiring attendance shall be issued by the municipal clerk under his hand and the seal of the municipality. Subpoenas duces tecum requiring the production of books and papers shall be issued in like manner upon request. If a person fails to obey a subpoena, the party at whose request the subpoena issued may petition the superior court for an order compelling the attendance of the disobedient witness or the production of the books or papers referred to in a subpoena duces tecum. The superior court shall order the witness to appear and testify or compel the production of the books or papers. A violation of the order of the court is a contempt of court. If a witness appears and refuses to testify concerning a matter material to the facts inquired about at the hearing and to establish or determine which the hearing was had, an application may be made to the superior court to compel the witness to testify and answer questions put to him concerning the matters inquired about, and the court shall make an order compelling the witness to testify. Violation of the order is contempt of court.

Sec. 29.33.150. (Sec. 29.48.090.) FURTHER PROCEEDINGS. A hearing under Sec. 70 of this chapter shall begin at the time stated in the notice but may be continued from time to time. At least a quorum of the assembly or council shall be present at the hearing. At the conclusion of the hearing the parties interested may make such arguments before the assembly or council, either in person or by attorney, as they consider proper, touching the matters at issue, and thereafter the assembly or council shall proceed to regulate and fix the rates by ordinance. The date upon which the rates fixed or regulated take effect shall be stated in the ordinance and shall be at least 10 days after passage and approval of the ordinance.

Sec. 29.33.160. (Sec. 29.48.100.) APPLICATION. (a) In the case of conflict between the provisions of Secs. 110-130 (Secs. 50-70) of this chapter and the provisions of AS 42.05 as to the regulation of rates of a utility, the provisions of AS 42.05 shall prevail.

(b) Sections 110-160 (Sections 50-100) of this chapter apply to home rule and general law municipalities.

Article 3. FISCAL DUTIES

Sec. 29.33.190. (Sec. 29.48.250.) CENTRALIZED PURCHASING. The assembly or council may provide for centralized purchasing, storage and distribution of supplies, material and equipment for the municipality and its departments.

Sec. 29.33.200. (Sec. 29.48.260.) MUNICIPAL PROPERTIES. (a) A municipality may acquire and hold real and personal property or interest in property, and may sell, lease or otherwise dispose of property no longer required for municipal purposes.

(b) Notwithstanding the provisions of (c) of this section, a municipality may sell, lease, donate or exchange with the United States, the state, or a political subdivision real estate or other property, or interest in property, when in the judgment of the assembly or council it is advantageous to the municipality to do so.

Repeal.

(c) The assembly or council shall by ordinance establish a formal procedure for the sale, lease or disposition of real property or interest in real property. The ordinance shall require (1) an estimated value of the property by a qualified appraiser or the assessor; (2) a notice of sale published in a newspaper of general circulation distributed within the municipality at least 30 days before the date of the sale, lease, or disposition, or posted within that time in at least three public places in the municipality (3) public auction or opening of sealed bids, if any; and (4) other terms and conditions fixed by the assembly or council. However, no ordinance for the sale, lease, or disposition of real property or interest in real property valued at $25,000 or more is valid unless ratified by a majority of the qualified voters voting at a regular or special election at which the question of the ratification of the ordinance is submitted. Thirty days notice shall be given of the election and during that period the assembly or council shall have published at least once a week in a newspaper of general circulation distributed within the municipality a notice stating the time of the election and the place of voting, describing the property to be sold, leased or disposed of, giving a brief statement of the terms and conditions of the sale and the consideration, if any, and stating the title and date of passage of the ordinance. Notice shall also be given by posting a copy of it in at least three public places in the municipality at least 30 days before the election. If no newspaper of general circulation is distributed within the municipality, the notice given by posting is sufficient for the purposes of this section.

(d) The assembly or council ~~may~~ by ordinance establish a formal procedure for acquisition ~~from the state~~ of land ~~or rights~~ in land, ~~and the disposal of the land or rights in land, in which event the provisions of (c) of this section do not apply.~~

(e) A ~~municipality~~, in order to make sites available for beneficial ~~new industries~~, may acquire and hold real property, either inside or outside

the corporate limits, and may sell, lease or dispose of it to persons who agree to operate a beneficial new industry upon the terms and conditions the assembly or council considers advantageous to the municipality.

(f) A deed, contract of sale, lease, or other instrument evidencing disposition by a borough of land or interest in land classified by the borough as agricultural land shall include, among other terms, conditions and limitations which may be required by law or which the assembly may elect to include, a condition that the land is restricted to agricultural use. The assembly may not by subsequent action waive or abrogate the condition for a period of 50 years. An abrogation of the restriction to agricultural use after the 50-year period requires the consent of any party having an interest in the land. The assembly shall provide for enforcement by appropriate legal means, including but not limited to forfeiture of the purchaser's interest for violation of the condition.

Sec. 29.33.210. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

(b) A bond, contract, lease, or other obligation requiring the payment of funds from the appropriations of a later fiscal year or of more than one fiscal year shall be made or approved by ordinance adopted by a majority of the votes authorized on the question.

(c) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

(d) Nothing in this section is intended to prevent the authorizing of payment or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds.

Sec. 29.33.220. (~~Sec. 29.48.210.~~) EXPENDITURE OF BOROUGH REVENUES. Borough revenues levied and collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Revenues levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only.

Sec. 29.33.230. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33.260. (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.270. (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.280. (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

# SCOMM

#23:34

See Berns drafts

CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES.

ARTICLE 1. SCOPE

Consolidated to Berns chap 33

Sec. 29.36.010. SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

ARTICLE 2. MANDATORY AREAWIDE POWERS AND DUTIES.

Sec. 29.36.040. EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.050. ASSESSMENT AND COLLECTION OF TAXES. Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 45 of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

****Sec. 29.36.060. PLANNING, PLATTING, AND ZONING.

ARTICLE 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS.

Sec. 29.36.090. ADDITIONAL AREAWIDE POWERS. First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.33.080 and 29.33.090.

Sec. 29.36.100. TRANSFER BY CITY. (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities.

Sec. 29.36.110. PETITION FOR POWER. An election on the question of adding an areawide power may be initiated in two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the borough at the preceding regular election may file a petition with the assembly, or

(2) the assembly may propose the acquisition of the power.

Sec. 29.36.120. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.130. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications.

One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This section applies to home rule and general law cities.

ARTICLE 4. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES.

Sec. 29.36.160. FIRST CLASS BOROUGH. The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. SECOND CLASS BOROUGH. (a) The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

****(b) A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080;

(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

**** (8) Tax, spend, and regulate for the purpose of promoting economic development.

Sec. 29.36.180. ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways:

(1) a number of voters equal to 15 per cent of the number of votes cast in the area outside cities at the preceding regular election may file a petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

ARTICLE 5. POWERS OF THIRD CLASS BOROUGHS.

Sec. 29.36.230. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.42.010 - 29.42.150 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided

by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200 - 29.51.510

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD. Repeal.

ARTICLE 6. SERVICE AREAS.

Sec. 29.36.270. SERVICE AREAS. ****(a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of

this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election, or if no voters reside within the area, all owners of real property within the service area must consent in writing to the exercise of the power.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

Proofed 12-31

## CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES.

u.c.

### Article 1. SCOPE.

Sec. 29.36.010. SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

u.c.

### Article 2. MANDATORY AREAWIDE POWERS AND DUTIES.

Sec. 29.36.040. EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.050. ASSESSMENT AND COLLECTION OF TAXES. ~~(ASSESSMENT AND COLLECTION)~~ Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 45 of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

****Sec. 29.36.060. ~~(New Section)~~ PLANNING, PLATTING, AND ZONING.

## Article 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS.

Sec. 29.36.090. ADDITIONAL AREAWIDE POWERS. First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.33.080 and ~~AS~~ 29.33.090.

Sec. 29.36.100. TRANSFER BY CITY. (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities.

Sec. 29.36.110. PETITION FOR POWER. An election on the question of adding an areawide power may be initiated in two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the borough at the preceding regular election may file a petition with the assembly, or

(2) the assembly may propose the acquisition of the power.

Sec. 29.36.120. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.130. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of

adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This ~~subsection~~ U.C. applies to home rule and general law cities.

Article 4. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES.

Sec. 29.36.160. FIRST CLASS BOROUGH. The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. SECOND CLASS BOROUGH. (a) The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

****(b) A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080;

(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

**** (8) Tax, spend, and regulate for the purpose of promoting economic development.

Sec. 29.36.180. ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the area outside cities at the preceding regular election may file a petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

Article 5. POWERS OF THIRD CLASS BOROUGHS.

Sec. 29.36.230. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.42.010-29.42.150 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided

by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedne as provided for first and second class boroughs in AS 29.51.200-29.51.510

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD. Repeal.

U.C.

Article 6. SERVICE AREAS.

Sec. 29.36.270. SERVICE AREAS. ****(a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of

this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election, or if no voters reside within the area, all owners of real property within the service area must consent in writing to the exercise of the power.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.36.170. SECOND CLASS BOROUGH POWERS OUTSIDE CITIES.

(8) tax, spend, and regulate for the purpose of promoting ~~industrial~~ economic development.

The rest of the section is the same.

EXPLANATION: This is added as a specific power which need not be assumed under AS 29.36.180. A first class borough may exercise this power under AS 29.36.160, the general grant of power to first class boroughs.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.420. SCHOOL BOARDS. (a) Each ~~borough and city~~ municipal school district has a school board. ~~(1)~~ Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. ~~(2)~~ All board members are elected at large. unless a different method of election has been approved by the voters in a regular election.

(b) [illegible] (a) of this section, assembly members in a third class [illegible] serve as the school board and the [illegible] is president of the school board.

EXPLANATION; The provision that school zones may be established as provided by Sec. 100 is deleted. AS 29.23.100 was repealed in 1972.

Sec. 29.36.240, repeal.

29.36.240.

~~(1) The number of members shall be determined by ordinance subject to voter approval.~~

~~(2) The election of board members shall be the same as provided for members of the governing body unless provided otherwise by ordinance ratified by the voters.~~

Clarify status of third class borough members are assembly elected from districts

ck: any Constitutional problem

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.36.270. SERVICE AREAS. (a) (First two sentences the same). Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the voters residing within the service area and voting on the question at a regular or special election, ~~unless~~ all owners of real property within the service area must consent in writing to the exercise of the power. ~~and no one resides~~ or if no voters reside within the area.

No other changes to this section.

EXPLANATION: Change in (a) to avoid the necessity of an election if there is no opposition by property owners who will be affected by the service area.

Words from Dunmick - on cities w/in service area. Is this allowed? Be consideration by Technical group.

* flag as needing more work

combine w/ CHAP 33

CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES

(CHAPTER 33. AREAWIDE BOROUGH POWERS AND DUTIES)

Article 1. SCOPE

Sec. 29.36.010. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

Article 2. MANDATORY AREAWIDE POWERS AND DUTIES

(Chapter 33, Article 2. ASSESSMENT AND COLLECTION OF TAXES)

Sec. 29.36.040. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.050. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

Sec. 29.36.060. (New Section) PLANNING, PLATTING, AND ZONING. Boroughs shall provide land use regulation

Article 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS

(Chapter 33. Article 5. ADDITIONAL AREAWIDE POWERS)

Sec. 29.36.090. (Sec. 29.33.250.) ADDITIONAL AREAWIDE POWERS. First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.33.070 ~~(AS 29.48.030)~~ and ~~AS~~ 29.33.080 ~~[29.48.035(b)].~~

Sec. 29.36.100. (Sec. 29.33.260.) TRANSFER BY CITY. (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities.

Sec. 29.36.110. (Sec. 29.33.270.) PETITION FOR POWER. An election on the question of adding an areawide power may be initiated in two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the borough at the preceding regular election may file a petition with the assembly, or

(2) the assembly may propose the acquisition of the power.

Sec. 29.36.120. (Sec. 29.33.280.) INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.130. (Sec. 29.33.290.) ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

OWN SECTION

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

## Article 4. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES

(CHAPTER 38. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES

Sec. 29.36.160. (Sec. 29.38.010.) FIRST CLASS BOROUGH. The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. (Sec. 29.38.020.) SECOND CLASS BOROUGH. The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 (AS 29.48.020), or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. ~~29.36.180~~. (Sec. 29.48.020.) ~~SECOND CLASS BOROUGH POWERS OUTSIDE CITIES. [NOTE: THIS SECTION HAS BEEN COMBINED WITH SEC. 29.38.020]~~ A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080 ~~(Sec. 33) of this chapter;~~

(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy. (8) tax, spend, & regulate for the purposes of promoting industrial development.

Sec. 29.36.180. (Sec.29.38.030.) ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways: consolidate:

(1) a number of voters equal to 15 percent of the number of votes cast in the area outside cities at the preceding regular election may file petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. (Sec. 29.38.040.) INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. (Sec. 29.38.050.) ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

## Article 5. POWERS OF THIRD CLASS BOROUGHS

(CHAPTER 41. POWERS OF THIRD CLASS BOROUGHS)

Sec. 29.36.230. (Sec. 29.41.010.) POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

(b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and zoning in accordance with AS 29.42.010-29.42.150 ~~(AS 29.33.070-29.33.245)~~ for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the manner provided by (AS 29.63.090) for second class boroughs. The acquisition of additional powers or a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200-29.51.510 ~~(AS 29.58.150-29.58.340)~~.

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military

reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.240. (Sec. 29.41.020.) ASSEMBLY TO SERVE AS SCHOOL BOARD. The borough assembly is the borough school board for third class boroughs. The borough executive is the presiding officer of the borough assembly and president of the school board. The borough executive has all powers of a borough executive except for the veto power.

Article 6. SERVICE AREAS

Sec. 29.36.270. (Sec. 29.63.090) SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be

provided by an existing service area, by annexation to a city, or by incorporation as a city.

(e)

SCOMM

#23:35

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS.

Sec. 29.39.010. ADDITIONAL POWERS. In addition to the powers granted by ch. 48 of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 of this title for boroughs.

move back to taxing material

Sec. 29.39.030. DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.39.040. EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 for boroughs.

****Sec. 29.39.050. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside boroughs shall, and second class cities outside boroughs may, provide for planning, platting and land use regulation within their boundaries as provided by AS 29.42.010 - 29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may provide for planning, platting and land use regulation, as provided by AS 29.42.010 - 29.42.150 for boroughs.

****Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

****Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

****Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

Proofed 12-31

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS.

Sec. 29.39.010. ADDITIONAL POWERS. In addition to the powers granted by ~~ch. 48~~ of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

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****Sec. 29.39.050. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside boroughs shall, and second class cities outside boroughs may, provide for planning, platting and land use regulation within their boundaries as provided by AS 29.42.010-29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may provide for planning, platting and land use regulation, as provided by AS 29.42.010 - 29.42.150 for boroughs.

****Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

****Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

****Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.39.010. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside ~~first and second class~~ boroughs shall, and second class cities outside ~~first and second class~~ boroughs may ~~in whole or part~~, provide for planning, platting and land use regulation within their boundaries, as provided by AS 29.42.010-29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may ~~in whole or part~~ provide for planning, platting and land use regulation, as provided by AS 29.42.010-29.42.150 for boroughs.

EXPLANATION; Clarifies that a city may only plan for the area within its boundary. ~~Adds the provision that second class cities may plan "in whole or part" as provided for boroughs, so that it is clear that they are not forced into an all or nothing situation.~~

on list of unfinished policy questions
How to encourage planning w/out forcing them into complex & expensive procedures.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

EXPLANATION: It is felt that these provisions are unnecessary and would be properly placed in the criminal code. (NOTE: These were in the criminal code as AS 11.60.250, 11.60.260, and 11.60.270 and moved to Title 29 effective January 1, 1980.)

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS

(CHAPTER 43. POWERS OF CITIES OUTSIDE BOROUGHS

Sec. 29.39.010. ~~(Sec. 29.43.010.)~~ ADDITIONAL POWERS. In addition to the powers granted by ~~(~~ch. 48~~)~~ of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. ~~(Sec. 29.43.020.)~~ ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 ~~(ch. 53)~~ of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 ~~(ch. 53)~~ of this title for boroughs.

Sec. 29.39.030. (Sec. 29.53.405) DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.39.040. (Sec. 29.43.030.) EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 ~~(AS 29.33.050)~~ for boroughs.

Sec. 29.39.050. (Sec. 29.43.040.) PLANNING AND ZONING. (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may, provide for planning, platting and zoning, as provided by AS 29.42.010-29.42.245 (AS 29.33.070-29.33.245) for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may, provide for planning, platting and zoning, as provided by AS 29.42.010-29.42.150 (AS 29.33.070-29.33.245) for boroughs.

DELETE

Sec. 29.39.060. (Sec. 29.43.100.) EXTENSION OF CURFEWS OUTSIDE CITIES. The provisions of a curfew ordinance enacted by a city of any class concerning minors shall be imposed in the total area within 20 miles of the limits of that city. If a given area lies within 20 miles of two or more cities with conflicting curfew ordinances, the provisions of the curfew ordinance of the city having the largest population prevails as to the overlapping area.

Sec. 29.39.070. (Sec. 29.43.105.) ENFORCEMENT OF CURFEWS. (a) The municipal peace officers shall enforce the provisions of the ordinance inside the city limits. Under AS 29.39.060-29.39.080 (AS 29.43.100 - 29.43.110) the state peace officers shall enforce the provisions of the ordinance in the area outside the city limits.

(b) In an area where state peace officers are not available, the municipal peace officer may enforce the provisions of the ordinance in the area outside the city limits if the enforcement responsibilities are delegated by contract between the state and the municipality.

Sec. 29.39.080. (Sec. 29.43.110.) PENALTY FOR VIOLATION OF CURFEW. The penalty for violation of AS 29.36.060-29.36.080 (AS 29.43.100 29.43.110) is as prescribed by the curfew ordinance of the city, and a fine so paid shall be paid to the city when the violation takes place in the city. Otherwise the fine shall be paid to the state. However, the penalty shall not exceed a fine of $300, or imprisonment for 30 days, or both.

SCOMM

#23:36

Draft 12/4/80

T19B Chapter 42. Planning, Patting and Land Use Regulation Notes

Section
10. Planning, platting, and land use regulation
20. Planning commission
30. Comprehensive plan
40. Land use regulations
50. Appeals from administrative decisions
60. Judicial review
70. Platting jurisdiction and power
80. Application to state and political subdivisions
90. Waiver in certain cases
100. Procedure
110. Information required
120. Alteration of replat petition
130. Notice of hearing
140. Hearing and determination
150. Recording
160. Title to vacate area
170. Penalties

Sec. 29.42.010. Planning, platting, and land use regulation. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The Assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

EXPLANATION

This section is substantially similar to AS 29.33.070. A reference in subsection (a) to "zoning" has been changed to the more flexible term "land use regulation". Subsection (b) is a redrafted version of AS 29.33.070(b). The proposed language clarifies the issue of whether a city's consent is required before delegated powers are revoked by the Assembly.

(Alternate Section suggested by Joanne Shanley)

Sec. 29.42.010. Planning, platting and land use regulation. (a) First and second class boroughs shall provide for planning, platting and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the Borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

use existing language

Sec. 29.42.020. Planning commission. (a) By ordinance the assembly shall establish a planning commission consisting of not less than five ~~persons~~ residents appointed and confirmed as provided by law. The assembly by ordinance shall also prescribe the qualifications, terms, and compensation of planning commissioners.

(b) In addition to those responsibilities prescribed by law, the planning commission shall:

& Administer

(1) Prepare and recommend to the assembly a comprehensive plan for the systematic and organized development of the borough, as defined in .030 of this chapter.

(2) Prepare, recommend, and as required by ~~law~~ ordinance to administer those measures necessary to implement the comprehensive plan. (including those measures provided in 29.42.040.)

Add to Reference language → 040

EXPLANATION

This section is a shortened and revised version of AS 29.33.080. Major changes include: elimination of apportionment requirements based on residency of specified members within first class cities; elimination of specific language regarding appointments, terms, and compensation of planning commissioners and substitution of more general language requiring the Assembly to prescribe by ordinance the qualifications, terms and compensation of commissioners; elimination of detailed and unnecessary specifications of the commission's duties in favor of a general statement requiring the commission to prepare and recommend measures necessary to implement the comprehensive plan; and elimination of public meetings and public records requirements as redundant.

Sec. 29.42.030. Comprehensive plan. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

(b) The assembly shall adopt, ~~or~~ by ordinance may modify ~~the~~ a comprehensive plan after receiving & ~~with the~~ recommendations of the planning commission. The assembly shall, with the advice and recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary, ~~to ensure the continued validity and effectiveness of the plan~~.

EXPLANATION

This section is derived from AS 29.33.085. Subsection (a) is identical to AS 29.33.085(a). Subsection (b) is redrafted to eliminate the mandatory two year review requirement of AS 29.33.085(b) and contains a more flexible review requirement premised on a determination that the continued validity and effectiveness of the plan requires review.

Sec. 29.42.040. Land use regulation. In accordance with a comprehensive plan adopted under Section .030 of this chapter and in order to implement that plan, the assembly by ordinance ~~and as a legislative act, may~~ shall enact or amend regulatory measures governing the use and occupancy of land, ~~including~~ which may include but not limited to:

(1) Zoning regulations which restrict or govern use of land and improvements by geographic districts;

(2) Construction, fire and life safety codes governing placement, erection and occupancy of structures;

(3) Land use permit systems designed to encourage specified uses and structures and to discourage others, or to minimize unfavorable ~~externalities~~ effects of certain uses and structures.

(4) Other regulatory measures ~~reasonably~~ necessary to further the goals and objectives of the comprehensive plan.

(5) Measures defining and regulating public nuisances. Make to powers sec. (b) fm 33.110 (b)(3) & c

EXPLANATION

The proposed Section 29.42.040 represents a substantial modification of AS 29.33.090. Present law requires implementation of the comprehensive plan through traditional zoning applicable to geographically defined districts, and allows so called "contract zoning." Although the present AS 29.33.090(b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important catagories of land use regulations available to the Borough. Passage of AS 29.42.040 would clearly enable second class boroughs to enact building and fire codes and to regulate public nuisances.

Sec. 29.42.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for appeals from administrative decisions of borough employees or boards and commissions made in the enforcement, administration, or application of land use regulations adopted ~~by the borough~~ assembly under this chapter to a board of adjustment, hearing Court,

officer, or other ~~independent quasi-judicial body established by the~~ borough assembly.

(b) By ordinance the assembly ~~shall~~ may provide for appointment of hearing officers, or the composition, appointment and terms of office of a board of adjustment or other ~~quasi judicial~~ body established to hear appeals from administrative actions specified in (a) of this section, ~~and~~ The assembly may define proper parties, prescribe evidentiary rules and standards of review and define remedies available to such bodies or hearing officers.

EXPLANATION

This section consolidates provisions of existing Section 29.33.110 and Section 29.33.120. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundent public records and meeting requirements, and allows the Assembly to define proper parties, evidentary rules, and standards of review rather than follow more restrictive rules of the present AS 29.33.120.

Sec. 29.42.060. Judicial review. (a) The assembly shall provide by ordinance for appeals from decisions of the board of adjustment, hearing officer or other ~~quais-judicial board or others named under Sec. 050 of this chapter~~ body to the Superior Court by a municipal officer or person ~~jointly or severally aggrieved.~~ an aggrieved

(b) Appeals to the Superior Court under this section are administrative appeals and shall be governed by Rules of Court applicable to appeals from decisions of administrative agencies; provided that

(c) Appeals are heard solely on the record established by the administrative agency, ~~and the court may affirm, reverse, wholly or partly, the decision appealed from.~~ Issues in proceedings under this section have preference over all other civil actions and proceedings.

EXPLANATION

Based on AS 29.33.130, the proposed section makes several important changes in procedures governing administrative appeals to Superior Court. The "automatic stay" requirement of AS 29.33.130(c) is eliminated, allowing parties to follow more customary appellate rules governing injunctions pending appeal; the language plainly makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

Sec. 29.42.070. Platting jurisdiction and power. ~~(a) First and second class boroughs shall exercise the power to regulate platting and the subdivision of land on an areawide basis~~. By ordinance the assembly shall enact subdivision regulations which may include:

(1) governing the form, size and other aspects of subdivision, dedications, and vacations of land;

(2) regulating dimensions and design features of lots or tracts;

(3) establishing ~~strict~~ street width, arrangement, and right of way, including ~~allowance~~ requirement for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;

(4) requiring dedication of streets, rights of way, public utility easements and ~~other~~ areas deemed by the platting authority necessary for other public uses;

(b) The assembly by ordinance shall establish a platting board to administer subdivision regulations adopted by the borough and perform other duties prescribed by law. The platting board may, in whole or in part, consist of members of the planning commission or of other municipal bodies, boards and commissions.

EXPLANATION

This section is derived from AS 29.33.150 and, aside from stylistic changes, makes the following modifications to existing law: requires adoption of subdivision regulations by ordinance; clearly allows the platting authority to require dedications; allows the Assembly to determine the composition of the platting board; and eliminates the provisions of 85 SLA 1979 which allow the State of Alaska to ignore capital improvement requirements of local subdivision regulations.

Sec. 29.42.080. Application to state and political subdivisions. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to the provisions of this chapter or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter or under home rule authority, in the same manner and to the same extent as subdivisions made by private landowners.

Governor's override (platting?)

EXPLANATION

This section contains the language of AS 40.15.200 and adds the word "private" preceeding the word "landowners" in the last line. It is believed that the provisions of AS 40.15.200 are more appropriately placed here rather than in AS 40.15.

Sec. 29.42.090. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that:

(1) each tract or parcel of land will have adequate legal and physical access by the public to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may, in the manner provided by ordinance, waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development which constitutes an isolated transaction and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

EXPLANATION

This section contains one modification to its predecessor, AS 29.33.170. A reference to "adequate legal and physical access" is added to subsection (a)(1) which will guarantee public access to tracts or parcels created by waiver.

Sec. 29.42.095. Short plat procedure. (a) Notwithstanding ~~the requirements~~ any of this chapter ~~governing the submission, consideration, or approval of vacations, subdivisions, or resubdivisions, by ordinance the~~ by ord Assembly may establish a short or abbreviated plat procedure for plats which will only relocate or vacate lot lines, subdivide a single tract, parcel or lot into not more than four tracts or lots and will not:

(1) deny legal and physical public access to and from all lots or tracts created by, or adjacent to, the subdivision or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication except to match a half right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted under existing law;

(4) require the granting of a vacation or variance from the subdivision regulations enacted by the Borough.

(b) Consistent with this section, regulations governing the short plat procedure may allow an administrative official to review, consider, and approve abbreviated plats with such notice, hearing, and other procedural requirements established by the Assembly.

EXPLANATION

New section allowing short plat procedure under such expedited procedures as the Assembly may adopt.

Sec. 29.42.100. Procedure. (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010 -- 40.15.020.

EXPLANATION

Subsections (a) and (b) are identical to AS 29.33.160(a) and (b). The proposed section eliminates AS 29.33.160(c) relating to submission of preliminary plats for state disposals under AS 38.05 or 38.08, because the proposed changes in Sections 29.42.070 require full state compliance with local capital improvement requirements.

Sec. 29.42.110. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

EXPLANATION

Identical to AS 29.33.180.

a government agency ~~Municipality~~ or the governing body Title 09

Sec. 29.42.120. Alteration of replat petition. No recorded plat may be altered or replatted except upon petition of the owners ~~of a majority of the land affected by the application of replat or by the platting board.~~ of in the subdivision. alteration OR No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

EXPLANATION

Identical to AS 29.33.200.

Sec. 29.42.130. Notice of hearing. The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a

copy of the notice to each affected property owner not signing the petition.

EXPLANATION

Identical to AS 29.33.210.

Sec. 29.42.140. Hearing and determination. Following ~~At the hearing~~ the platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

EXPLANATION

Identical to AS 29.33.220.

Sec. 29.42.150. Recording. If the alteration or replat is approved, the revised plat must be recorded by the ~~platting board~~ borough and is thereafter the lawful plat.

EXPLANATION

Identical to AS 29.33.240.

Sec. 29.42.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for

another public purpose does not vest as provided in (a) of this section but remains in the city.

EXPLANATION

Identical to AS 29.33.240.

Sec. 29.42.170. Remedies. (a) It shall be unlawful for the owner or agent of the owner of land located within a subdivision to transfer, sell, offer to sell, or to enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with applicable municipal subdivision regulations enacted under this chapter. It shall be unlawful for any person to file or record a subdivision plat or other instrument depicting subdivided land in any public recorder's office unless that plat or document bears the approval of the municipal platting authority. Every act prohibited by this chapter or the maintenance of any condition prohibited by municipal subdivision regulations adopted in accordance with this chapter is unlawful and the willful commission of such act or maintenance of such condition is a misdemeanor. Every person convicted of a violation of any provision of this title or any municipal subdivision regulation adopted under this title or the terms, conditions, or limitations imposed by a municipal platting authority in the exercise of its powers under this title is guilty of a misdemeanor and may be punished by a fine not to exceed $500.

(b) If there is a violation of the terms ~~of this chapter,~~ sections dealing w platting municipal subidivision regulations adopted under this chapter, or any terms, conditions, or limitations imposed by a platting authority in the exercise of its powers under this chapter, the Borough or any aggrieved citizen may institute or cause to be instituted any appropriate civil action to

prevent, abate, enjoin, estop, remove or punish such violation and to obtain monetary damages suffered by that party. In addition to injunctive and compensatory relief each violation shall be subject to a civil penalty not to exceed $1,000. An action to enjoin any violation ~~to this title~~ may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of an existing or threatened violation, the Superior Court shall grant injunctive relief to restrain that violation.

(c) Every day upon which an unlawful act or condition shall ~~occur~~ continue shall constitute a separate violation.

(d) ~~The platting authority~~ Draught may enjoin any partition, lease, transfer, or sale of land which would result in an unlawful subdivision. Following an unlawful petition, transfer, lease or sale, the platting authority may enjoin any further transfer, sale of all unlawfully subdivided parcels until such time as the parcels are dully subdivided or returned to common ownership.

EXPLANATION

This section is derived in part from AS 29.33.190 and contains certain new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. The new section prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations; authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurrences of unlawful acts separate violations.

CHAPTER 42. PLANNING, PLATTING, AND LAND USE REGULATION

****Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

Sec. 29.42.020. PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

**** (b) In addition to the responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

Sec. 29.42.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

**** (b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary.

****Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, or for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

****Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

****Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the board of adjustment, hearing officer or other body. A proceeding under this section has preference over all other civil actions and proceedings.

****Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting board necessary for other public uses.

(b) The assembly by ordinance shall establish a platting authority to administer subdivision regulations adopted by the borough and perform other duties. The platting authority may consist of members of the planning commission or of other [~~reasons~~ municipal bodies, boards, and commissions.] delete residents

****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

****Sec. 29.42.090. PROCEDURE. (a) The platting authority shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the platting authority fails to act, the plat is considered approved and a certificate of approval shall be issued by the platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the platting authority. The platting authority shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting authority shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

****Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

Sec. 29.42.110. INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

****Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Nothwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

****Sec. 29.42.120. PENALTIES. Repeal.

****Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting authority upon petition of the state, the municipality, a public utility, or the owners of a majority

of the land affected by the alteration or replat. No platted street may be vacated, except upon petition of the state, municipality, or a public utility, or owners of the majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

*Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The platting authority shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The platting authority shall also mail a copy of the notice to each affected property owner not signing the petition.

*Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting authority shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

*Sec. 29.42.160. RECORDING. If the alteration or replat is approved, the revised plat must be recorded by the platting authority and is thereafter the lawful plat.

Sec. 29.42.170. TITLE TO VACATED AREA. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

****Sec. 29.42.180. DELEGATIONS. Repeal.

****Sec. 29.42.190. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or with an ordinance adopted under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chpater is guilty of a misdemeanor and may be punished by a fine not to exceed $1,000.

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or threatened violation, the injunction shall be granted.

(c) Every day upon which an unlawful act or condition continues shall constitute a separate violation.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

APPROVED BY THE POLICY

DRAFTED CHANGES ~~RECOMMENDED BY TECHNICAL COMMITTEE~~ - 06 DECEMBER 1980

Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to ~~the council of~~ a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

EXPLANATION: This section is substantially similar to the existing AS 29.42.010. A reference in subsection (a) to "zoning" has been changed to the more flexible term "land use regulation". Subsection (b) has been redrafted to clarify the issue of whether a city's consent is required before delegated powers are revoked by the assembly.

MINORITY RECOMMENDATION:

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

EXPLANATION: Would allow a first class or home rule city located a distance from the borough seat to take over planning without the consent of the borough.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.020. PLANNING COMMISSION. (a) No change. (b) In addition to responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

EXPLANATION: This section is a shortened version of the existing AS 29.42.020. A major change is the elimination of detailed and unnecessary specifications of the commission's duties in favor of a general statement requiring the commission to prepare and recommend measures necessary to implement the comprehensive plan. The public meetings and public records requirement is eliminated since these requirements would attach in any case. The requirement for a public hearing is eliminated because it is felt that the public is adequately protected. A plan must be adopted by ordinance and is therefore subject to notice and hearing provisions.

✓ DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.030 COMPREHENSIVE PLAN. (a) No change.

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary.

EXPLANATION: Subsection (b) is redrafted to eliminate the mandatory two year review requirement and substitute a more flexible review requirement.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

~~(2) construction, fire and safety codes governing placement, erection and occupancy of structures;~~

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

EXPLANATION: Present law requires implementation of the comprehensive plan through traditional zoning applicable to geographically defined districts, and allows so-called "contract zoning." Although the present Sec. 29.42.040 (b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important categories of land use regulations available to the borough. Passage of AS 29.42.040 would enable second class boroughs to enact building and fire codes. Material on variances has been moved to the section from AS 29.42.050.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a ~~borough~~ municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, or for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

EXPLANATION: This section consolidates provisions of existing Sec. 29.42.050. and Sec. 29.42.060. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundant public record and meeting requirements, and allows the assembly to define proper parties, evidentary rules, and standards of review rather than following more restrictive rules of the present AS 29.42.060.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

EXPLANATION: A simplified procedure is now provided in the prior section.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the board of adjustment, hearing officer or other body. A proceeding under this section has preference over all other civil actions and proceedings.

EXPLANATION: This proposed language makes several important changes in procedures governing administrative appeals to the superior court. The "automatic stay" requirement of is eliminated, allowing parties to follow more customary appellate rules governing injunctions pending appeal; the language makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvments;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting ~~authority~~ board necessary for other public uses.

(b) The assembly by ordinance shall establish a platting ~~board~~ authority to administer subdivision regulations adopted by the borough and perform other duties. The platting ~~board~~ authority may consist of members of the planning commission or of other municipal bodies, boards and commissions.

EXPLANATION: This proposed change makes the following modifications to existing law: it requires adoption of subdivision regulations by ordinance; allows the platting authority to require dedications; allows the assembly to determine the composition of the platting board; and eliminates the provisions which allow the state of Alaska to ignore capital improvement requirements of local subdivision regulations.

use platting "board" or "authority" throughout the 40

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

EXPLANATION: This new section contains cross references to other statutes applicable to subdivisions and platting.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.090. PROCEDURE. (a) The platting ~~board~~ authority shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the ~~board~~ platting authority fails to act, the plat is considered approved and a certificate of approval shall be issued by the ~~board~~ platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the ~~board~~ platting authority. The ~~board~~ platting authority shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting ~~board~~ authority shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

EXPLANATION: The proposed change eliminates submission of preliminary plats for state disposals uder AS 38.05 or 38.08, because the proposed changes in Sec. 29.42.090 requires full state compliance with local ~~capital~~ Subdivision improvement requirements.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal.

EXPLANATION: A short plat provision is added as AS 29.42.115, making the waiver provision no longer necessary.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Notwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

EXPLANATION: New section allowing short plat filing under expedited procedures adopted by the assembly so that small subdivisions can be accomplished without unduly complex procedural requirements.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.120. PENALTIES. Repeal.

EXPLANATION: Provisions now contained in this section have been moved to a more inclusive section dealing with remedies - AS 29.42.160.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting ~~board~~ authority upon petition of the state, the municipality, a public utility, or the owners of a majority of the land affected by the alteration or replat. No platted street may be vacated, except upon petition of the state, municipality, or a public utility, or owners of the majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting ~~board~~ authority. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

EXPLANATION: Similar to current language except for a change allowing the state, the municipality or a public utility to initiate a replat petition, as well as property owners. Petitions to vacate streets may be initiated by the state and a public utility, as well as the municipality or property owners.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.150. DELEGATIONS. Repeal.

EXPLANATION: Since the assembly is able to establish powers and duties of the planning commission and platting ~~board~~, authority this section is redundant.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.~~120~~ 090. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or with an ordinance adopted under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chapter is guilty of a misdemeanor and may be punished by a fine not to exceed $1,000.

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority. ~~In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation.~~ An action to enjoin a violation may be brought notwithstanding the availability of any other remedy.

(c) ~~Every~~ day upon which an unlawful act or condition ~~continues shall~~ constitute a separate violation.

EXPLANATION: This new section is derived in part from AS 29.42.120 and contains new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. It prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations, authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurances of unlawful acts separate violations.

## CHAPTER 42. PLANNING, PLATTING AND ZONING

(Chapter 33. Article 4. PLANNING, PLATTING AND ZONING)

Sec. 29.42.010. (Sec. 29.33.070.) PLANNING, PLATTING AND ZONING. (a) First and second class boroughs shall provide for planning, platting and zoning on an areawide basis.

(b) The assembly by ordinance may

(1) designate the council of a city within the borough as a board of adjustment within the city;

(2) delegate other planning and zoning powers conferred by this chapter to a city within the borough;

(3) revoke or modify any part or all of the powers delegated under this subsection.

Sec. 29.42.020. (Sec. 29.33.080.) PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

(b) The commission shall prepare and recommend to the assembly

(1) a comprehensive plan consisting of maps and related texts for the systematic development of the borough;

(2) a zoning ordinance to implement the plan;

(3) a subdivision ordinance;

(4) the official map of the borough;

(5) modifications to the documents specified in (1)-(4) of this section.

(c) The commission shall publish notice of and hold at least one hearing before submitting its recommendations under (b) of this section to the assembly.

(d) The commission shall

(1) act as the platting board;

(2) act upon requests for variances;

(3) act upon requests for conditional uses.

(e) Subject to Sec. 150 (Sec. 245) of this chapter, no platting request, variance or conditional use may be granted except upon an affirmative vote of a majority of the commission.

(f) The commission shall designate its presiding officer and shall meet as frequently as is necessary. The commission shall establish , subject to approval by the assembly, rules and regulations for the conduct of its meetings. Meetings shall be public and minutes shall be kept. Minutes and records shall be filed with the municipal clerk and retained as public records.

(g) Exceptions may be granted to building, housing and related codes by the planning commission when an applicant for an exception demonstrates that the exception will result in increased energy efficiency, unless the planning commission determines that the exception would endanger the health or safety of the public.

Sec. 29.42.030. (Sec. 29.33.085.) COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to,

the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

(b) The assembly shall adopt a comprehensive plan based upon the recommendations of the planning commission. The assembly may modify the plan, provided that it first obtains the recommendations of the planning commission. The planning commission shall undertake an overall review of the plan at least once every two years and shall present recommendations based on the review to the assembly.

Sec. 29.42.040. (Sec. 29.33.090.) ZONING. (a) In accordance with the comprehensive plan, the assembly shall regulate and restrict the use of land and improvements by districts or contract zoning to permit specific uses provided for in the contract. Regulations shall be uniform for each class or kind of building, structure, land or water area within each district, but the regulations may differ among districts and exceptions may be made in order to provide for the preservation, maintenance and protection of historic sites, buildings and monuments. In this section, "contract zoning" means a zoning reclassification to a less restricted use when the owner of the rezoned property, either through an agreement with the assembly or a covenant in favor of the borough, places restrictions on the use of the land beyond the zoning requirements generally attaching to the new district in which the property has been placed. The assembly shall hold a public hearing on the proposed contract zoning.

(b) Zoning regulations adopted under (a) of this section may include, but are not limited to, restriction of

(1) land use;

(2) building location and use;

(3) the height and size of structures;

(4) the number of stories in buildings;

(5) the percentage of lot which may be covered;

(6) the size of open spaces;

(7) population density and distribution.

(c) Zoning regulations are designed to

(1) provide for orderly development;

(2) lessen street congestion;

(3) promote fire safety and public order;

(4) protect the public health and general welfare;

(5) prevent overcrowding;

(6) stimulate systematic development of transportation, water, sewer, school, park and other public facilities.

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

(d) Repealed by sec. 45 ch 85 SLA 1979.

(e) A zoning ordinance adopted or amended under (a) of this section may not preclude an activity authorized under a license or permit issued under AS 04 if the activity was licensed or permitted by the Alcoholic Beverage Control Board before the adoption of the zoning ordinance or zoning ordinance amendment.

Sec. 29.42.050. (Sec. 29.33.110.) BOARD OF ADJUSTMENT. (a) The assembly is the board of adjustment but may delegate by resolution or ordinance part or all of its functions to a city within the borough for the area within city boundaries in accordance with AS 29.42.010(b)(1) [AS 29.33.070(b)(1)], in addition to making delegations as provided for an assembly under AS 29.42.150 (AS 29.33.245). Meetings of the borough board are held at the call of the presiding officer and of the city board by the mayor. The presiding officer or mayor may administer oaths and compel

attendance of witnesses. Meetings and hearings of the board shall be open to the public and the board shall keep minutes of its proceedings as a public record.

(b) The board of adjustment shall hear and decide

(1) appeals regarding alleged errors in enforcement of zoning ordinances and building codes;

(2) appeals from the decisions of the planning commission on requests for conditional uses;

(3) appeals from the decisions of the planning commission on requests for variances from the terms of the zoning ordinance which are not contrary to the public interest, when a literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the same district.

(c) A variance shall not be granted because of special conditions caused by actions of the person seeking relief or for reasons of pecuniary hardship or inconvenience. A variance shall not be granted which will permit a land use in a district in which that use is prohibited.

Sec. 29.42.060. (Sec. 29.33.120.) ADJUSTMENT PROCEDURE. An interested party, including but not limited to a borough or city official, may file with the board of adjustment an appeal specifying his objections. Copies are filed with the administrative officer involved and with the borough clerk within the time required by the zoning ordinance. The officer shall provide the board with all pertinent records, including his written decision. An appeal to the board stays enforcement proceedings unless the board or a court issues an enforcement order based on a certificate of imminent peril to life or property made by the enforcement officer.

Sec. 29.42.070. (Sec. 29.33.130.) JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for appeals from the board of adjustment to the superior court.

(b) A municipal officer, a taxpayer, or a person, jointly or severally aggrieved, may appeal an action of the board to the superior court by filing with the borough clerk within the time fixed by ordinance, a notice of appeal specifying grounds. When the notice of appeal is filed, the board shall at once transmit to the superior court clerk copies of all the papers constituting the record in the case.

(c) An appeal from the board of adjustment stays enforcement proceedings unless the court issues an enforcement order based on a certificate of imminent peril to life or property made by the board.

(d) The appeal is heard upon the record by the superior court, and the court may reverse or affirm, wholly or partly, the decision appealed from.

(e) Issues in proceedings under this section have preference over all other civil actions and proceedings. An appeal lies from the decision of the superior court as in other civil cases.

Sec. 29.42.080. (Sec. 29.33.150.) PLATTING JURISDICTION AND POWER. (a) The planning commission acting as the platting board has jurisdiction over platting and shall adopt and publish rules and regulations to implement this power. Jurisdiction includes, but is not limited to, the control of

(1) form, size, and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions of lots or tracts;

(3) street width, arrangement, and right-of-way, including allowance for access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage, and other public utility facilities and improvements.

(b) The regulations adopted under (a) of this section apply to subdivision plats of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board, except that the platting board may

not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat.

Sec. 29.42.090. (Sec. 29.33.160.) PROCEDURE. (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010-40.15.020.

(c) If a municipality has adopted a subdivision ordinance which requires the submission of a preliminary or sketch subdivision plat during the platting procedure, the commissioner of natural resources shall, not later than 60 days before filing a final subdivision plat which contains land to be disposed of to individuals under AS 38.05 or AS 38.08, file a preliminary subdivision plat with the platting authority of the municipality.

Sec. 29.42.100. (Sec. 29.33.170.) WAIVER IN CERTAIN CASES. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that

(1) each tract or parcel of land will have adequate access to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of Secs. 29.42.080-29.42.170 (Secs. 29.33.150-29.33.240) of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

✓ Sec. 29.42.110. (Sec. 29.33.180.) INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

Sec. 29.42.120. (Sec. 29.33.190.) PENALTIES. (a) The owner or agent of the owner of land located within a subdivision who transfers, sells, or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved, and recorded, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $500 for each lot or parcel transferred, sold, or included in a contract to be sold. The borough may enjoin a transfer, sale, or contract to sell, and may recover the penalty by appropriate legal action.

(b) No person may record a plat or seek to have a plat recorded unless it bears the approval of the platting board. A person who knowingly violates this requirement is punishable upon conviction by a fine of not more than $500.

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Sec. 29.42.~~140~~. (Sec. 29.33.200.) ALTERATION OF REPLAT PETITION. No recorded plat may be altered or replatted except upon petition of the owners of a majority of the land affected by the alteration or replat or by the platting board. No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

✓ Sec. 29.42.140. (Sec. 29.33.210.) NOTICE OF HEARING. The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a copy of the notice to each affected property owner not signing the petition.

✓ Sec. 29.42.150. (Sec. 29.33.220.) HEARING AND DETERMINATION. At the hearing the platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

✓ Sec. 29.42.160. (Sec. 29.33.230.) RECORDING. If the alteration or replat is approved, the revised plat must be recorded by the platting board and is thereafter the lawful plat.

✓ Sec. 29.42.170. (Sec. 29.33.240.) TITLE TO VACATED AREA. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

Sec. 29.42.~~130~~ 140. (Sec. 29.33.245.) DELEGATIONS. The assembly may by ordinance authorize the planning commission ~~and~~ the platting ~~board~~ authority and the board of adjustment to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the commission or board, to other boards or commissions, or to a hearing officer designated by the commission or board. ~~The assembly shall prescribe procedures for hearings and appeals. The commission or board shall hear and decide appeals de novo.~~

Proofed 12-23

CHAPTER 42. PLANNING, PLATTING, AND LAND USE REGULATION

****Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

Sec. 29.42.020. PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

**** (b) In addition to the responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

Sec. 29.42.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

**** (b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary.

****Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a requires for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, or for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

****Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal.

****Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the board of adjustment, hearing officer or other body. A proceeding under this section has preference over all other civil actions and proceedings.

****Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting board necessary for other public uses.

(b) The assembly by ordinance shall establish a platting authority to administer subdivision regulations adopted by the borough and perform other duties. The platting authority may consist of members of the planning commission or of other municipal bodies, boards, and commissions.

****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

****Sec. 29.42.090. PROCEDURE. (a) The platting authority shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the platting authority fails to act, the plat is considered approved and a certificate of approval shall be issued by the platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the platting authority. The platting authority shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting authority shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

****Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

Sec. 29.42.110. INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

****Sec. 29.42.115. SHORT PLAT PROCFDURE. (a) Nothwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

****Sec. 29.42.120. PENALTIES. Repeal.

****Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting authority upon petition of the state, the municipality, a public utility, or the owners of a majority

of the land affected by the alteration or replat. No platted street may be vacated, ~~except~~ upon petition of the state, municipality, or a public utility, or owners of the majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

*Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The platting authority shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The platting authority shall also mail a copy of the notice to each affected property owner not signing the petition.

*Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting authority shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

*Sec. 29.42.160. RECORDING. If the alteration or replat is approved, the revised plat must be recorded by the platting authority and is thereafter the lawful plat.

Sec. 29.42.170. TITLE TO VACATED AREA. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

****Sec. 29.42.180. DELEGATIONS. Repeal.

****Sec. 29.42.190. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or with an ordinance adopted under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chpater is guilty of a misdemeanor and may be punished by a fine not to exceed $1,000.

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chpater, or a term, condition, or limitation imposed by a municipal platting authority. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or threatened violation, the injunction shall be granted.

(c) Every day upon which an unlawful act or condition continues shall constitute a separate violation.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

SCOMM

#23:37

Section
10. Planning, platting, and land use regulation
20. Planning commission
30. Comprehensive plan
40. Land use regulations
50. Appeals from administrative decisions
60. Judicial review
70. Platting jurisdiction and power
80. Application to state and political subdivisions
90. Waiver in certain cases
100. Procedure
110. Information required
120. Alteration of replat petition
130. Notice of hearing
140. Hearing and determination
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160. Title to vacate area
170. Penalties

Sec. 29.42.010. Planning, platting, and land use regulation. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under ~~(a) of this section~~ to the council of a city ~~of any class~~ within the borough, or a ~~subordinate~~ board or commission, ~~of a city,~~ provided the city first consents by ordinance to ~~that~~ delegation. The ~~Assembly, with or without the consent of the council~~ may ~~at any time~~ revoke any ~~or all~~ powers or responsibilities delegated ~~to a city council, or to a city board or commission subordinate body~~ under this section.

EXPLANATION

This section is substantially similar to AS 29.33.070. A reference in subsection (a) to "zoning" has been changed to the more flexible term "land use regulation". Subsection (b) is a redrafted version of AS 29.33.070(b). The proposed language clarifies the issue of whether a city's consent is required before delegated powers are revoked by the Assembly.

~~(Alternate Section suggested by Joanne Shanley)~~

MINORITY RECOMMENDATION

CAPL

Sec. 29.42.010. Planning, platting and land use regulation. (a) First and second class boroughs shall provide for planning, platting and land use regulation on an areawide basis.

(b) the assembly by ordinance may delegate any of its powers and responsibilities under (a) of this section to the council of a city of any class within the borough or a subordinate board or commission of a city, provided the city first consents by ordinance to that delegation. The assembly, with or without the consent of the council may at any time revoke any or all powers or responsibilities delegated to a city council or subordinate body under this section.

DO NOT TYPE

Add as minority recommendation

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the Borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

EXPLANATION: Would allow a first class or home rule city located at a distance from the borough seat to take over planning without the consent of the borough.

New Page

use existing (a)

Sec. 29.42.020. ~~(b)~~ Planning commission. (a) By ordinance the assembly shall establish a planning commission consisting of not less than five ~~persons~~ residents appointed and confirmed as provided by law. The assembly by ordinance shall also prescribe the qualifications, terms, and compensation of planning commissioners.

DO NOT TYPE

(b) In addition to ~~those~~ responsibilities prescribed by ~~law,~~ ordinance the planning commission shall

(in accordance with AS. 29.42.030)

(1) prepare and recommend to the assembly a comprehensive plan for the systematic and organized development of the borough; ~~as defined in .030 of this chapter.~~

(2) prepare, recommend, and ~~as required by law to~~ administer ~~those~~ measures necessary to implement the comprehensive plan, including ~~those~~ measures provided under ~~040 of this Chapter~~. AS. 29.42.040.

EXPLANATION

This section is a shortened ~~and revised~~ version of AS 29.33.080. A ~~Major~~ change ~~include~~ ~~elimination of apportionment requirements based on residency of specified members within first class cities; elimination of specific language regarding appointments, terms, and compensation of planning commissioners and substitution of more general language requiring the Assembly to prescribe by ordinance the qualifications, terms and compensation of commissioners;~~ elimination of detailed and unnecessary specifications of the commission's duties in favor of a general statement requiring the commission to prepare and recommend measures necessary to implement the comprehensive plan; ~~and elimination of~~ public meetings and public records requirements ~~as redundant.~~ is eliminated since these requirements would attach in any case. The requirement for a public hearing is eliminated because it is felt that the public is adequately protected. A plan must be adopted by ordinance and is therefore subject to notice and hearing provisions.

New Page

Sec. 29.42.030. (b) Comprehensive plan. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

Do Not Type

(b) ~~The~~ assembly shall adopt, by ordinance ~~or may modify the~~ a comprehensive plan ~~with~~ the recommendations of the planning commission. The assembly shall, after receiving ~~with~~ the ~~advice and~~ recommendations of the planning commission, ~~periodically~~ undertake an overall review of the plan and update the plan as necessary, ~~to ensure the continued validity and effectiveness of the plan.~~

EXPLANATION

This section is derived from AS 29.33.085. ~~Subsection (a) is identical to AS 29.33.085(a).~~ Subsection (b) is redrafted to eliminate the mandatory two year review requirement ~~of AS 29.33.085(b)~~ and ~~contains~~ a more flexible review requirement ~~premised on a determination that the continued validity and effectiveness of the plan requires review.~~

INSERT 29.42.040

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) ~~it~~ the variance is sought solely to relieve pecuniary hardship or inconvenience.

New page

Sec. 29.42.040. Land use regulation. In accordance with a comprehensive plan adopted under ~~Section .030 of this chapter~~ AS 29.42.030 and in order to implement ~~that~~ the plan, the assembly by ordinance ~~and~~ as a legislative act, ~~may~~ shall enact or amend ~~regulatory measures~~ provisions governing the use and occupancy of land, which may ~~including~~ but are not limited to:

(1) ~~Z~~oning regulations ~~which~~ restricting ~~or govern~~ the use of land and improvements by geographic districts;

(2) construction, fire and ~~life~~ safety codes governing placement, erection and occupancy of structures;

(3) Land use permit ~~systems~~ requirements designed to encourage or discourage specified uses and construction of specified structures ~~and to discourage others~~, or to minimize unfavorable ~~exter-nalaties~~ effects of ~~certain~~ uses and the construction of structures;

(4) ~~Other regulatory~~ measures ~~reasonably necessary~~ ~~intended~~ to further the goals and objectives of the comprehensive plan.

~~(5) Measures defining and regulating public nuisances.~~ ← powers section

insert (b) → b (3) ~~(b)~~ insert from T Y 29.42.050 re-write to cover appeals from all decisions, not just zoning

EXPLANATION

The proposed Section 29.42.040 represents a substantial modification of ~~AS 29.33.090~~. Present law requires implementation of the comprehensive plan through traditional zoning applicable to geographically defined districts, and allows so called "contract zoning." Although the present AS 29.33.090(b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important catagories of land use regulations available to the borough. Passage of AS 29.42.040 would ~~clearly~~ enable second class boroughs to enact building and fire codes, ~~and to regulate public nuisances.~~ Material on ~~appeals from decisions~~

New page

Sec. 29.42.050. Appeals from administrative decisions. (a) By ordinance the assembly shall provide for an appeal~~s~~ from an administrative decision~~s~~ of a borough employee~~s~~, ~~or~~ board~~s~~, ~~and~~ or commission~~s~~ made in the enforcement, administration, or application of a land use regulation~~s~~ adopted ~~by the borough~~ ~~assembly~~ under this chapter. The assembly may provide for appeals to a board of adjustment, hearing

variance has been moved to the section from AS 29.33.10

officer, or other ~~independent quasi-judicial~~ body ~~established by the assembly~~ ~~assembly~~ ~~borough~~.

(b) By ordinance the assembly ~~shall~~ provide for appointment of hearing officers, or the composition, appointment and terms of office of a board of adjustment or other ~~quasi judicial~~ body established to hear appeals from administrative actions specified in (a) of this section, ~~and~~ the assembly may define proper parties, prescribe evidentiary rules, ~~and~~ standards of review, and ~~define~~ remedies available to ~~such bodies or~~ hearing officers, ~~TEXT OMITTED~~

EXPLANATION

This section consolidates provisions of existing Section 29.33.110 and Section 29.33.120. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundent public records and meeting requirements, and allows the Assembly to define proper parties, evidentary rules, and standards of review rather than following more restrictive rules of the present AS 29.33.120.

Sec. 29.42.~~060~~. Judicial review. (a) The assembly shall provide by ordinance for appeals from decisions of the board of adjustment, hearing officer or other ~~quais-judicial~~ boards or ~~others~~ named under ~~Sec. 050 of this chapter~~ to the Superior Court by a municipal officer or person ~~jointly or severally~~ aggrieved.

(b) An appeal to the Superior Court under this section ~~are~~ is an administrative appeal and ~~shall be governed by Rules of Court applicable to appeals from decisions of administrative agencies, provided that~~ and the

(c) appeal is ~~are~~ heard solely on the record established by the administrative agency, ~~and the court may affirm, reverse, wholly or partly, the decision appealed from.~~ Issues in proceedings under this section have preference over all other civil actions and proceedings.

Next page

INSERT

Sec 29.42.060. ADJUSTMENT PROCEDURE. Repeal.

EXPLANATION. A simplified appeal procedure is now provided in the prior section.

**EXPLANATION**

Based on AS 29.33.130, the proposed section makes several important changes in procedures governing administrative appeals to Superior Court. The "automatic stay" requirement of AS 29.33.130(c) is eliminated, allowing parties to follow more customary appellate rules governing injunctions pending appeal; the language ~~plainly~~ makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

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Next page

Sec. 29.42.~~070~~ 090. Platting jurisdiction and power. (a) ~~First and second class boroughs shall exercise the power to regulate platting and the subdivision of land on an areawide basis.~~ By ordinance the assembly shall ~~enact~~ adopt subdivision ~~regulations~~ requirements which may include but are not limited to the control of

(1) ~~governing the~~ form, size and other aspects of subdivision, dedications, and vacations of land;

(2) ~~regulating~~ dimensions and design ~~features~~ of lots or tracts;

(3) ~~establishing~~ ~~strict~~ street width, arrangement, and right-of-way, including ~~allowance~~ requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;

(4) ~~requiring~~ dedication of streets, rights of way, public utility easements and ~~other~~ areas deemed by the platting authority necessary for ~~future~~ other public use;

(b) The assembly by ordinance shall establish a platting board to administer subdivision regulations adopted by the borough and perform other duties, ~~prescribed by law.~~ The platting board may, ~~in whole or in part,~~ consist of members of the planning commission or of other municipal bodies, boards and commissions.

**EXPLANATION**

This section is derived from AS 29.33.150 and ~~, aside from stylistic changes,~~ makes the following modifications to existing law: requires adoption of subdivision regulations by ordinance; ~~clearly~~ allows the platting authority to require dedications; allows the Assembly to determine the composition of the platting board; and eliminates the provisions of ~~AS 29.33.150~~ AS 29.33.150(b) ~~SLA 1979~~ which allow the State of Alaska to ignore capital improvement requirements of local subdivision regulations.

Sec. 29.42.~~080~~ 085. Application to state and political subdivisions. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. ~~the provisions of this chapter or home rule ordinances or regulations governing subdivisions, and shall comply with ordinances and other local regulations adopted under this chapter or under home rule authority, in the same manner and to the same extent as subdivisions made by private landowners.~~ The platting authority ~~fire to governor override provision~~ in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and AS 40.15.075.

**EXPLANATION**

This new section contains ~~the language of AS 40.15.200 and adds the word "private" preceeding the word "landowners" in the last line. It is believed that the provisions of AS 40.15.200 are more appropriately placed here rather than in AS 40.15.~~ cross references to other statutes applicable to subdivisions and platting.

Sec. 29.42.090. Waiver in certain cases. (a) The platting authority shall, in individual cases, waive the preparation, submission for approval, and recording of a plat upon satisfactory evidence that:

repeal

(1) each tract or parcel of land will have adequate legal and physical access by the public to a public highway or street;

(2) each parcel created is five acres in size or larger and that the land is divided into four or fewer parcels;

(3) the conveyance is not made for the purpose of, or in connection with, a present or projected subdivision development;

Type

Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

Explanation: A short plat provision is added as AS 29.42.115, making the waiver provision no longer necessary.

(4) no dedication of a street, alley, thoroughfare or other public area is involved or required.

(b) In other cases the platting authority may waive the preparation, submission for approval, and recording of a plat, if the transaction involved does not fall within the general intent of this chapter and AS 40.15 if it is not made for the purpose of, or in connection with, a present or projected subdivision development which constitutes an isolated transaction and no dedication of a street, alley, thoroughfare, park or other public area is involved or required.

EXPLANATION

This section contains one modification to its predecessor, AS 29.33.170. A reference to "adequate legal and physical access" is added to subsection (a)(1) which will guarantee public access to tracts or parcels created by waiver.

Sec. 29.42.095. Short plat procedure. (a) Notwithstanding ~~the requirements~~ of this chapter ~~governing the submission, consideration, or approval of vacations, subdivisions, or resubdivisions,~~ by ordinance the assembly may establish a short or abbreviated plat procedure for plats which will only relocate or vacate lot lines, or subdivide a single tract, ~~parcel~~ or lot into not more than four tracts or lots and will not:

(1) deny legal and physical access to ~~and from~~ all lots or tracts created ~~by,~~ or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication ~~except to match a half~~ right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted ~~under existing law~~;

(4) require the granting of a vacation or variance from ~~the~~ a subdivision regulation~~s enacted by the Borough~~.

(b) ~~Consistent with this section,~~ Regulations ~~governing the short plat procedure~~ may ~~allow~~ provide for an administrative official to review, consider, and approve ~~abbreviated~~ plat plats with ~~such~~ notice, hearing, and other procedural requirements established by the ~~A~~assembly.

EXPLANATION

New section allowing short plat procedure under ~~such~~ expedited procedures ~~as the Assembly may adopt.~~ adopted by the assembly so that small subdivisions can be accomplished without unduly complex procedural requirements.

Sec. 29.42.~~100.~~ Procedure. (a) The platting board shall within 60 days of filing approve or disapprove the plat or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010 -- 40.15.020.

EXPLANATION

Subsections (a) and (b) are identical to AS 29.33.160(a) and (b). The proposed section eliminates AS 29.33.160(c) relating to submission of preliminary plats for state disposals under AS 38.05 or 38.08, because the proposed changes in Sections 29.42.070 require full state compliance with local capital improvement requirements.

Sec. 29.42.110. Information required. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

DO NOT TYPE

Type → Sec. 29.42.120. PENALTIES. Repeal

Explanation: provision now contained in this section have been moved to a more inclusive section dealing with remedies, AS .

EXPLANATION

Identical to AS 29.33. 0.

Sec. 29.42.130 120. Alteration or replat petition. No recorded plat may be altered or replatted except upon petition of the owners of a majority of the land affected by the application of replat, or by the platting board. No platted street may be vacated, except upon petition of the municipality or owners of the majority of the front feet of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

EXPLANATION

Similar Identical to AS 29.33.200. except to change allowing the state, the municipality or a public utility to initiate a replat petition, as well as property owners. Petitions to vacate streets may be initiated by the state or a public utility as well as the municipality or property owners.

Sec. 29.42.140. Notice of hearing. The platting board shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The board shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The board shall also mail a

DO NOT TYPE

copy of the notice to each affected property owner not signing the petition. DO NOT TYPE

EXPLANATION

Identical to AS 29.33.210.

Sec. 29.42.~~140~~ 150. Hearing and determination. ~~At the hearing the~~ The platting board shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

EXPLANATION

Identical to AS 29.33.220.

Sec. 29.42.~~150~~ 160. Recording. If the alteration or replat is approved, the revised plat must be recorded by ~~the platting board~~ borough and is thereafter the lawful plat. DO NOT TYPE

EXPLANATION Technical change to reflect the fact that the borough, not ~~Identical to AS 29.33.240.~~

Sec. 29.42.160. Title to vacated area. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

DO NOT TYPE

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for

another public purpose does not vest as provided in (a) of this section but remains in the city.

EXPLANATION

Identical to AS 29.33.240.

~~AS 29.42.150. DELEGATIONS. Repeal~~ AS 29.42.150. DELEGATIONS. Repeal Ex: Since the assembly is able to establish powers and duties of the planning commission and platting board, this section is redundant.

Sec. 29.42.150. Remedies. (a) It shall be unlawful for the owner ~~or agent of the owner~~ of land located within a subdivision to transfer, sell, offer to sell, or to enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with ~~applicable municipal subdivision regulations enacted~~ this chapter and ordinances adopted under this chapter. It shall be unlawful for ~~any~~ a person to ~~file or record a subdivision~~ plat or other ~~instrument~~ document depicting subdivided land in any public recorder's office unless ~~that~~ the plat or document ~~bears the approval of~~ has been approved by the municipal platting authority. ~~Every act prohibited by this chapter or failure to perform a duty required by the maintenance of any condition prohibited by municipal subdivision regulations adopted in accordance with this chapter is unlawful and the willful commission of such act or maintenance of such condition is a misdemeanor.~~ ~~Every~~ A person convicted of ~~a violation of any~~ violating a provision of this ~~title or~~ chapter, any municipal subdivision regulation adopted under this ~~title~~ chapter, or the terms, conditions, or limitations imposed by a municipal platting authority in the exercise of its powers under this ~~title~~ chapter is guilty of a misdemeanor and may be punished by a fine not to exceed $500.

(b) ~~If there is a violation of the terms of this chapter, municipal subdivision regulations adopted under this chapter, or any terms, conditions, or limitations imposed by a platting authority in the exercise of its powers under this chapter,~~ the ~~Borough~~ municipality or ~~any~~ an aggrieved ~~citizen~~ person may institute ~~or cause to be instituted any~~ a appropriate civil action ~~to~~ against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority.

~~prevent, abate, enjoin, estop, remove or punish such violation and to obtain monetary damages suffered by that party.~~ In addition to injunctive and compensatory relief each violation shall be subject to a civil penalty not to exceed $1,000. An action to enjoin any violation ~~to this title~~ may be brought notwithstanding the availability of any other remedy. ~~Upon application for injunctive relief and a finding of an existing or threatened violation, the Superior Court shall grant injunctive relief to restrain that violation.~~

(c) Every day upon which an unlawful act or condition ~~shall~~ occur shall constitute a separate violation.

(d) The ~~platting authority~~ borough may enjoin any partition, lease, transfer, or sale of land which would result in an unlawful subdivision. Following an unlawful petition, transfer, lease or sale, the platting authority may enjoin any further transfer, sale of all unlawfully subdivided parcels until such time as the parcels are dully subdivided or returned to common ownership.

EXPLANATION

This new section is derived in part from AS 29.33.190 and contains certain new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. ~~The new section~~ It prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations; authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurrences of unlawful acts separate violations.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to the council of a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

Tam - our numbering & references are mixing apples & oranges?

use new numbers.

EXPLANATION: This section is substantially similar to ~~AS 29.33.070.~~ the existing 29.42.010. A reference in subsection (a) to "zoning" has been changed to the more flexible term "land use regulation". Subsection (b) is a redrafted version ~~of AS 29.33.070(b).~~ ~~The proposed~~ and ~~language~~ clarifies the issue of whether a city's consent is required before delegated powers are revoked by the assembly. current language.

MINORITY RECOMMENDATION:

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city. ?

No change

EXPLANATION: Would allow a first class or home rule city located a distance from the borough seat to take over planning without the consent of the borough.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.020. PLANNING COMMISSION. (b) In addition to responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

29.42.020 EXPLANATION: This section is a shortened version of the existing ~~29.33.080.~~ A major change is the elimination of detailed and unnecessary specifications of the commission's duties in favor of a general statement requiring the commission to prepare and recommend measures necessary to implement the comprehensive plan. The public meetings and public records requirement is eliminated since these requirements would attach in any case. The requirement for a public hearing is eliminated because it is felt that the public is adequately protected. A plan must be adopted by ordinance and is therefore subject to notice and hearing provisions.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.030 COMPREHENSIVE PLAN. (a) No change. (b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary.

EXPLANATION: ~~This section is derived from AS 29.33.085.~~ Subsection (b) is redrafted to eliminate the mandatory two year review requirement and substitute a more flexible review requirement.

Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall ~~enact~~ adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(2) construction, fire and safety codes governing placement, erection and occupancy of structures;

(3) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(4) measures to further the goals and objectives of the comprehensive plan.

((b)) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

EXPLANATION: Present law requires implementation of the comprehensive plan through traditional zoning applicable to geographically defined districts, and allows so-called "contract zoning." Although the present AS 29.33.090(b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important categories of land use regulations available to the borough. Passage of AS 29.42.040 would enable second class boroughs to enact building and fire codes. Material on variances has been moved to the section from AS 29.33.110.

29.42.040 (b) new no.

29.42.050 new no.



Sorry

Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a borough employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for appeals to a court, board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, ~~but~~ for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

new no. 42.050 42.060

EXPLANATION: This section consolidates provisions of existing Sec. 29.33.110 and Sec. 29.33.120. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundant public record and meeting requirements, and allows the assembly to define proper parties, evidentary rules, and standards of review rather than following more restrictive rules of the present AS 29.33.120.

42.060

Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the ~~administrative agency~~ board of adjustment, hearing officer or other body. ~~Issues in~~ A proceeding under this section has preference over all other civil actions and proceedings.

EXPLANATION: ~~Based on AS 29.33.130~~, this proposed ~~section~~ language makes several important changes in procedures governing administrative appeals to the superior court. The "automatic stay" requirement ~~of AS 29.33.130(c)~~ is eliminated, allowing parties to follow more customary appellate rules governing injunctions pending appeal; the language makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

EXPLANATION: A simplified procedure is now provided in the prior sec

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvments;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting authority necessary for other public uses.

(b) The assembly by ordinance shall establish a platting board to administer subdivision regulations adopted by the borough and perform other duties. The platting board may consist of members of the planning commission or of other municipal bodies, boards and commissions.

new #01

This proposed change

EXPLANATION: ~~This section is derived from AS 29.33.150 and~~ makes the following modifications to existing law: it requires adoption of subdivision regulations by ordinance; allows the platting authority to require dedications; allows the assembly to determine the composition of the platting board; and eliminates the provisions ~~of AS 29.33.150(b),~~ which allows the state of Alaska to ignore capital improvement requirements of local subdivision regulations.

Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

EXPLANATION: This new section contains cross references to other statutes applicable to subdivisions and platting.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal.

EXPLANATION: A short plat provision is added as AS 29.42.115, making the waiver provision no longer necessary.

Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Notwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for plats which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

EXPLANATION: New section allowing short plat ~~procedure~~ filing under expedited procedures adopted by the assembly so that small subdivisions can be accomplished without unduly complex procedure requirements.

Sec. 29.42.090. PROCEDURE. (a) The platting board shall within 60 days of filing approve or disapprove the plat, or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

EXPLANATION: ~~Subsections (a) and (b) are identical to AS 29.33.160(a) and (b).~~ The proposed ~~section~~ eliminates ~~AS 29.33.160(c) relating to~~ submission of preliminary plats for state disposals under AS 38.05 or 38.08, because the proposed changes in Sec. 29.42.070 requires full state compliance with local capital improvement requirements.

Sec. 29.42.120. PENALTIES. Repeal.

EXPLANATION: Provisions now contained in this section have been moved to a more inclusive section dealing with remedies; AS 29.42.140.

Thanks!

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting board upon petition of the state, the municipality, a public utility, or the owners of a majority of the land affected by the alteration or replat. No platted street may be vacated, except upon petition of the state, municipality, or a public utility, or owners of the majority of the ~~front feet of~~ land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

current language

EXPLANATION: Similar to ~~AS 29.33.200~~ except for a change allowing the state, the municipality or a public utility to initiate a replat petition, as well as property owners. Petitions to vacate streets may be initiated by the state and a public utility, as well as the municipality or property owners.

Sec. 29.42.150. DELEGATIONS. Repeal.

EXPLANATION: Since the assembly is able to establish powers and duties of the planning commission and platting board, this section is redundant.

Sec. 29.42.160. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or ordinance adopted with law under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chapter is guilty of a misdemeanor and may be punished by a fine not to exceed $500.

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority.

(c) Every day upon which an unlawful act or condition continues shall constitute a separate violation.

New no. 29.42.120

EXPLANATION: This new section is derived in part from AS 29.33.190 and contains new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. It prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations, authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurances of unlawful acts separate violations.

SCOMM

#23:38

CHAPTER 45. MUNICIPAL TAXATION

Article 1. MUNICIPAL PROPERTY TAX

****Sec. 29.45.010. GENERAL PROPERTY TAX. A general law or home rule borough other than a unified municipality, may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A tax if levied on real property, personal property, or both must be assessed, levied and collected as provided in this chapter.

****Sec. 29.45.020. TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, or both, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

| | |
|---|---|
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE (AS 14.17) | $ |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100) | $ |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE (AS 29.88) | $ |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89) | $ |
| TOTAL AID | $ |

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

**** (1) municipal, state or federally owned property, except that a private leasehold, contract or other interest in the property shall be taxable to the extent of those interests;

**** (2) household furniture of the head of a family or household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

**** (4) property of a nonbusiness organization or its auxiliary composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

**** (3) Repeal.

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 and 44.62.570.

**** (f) No exemption may be granted under (e) of this section except upon written application

for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 or a date provided by ordinance which is not later than March 31, of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 or a date provided by ordinance which is not later than March 31, of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under AS 29.53.025(a).

(h) Except as provided in (g) of this section, nothing in (e) - (i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

(i) In (e) - (i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Sec. 29.45.040. PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental

receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

**** (1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage.

(2) classify and exempt from taxation

**** (A) Repeal.

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the

conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

(1) a home rule or first or second class borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or

partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is direcly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later.

****Sec. 29.45.060. MINING CLAIMS. Repeal.

Sec. 29.45.070. FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be

assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file

for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. TAX LIMITATION. (a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

**** (b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of

residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Sec. 29.45.110. NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. FULL AND TRUE VALUE. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and Secs. 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Sec. 29.45.130. RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

**** (b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the investigation. The assessor may seek a court order to compel entry and production of records.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.

****Sec. 29.45.150. STATEMENT. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a class B misdemeanor.

Sec. 29.45.160. REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to

be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. ASSESSMENT NOTICE. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Sec. 29.45.190. CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

****Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the assembly, municipal residents, or a combination of assembly members and residents. The assembly shall be ordinance establish the qualifications for membership.

(b) The board is governed in its proceedings by rules adopted by ordinance which are consistent with general rules of administrative procedure. The board may alter an assessment of a lot or parcel only pursuant to an appeal filed as the the particular lot or parcel.

(c) Notwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law shall be appealed directly to the superior court.

Sec. 29.45.220. HEARING. (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

**** (c) The only grounds for adjustment are proof of unequal, excessive, improper, or undervaluation based on facts which are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(d) The board shall certify its actions to the assessor within seven days.

**** (e) Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

**** (f) An appellant or the assessor may appeal the board's determination to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

Sec. 29.45.230. SUPPLEMENTARY ASSESSMENT ROLLS. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll.

Sec. 29.45.240. TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

**** (e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law, or a disaster declared by the governor under AS 26.23.010 26.23.110.

Sec. 29.45.250. TAX LEVY AND RATE. ****(a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of a general ordinance. The rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Sec. 29.45.260. RATES OF PENALTY AND INTEREST. ****(a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 20 percent may be added to all delinquent taxes, and interest at the rate of 15 percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments penalty and interest on an unpaid installment accrues from the date the installment becomes due.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

**** (c) Repeal.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

**** (b) Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice is given by posting or publication. The siezure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty and interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. If the property is sold for more money than is needed to satisfy the tax, upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

**** (b) If the tax on property described in AS 29.45.080 or on a taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the superior court for judgment;

(2) publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed within the borough or, if there is no newspaper of general circulation distributed within the borough, post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appear on the list a notice advising of the foreclosure proceeding in which a petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspection at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeals as provided in AS 29.33.130(e).

Sec. 29.45.370. ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

**** (b) Repeal.

****Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough releases the judgment obtained under AS 29.45.380. The clerk or his designee shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk or his designee shall collect the recording fee at

the time or redemption and shall file the certificate with the record as part of the judgment roll.

Sec. 29.45.420. ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. EXPIRATION. ****(a) At least 30 days before the expiration of the redemption period the clerk or his designee shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be

sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

**** (b) Conveyance gives the borough or the city clear title except for prior recorded tax liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

**** (d) No deed is invalid for irregularities, omissions or defects in the proceedings under this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person having an interest in the property is forever barred.

Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of

this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist. The ordinance shall contain the information required in (a) of this section.

**** (c) The clerk or his designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the last record owner of the property as his name appears on the assessment rolls of the municipality.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale,

including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350(a) of this chapter.

(b) After adoption of an ordinance providing for the retention of a parcel of tax-foreclosed property by the municipality for a public purpose, the right of the former record owner to repurchase the property ceases.

Sec. 29.45.480. PROCEEDS OF TAX SALE. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under Sec. 350(a) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.490. PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

****Sec. 29.45.510. REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, or, if in the absence of suit, it becomes obvious to the assembly that judgment for recovery of the taxes would be obtained if legal proceedings were brough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at 15 percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

(c) The assembly may correct manifest clerical errors at anytime.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter.

The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.540. LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

**** Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition for second class city incorporation may request that a property tax proposal be placed in the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails.

ARTICLE 4. BOROUGH SALES AND USE TAX

Sec. 29.45.570. SALES AND USE TAX. ****(a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the

extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

**** (d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

**** (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION. ****(a) A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question at a regular or special election.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. POWER OF LEVY. (a) Cities within a borough which levies and collects areawide sales or use taxes ~~for areawide borough functions~~ delete may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs. New sentence (1)

~~Sec. 29.45.620. POWER OF LEVY AND COLLECTION.~~ (b) Cities within a borough which does not levy and collect areawide sales or use taxes ~~for areawide borough functions~~ may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

Lee Sharp 12-4-80

COMMENTS FOR CONSIDERATION ON THE PROPOSED CHAPTER 45
ON MUNICIPAL TAXATION

29.45.010. The authority to levy a property tax should be extended to unified municipalities.

29.45.020. The use of the disjunctive in the phrase "real or personal property" implies that a municipality may levy either real or personal property taxes. This conflicts with the requirement set forth in the preceeding section that if a property tax is levied it must be levied on real and personal property.

29.45.020(c). I suggest that an additional clause be added to the last sentence of this subsection which would provide that if DCRA has not notifed a muncipality of the amount it will receive under the equalization and state aid programs at least 30 days prior to the date the municipality gives final approval to its budget, the municipality need not include the mill or tax equivalent attributable to the program and DCRA will not withhold allocations for such failure to provide notice.

29.45.030(a)(3). Shouldn't we add the requirement that property under this section be owned by and used exclusively for the nonprofit religious, charitable, etc?

29.45.030(b)(3). If a lot which is adjacent to the residence of of a pastor is a 10 acre lot and a quarter acre of that lot is used to support the residence, is the entire lot exempt? If not, perhaps the substitution of the word "property" or a similar word for the word "lot" would provide some justification for prorating in such cases. The other alternate would be to make it clear that the entire lot must be used to support the structure in order order to obtain an exemption.

29.45.030(b)(4). Same comment here as above. The exemption probably should not go to any more property then is actually required to meet off-street parking requirements. Either the entire lot should be required and devoted to off-street parking or the language should be changed to indicate that a proration may occur.

29.45.030(c). The reference to section (b) is probably superfluous as the property which is set forth in (b) is merely a definition of property which falls under (a).

29.45.030(j). Although this was just enacted by the Legislature, I would like to see it dropped as personally, I don't think that such tax incentives are significant in causing persons to install fire protection systems. If fire protection systems are needed they should be required by code.

29.45.040. I think we ought to find a different place for this section as it has nothing to do with the levying or collection of taxes.

29.45.050(b)(1). The $5 and $15 tonnage-based tax on vessels should be raised to something that makes it worthwile to administer the tax; that, or the dollar limiation should be deleted to permit municipalities to establish the tax rate per ton.

29.45.060. If patented and unpatented mining claims are to be made exempt then this subject should be dealt with under the exemption section and not a separate section. Also, I do not believe that nonproducing patented mining claims should be exempt from property any more than any other nonproductive, privately owned property is exempt. Also, if mining claims valued at $200 are to much trouble, perhaps raising the value from $200 to $1000 could be considered.

29.45.090(b) and 100(b). Section 90(b) apparently sets a limit from property tax of $1500 per person. Section 100(b) sets a per capita limit in terms of "tax revenues from all sources." The "all sources" phrase is used twice in Section 100(b). The sections should be clarified to indicate whether the limitation is one which looks to all tax revenues or only to property tax revenues.

29.45.110. The references to Sections 45 and 50 in line 19 should be changed to 90 and 100.

29.45.120. The reference to Section 60 should be deleted if mining claims are exempted and moved to the exemption section. Also, would it be worthwhile to attempt to address the method of evaluation of property which is in the jurisdiction for only part of a year and property which is involved in inter-borough and inter-state commerce. CSSB 582 (though not adopted) addressed this matter as to transient aircraft.

29.45.120(b). I suggest this section be rewritten to delete the last sentence and to indicate that a municipality may provide by ordinance for the assessment (valuation) of business inventories based on the average monthly method etc.

29.45.120( ). The method evaluation of a possessory interest in tax exempt property is not addressed in the statutes. While we have a Superior Court case or two which indicate that it is the feeless reversion method, it might not hurt to have this established by statute. Some states go so far as to say that the value of a possessory interest in tax exempt land is the value of the fee. This latter approach is probably much simpler to apply, it might have an equal protection weakness.

29.45.140(b). I suggest dropping the phrase "if refused entry" and adding at the end of the sentence "or production of records."

29.45 150. I suggest we raise the fine to something more in keeping with inflation.

29.45.180(a). I question the wisdom of requiring notice on the assessment notice of a summary of when unlevied taxes are payable delinquent and subject to penalty and interest (all of which is unrelated to the assessment proceedings) but not requiring the inclusion of a date when the Board of Equalization will sit (something very directly related to the assessment proceeding). I think we are asking for more administrative problems by not requiring that the date be set prior to the sending of assessment notices than we would be eliminating to accommodate those assessors and councils or assemblys which can't seem to get their act together well enough to establish a hearing date sometime 45 or so days down the road.

29.45.180(b). I suggest that if in the preceding Section 170 we are going to allow any person having an interest in the property to be listed on the records that it be made clear that notice is sufficient if sent to the record owner, the first person listed as grantee on a multiple grantee deed or if sent to a person designated by such first grantee or record owner.

29.45.210. Should we change the first sentence to read "The assembly, or council of a city outside a borough, sits. . . ." or have we dealt elsewhere with the applicability of these procedures to such cities? In the third line we could delete the word "borough" and I believe we should add the word "it" before the word "may". If we are going to include reference to city councils, there are two additional references to assembly in this section which should be modified appropriately.

29.45.220(and 210). Section 210 speaks to appeals from "determinations" of the assessor. Section 220, however, appears to deal with assessment (value) determinations of the assessor. I suggest we clarify whether or not the Board of Equalization will hear appeals on the assessor's determination of the taxability of property.

29.45.220(e). I suggest that if assessors are concerned over the June 1 certification date applying to supplemental roles that Section (e) be rewritten to delete the reference to June 1 and merely require that the assessor enter the changes and certify the final assessment role immediately upon receipt of certification of the board changes.

29.45.230. I suggest that the assessing officer's suggestion not be included. I would hope that merely because the state assessor requires certain assessment information for reports, revenue sharing, etc. a municipality not be foreclosed from establishing a supplementary assessment role for property which comes to its attention during the latter part of the year. The assessing officer's suggestion would effectively preclude supplemental assessment roles for property which is discovered much later than the first of July.

29.45.250. I suggest that the reference to the date of equalization be deleted so that this may be set by motion. This will also provide a little more flexibility in the event a municipality appoints a board as the board should be the one which sets its date of hearing. As to the rate of levy and the date when taxes become delinquent, I suggest that we change the language to indicate that these may be fixed by ordinance or resolution.

29.45.260(a). The penalty and interest should be raised substantially. I just noticed that in the territorial days, as far back as the 1940's when interest rates and inflation were unbelievably low, the penalty limit for property tax delinquencies was 15% and the interest limit was 12% per year. I'd suggest we shoot for 20% penalty and a 15% interest limit. The penalty and interest appear in several places in Section 260.

29.45.300(a). I suggest that the phrase "assessed against" in line 22 should be "levied on" as property is assessed (valued) while taxes are levied.

29.45.300(b). I suggest that we permit the collection of taxes levied on trailers, mobile homes, etc. which are classed as real property to be collected in either or both an action against the property or a personal action against the owner. By the time the municipality gets around to collecting its delinquencies, the trailer may well have been sold and even removed from the taxing jurisdiction.

29.45.310. Would it be appropriate to stick a tactful reminder in the second sentence of this section that the procedure for distraint and sale include a hearing to which the owner is invited?

29.45.330(b). The reference to Section 40 should be changed to 80. Also, I believe the reference to "leasehold interest in tax exempt property" should be changed to "private interest in tax exempt property" as a leasehold is not the only type of taxable interest in tax exempt property.

29.45.350. I would suggest that this section be changed so that it is clear that failure to notify the lienholder does not defeat any of the rights of the municipality to foreclose on and sell the property. I would also suggest the deletion of the requirement that the notice be sent by certified mail.

29.45.400(a). The reference to Section 350(a) should be 440(a).

29.45.400(b). I think this section should be deleted as it appears to attempt to create a situation whereby a lienholder can carve out an interest in foreclosed property by merely paying his prorata share of the amounts due. If we are going to allow a lienholder to establish an interest in foreclosed property which is not extinguished by sale of the property, why aren't we allowing those persons who have a partial interest in the fee to do the same thing? There is no need for this section. A lienholder who redeems the property by paying the amounts due is given a lien for that amount under Section 420. Section 420 could be changed to make such lien paramount to others.

29.45.410 and 400(a). Section 400(a) provides that redeemed property is still subject to all taxes, assessments, liens, etc. as though it had continued in private ownership but that only the amount set forth in the judgment and decree must be paid in order to redeem the property. Section 410 then provides that upon payment of the redemption money all claims of the municipality are released. This is in conflict with the provision that taxes, assessments, liens, etc. accrue as though the property had continued in private ownership. The release language should be limited to claims which are the subject of the judgment and decree.

29.45.460(a). The reference to Section 360 in line 20 should be to 450.

29.45.460 and 470. I think these two sections ought to be dropped. The owner of the property has had ample opportunity to redeem his property and notice at every turn. There is no reason to allow his existence to create a cloud on property which the municipality may wish to use or later dispose of. If we are going to retain these sections, the interest rate in Section 470 ought to be raised to the same as is established for delinquent taxes and the municipality ought also to be able to collect interest on the taxes which would have been levied and paid had the property remained in private ownership. This interest increment does not appear to be authorized under Section 470.

29.45.480(b). I believe the reference in line 11 to Section 350(a) should be to 440(a).

29.45.510. Would it be worthwhile to add a subsection here or a new section relating to the right of a person who has paid taxes on the wrong property.

29.45.570. I believe the word "or" between the word "sales" and "rents" should be a comma.

29.45.570(d). I suggest the 8% limit on delinquent tax payment is a bit low.

29.45.590(a). I suggest the last two sentences of this section be dropped. I also suggest that subsection (b) be dropped. Perhaps the entire section can be written in a single sentence reading "A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question of approval at a regular or a special election called for that purpose."

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.45.010. GENERAL PROPERTY TAX. A general law or nome rule borough other than a unified municipality, may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A unified municipality may levy areawide and nonareawide property taxes. A tax if levied on real property, personal property, or both must be assessed, levied and collected as provided in this chapter.

EXPLANATION: This section has been clarified as the the fact that a unified municipality may levy both areawide and nonareawide taxes. Limiting the use of areawide taxes to areawide functions and nonareawide taxes to nonareawide functions makes little sense. It is made clear that taxes may be levied on personal and real property or either.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.020. TAXPAYER NOTICE. (a) If a municipality levies and collects real ~~and~~ or personal property taxes, or ~~either~~ both, the governing body shall provide the following notice:...

EXPLANATION: The language "real and personal property taxes, or either", was added to conform to 29.45.010.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that a private leasehold, contract, or other interest in the property shall be taxable to the extent of the interest;

(2) household furniture of the head of a family or household; (3) No change (5) No change (6) No change

(4) property of a nonbusiness organization or its auxiliary composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable;

(b) (3) lots or portions of lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use; ← out repeal

Repeal

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 or a date provided by ordinance which is not later than March 31, of the assessment year for which the exemption is sought, ...
...If a claimant whose failure to file by January 15, or a date provided by ordinance which is not later than March 31...

EXPLANATION: Based on Alaska Association of Asessing Officers (AAAO) recommendations:

1. (a)(2): deletes $500 limit on exemption of household furniture.

2. (b)(3): narrows the language so that only portions of lots necessary to convenient use are exempt.

3. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

4. (f): clarifies that filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section. Adds flexibility so that a local government may establish a date later than January 15 for filing for a senior citizen exemption.

Sec. 29.45.050. OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) No change.

(b) A municipality may by ordinance

(1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage.

(2) classify and exempt from taxation

(A) ... [THE HOUSEHOLD FURNITURE OVER $500 IN VALUE AND THE EFFECTS OF THE HEAD OF A FAMILY OR A HOUSEHOLDER]... (the rest of the subparagraph is left intact.)

EXPLANATION: Eliminates in (b)(1) the $5 and $15 limitations, since with these limits, collecting a tax on boats does not pay administrative costs. Modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects, based on recommendations of AAAO, since assessors currently do not include household furnishings and personal effects of family members.

29.45.060 - Mining Claims - Repeal

Sec. 29.45.100. TAX LIMITATIONS. (a) No change.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of the property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States bureau of the census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of the property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

EXPLANATION: Change requested by AAAO raising $1000 to $1500. No recommendation by the Technical Group.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) No change.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the purposes of the investigation. The assessor may seek a court order to compel entry and production of records.

(c) No change

EXPLANATION: It was felt that the assessor ought to be able to seek production of records, as well as to compel entry, whether refused entry or not.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.45.150. PENALTY. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation is guilty of a class B misdemeanor.

EXPLANATION: This section was changed to classify the misdemeanor to conform with the criminal code. A class B misdemeanor carries a possible fine of $1,000 and term of imprisonment of 90 days, somewhat more severe than existing law.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the assembly, ~~or other~~ municipal residents. The assembly shall by ordinance establish the qualifications for membership.

(b) The board is governed in its proceedings by rules adopted by ordinance which are consistent with general rules of administrative procedure. The board may alter an assessment of a lot or parcel only pursuant to an appeal filed as to the particular lot or parcel.

(c) Nothwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law ~~may~~ shall be appealed directly to the superior court.

EXPLANATION: Removes the requirement that the board consist of a number over that required for a quorum of the assembly in favor of requiring not less than three members. Requires that an assessment be altered only as a result of an appeal filed as to the lot in question. Allows a determination of the taxability of property (for example, land held by Indians or in trust for Indians may not be taxable at all under federal law) to be appealed to the superior court.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
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Sec. 29.45.220. HEARING. (a) No change.

(b) No change.

(c) The only grounds for adjustment ~~is~~ are proof of unequal, excessive, improper, or under valuation based on facts which are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(d) No change.

(e) Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

(f) The appellant or the assessor may appeal the board's determination to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

EXPLANATION: Change in (c) makes it clear that an assessment can be raised as the result of an appeal. Change in (e) to allow for supplementary assessments after June 1. Change in (f) so that appeals to the superior court will be heard on the record rather than de novo, as is now the case.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.45.240.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g or other federal law, or a disaster declared by the governor under AS 26.23.010-110.

EXPLANATION: Makes provision for special treatment of property affected by a disaster applicable if the governor, as well as the president, declares a disaster.

Sec. 29.45.250. TAX LEVY AND RATE. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of a general ordinance. The rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by ordinance or resolution.

(b) No change.

EXPLANATION: Allows rate of levy, date of equalization, date of delinquency to be fixed by ordinance as well as resolution.

Sec. 29.45.260. RATES OF PENALTY AND INTEREST. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 20 percent may be added to all delinquent taxes, and interest at the rate of 15 percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments penalty and interest on an unpaid installment accrues from the date the installment becomes due.

(b) No change.

(c) Repeal.

EXPLANATION: The penalty and interest rates are raised, so that people will not deliberately avoid paying taxes due to the high cost of borrowing from other sources. Penalty and interest on an unpaid installment accrues only from the date the installment is due. (c) is repealed as redundant. Since (a) provides for interest and penalty on all types of taxes, there is no need for special treatment of property taxes.

Sec. 29.45.300. TAX LIABILITY. (a) No change.

(b) Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

EXPLANATION: The change makes it clear that a lien exists on personal as well as real property.

Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. If the property is sold for more money than is needed to satisfy the tax, upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

EXPLANATION: Allows the return of excess money received over the amount needed for the tax when property is sold to satisfy a tax lien.

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) No change.

(b) If the tax on property described in AS 29.45.080 or on a taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

EXPLANTION: The word "taxable" is substituted for "leasehold" so that any interest in tax exempt property which can be taxed can be enforced.

Sec. 29.45.400. REDEMPTION PERIOD. (a) No change.

(b) Repeal.

EXPLANATON: (b) is eliminated so that a person holding a lien on only part of a lot or parcel may no longer redeem just that part. This avoids the problem of splitting lots or parcels into what might be illegal subdivisions.

Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough releases the judgment obtained under AS 29.45.380. The clerk or his designee shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk or his designee shall collect the recording fee at the time of redemption and shall file the certificate with the record as part of the judgment roll.

EXPLANATION: Changed so that all claims of the borough are not released, i.e., improvement assessments. Redemption releases only the judgement obtained for delinquent taxes.

Sec. 29.45.440. EXPIRATION. (a) At least 30 days before the expiration of the redemption period the clerk or his designee shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgement of foreclosure has been taken and, if the assessed value of the property is more than $100,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) No change.

EXPLANATION: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgement of foreclosure. Burden placed on lienholder to protect his interest.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) No change.

(b) Conveyance gives the borough or the city clear title except for prior recorded tax liens of the United States and the state.

(c) No change.

(d) No deed is invalid for irregularities, omissions or defects in the proceedings under this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person having an interest in the property is forever barred.

EXPLANATION: (b) changes to clear title except for tax liens. (d) changed to include the interests in property of persons other than the owner within the limitation period. This clears the title.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) No change.

(b) No change.

(c) The clerk or his designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the last record owner of the property as his name appears on the assessment rolls of the municipality.

(d) No change.

EXPLANATION: Language of (a) inserted into last line of (c) for consistency. No substantive change.

29.45.510

Section ~~29.53.390~~. Refund of Taxes and Correction of Clerical Errors. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, or, if in the absence of suit, it becomes obvious to the assembly that judgment for recovery of the taxes would be obtained if legal proceedings were brought, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

(c) The assembly may correct manifest clerical errors at anytime.

Comments: Changes in (a) includes language of section prior to 1972 rewrite and allows assembly to settle or refund without forcing taxpayer to file suit and obtain court judgment.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition for second class city incorporation may request that a property tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails.

EXPLANATION: This is a new section similar to the provision in 29.45.630 allowing an incorporation petition to be tied to imposition of a sales tax.

use

29.45.510. REFUND OF TAXES and Correction of Clerical errors
(c) The assembly may correct manifest clerical errors at any time.

Sec. 29.45.570. SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) No change.

(c) No change.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

new (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

EXPLANATION: (a) changed to make it clear that tax can be levied on sales and rents, not just one or the other. (d) interest rate raised from eight to 15 percent. (e) added to allow liens for the collection of sales and use taxes.

new

Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION. (a) A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question at a regular or special election.

(b) uncharged

EXPLANATION: Simplifies the section and eliminates the provision that propositions may be brought only once a year.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

DO Not TYPE - Not approved!

Sec. 29.45.610. POWER OF LEVY. (a) A city within a borough which levies and collects a sales or use tax for areawide functions may levy a sales or use tax upon all sources taxed by the borough in the manner provided for a borough and may provide for a lien to secure payment of the tax as provided for a borough.

(b) A city within a borough which does not levy and collect a sale or use tax for areawide functions may levy and collect a sales or use tax in the manner provided for a borough and may provide for a lien to secure payment of the tax as provided for a borough.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Repeal

EXPLANATION: Material contained in AS 29.45.620 has been combined into AS 29.45.610. The section has been altered to insure that a city may create a lien to secure payment of a sales and use tax as is recommended in AS 29.45.570 for boroughs.

29.45.610 Back to Technical Committee

Why did a city not within regard to the boroughs.

## CHAPTER 45. MUNICIPAL TAXATION

(Chapter 53. MUNICIPAL ASSESSMENT AND TAXATION

Article 1. MUNICIPAL PROPERTY TAX

Sec. 29.45.010. (Sec. 29.53.010.) GENERAL PROPERTY TAX. (a) Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter.

(b) Uni. Mun may levy areawide & non areawide prop. tax.

Sec. 29.45.020. (Sec. 29.73.070) TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE (AS 14.17) $

STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100) $

MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE (AS 29.88) $

STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89) $

TOTAL AID $

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 (AS 29.88) and state aid for miscellaneous municipal services under AS 29.62 (AS 29.89). The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. (Sec. 29.53.020.) REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a householder not exceeding $500 in value;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 and 44.62.570.

(f) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under AS 29.53.025(a).

(h) Except as provided in (g) of this section, nothing in (e) - (i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

(i) In (e) - (i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

Sec. 29.45.040. (Sec. 29.73.060.) PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) Municipalities may exclude or exempt or partially exempt residential

property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over $500 in value and the effects of the head of a family or a householder; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

(1) a home rule or first or second class borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to,

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excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is direcly attributable to alteration of

the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later.

Sec. 29.45.060. (Sec. 29.53.030.) MINING CLAIMS. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is fixed at $200 for each 20 acres or fraction of 20 acres. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.

Sec. 29.45.070. (Sec. 29.53.035.) FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other

nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner

wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. (Sec. 29.53.040.) MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. (Sec. 29.53.045.) TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. (Sec. 29.53.050.) TAX LIMITATION. (a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of

residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,000 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Sec. 29.45.110. (Sec. 29.53.055.) NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. (Sec. 29.53.060.) FULL AND TRUE VALUE. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and Secs. 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Sec. 29.45.130. (Sec. 29.53.070.) RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. (Sec. 29.53.080.) INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the

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purposes of the investigation. If refused entry, the assessor may seek a court order to compel entry.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.

Sec. 29.45.150. (Sec. 29.53.090.) STATEMENT. A person who fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a misdemeanor. Upon conviction, he is punishable by a fine of not more than $500, or by imprisonment for not more than 30 days, or by both, together with costs of prosecution.

Sec. 29.45.160. (Sec. 29.53.095.) REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. (Sec. 29.53.100.) ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the

name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. (Sec. 29.53.110.) ASSESSMENT NOTICE. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Sec. 29.45.190. (Sec. 29.53.120.) CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. (Sec. 29.53.130.) APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

Sec. 29.45.210. (Sec. 29.53.135.) BOARD OF EQUALIZATION. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, or it may delegate this authority to a board appointed by it for that purpose. The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business. The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance adopt rules for the membership and conduct of the board.

Sec. 29.45.220. (Sec. 29.53.140.) HEARING. (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed or proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1.

(f) An appellant may appeal to the superior court for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial.

Sec. 29.45.230. (Sec. 29.53.150.) SUPPLEMENTARY ASSESSMENT ROLLS. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll.

Sec. 29.45.240. (Sec. 29.53.160.) TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law.

Sec. 29.45.250. (Sec. 29.53.170.) TAX LEVY AND RATE. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of general ordinances, but the rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Sec. 29.45.260. (Sec. 29.53.180.) RATES OF PENALTY AND INTEREST. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 10 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments and the first half is not paid when due, the entire tax becomes delinquent and penalty and interest accrue as follows:

(1) if the first half is paid when due, the second half is payable on the due date fixed by the assembly for the second half and if not paid is delinquent after that date;

(2) a penalty not to exceed eight percent shall be added to all taxes delinquent until the due date fixed for payment of the second half, and interest at the rate of eight percent a year shall be charged on

the whole of the unpaid taxes, not including penalty, from due date until paid in full;

(3) after the due date for the payment of the second half, a total penalty of not more than 10 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalties, from due date until date paid in full.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

(c) If the assembly charges interest on property taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. (Sec. 29.53.200.) VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. (Sec. 29.53.210.) TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

(b) Real property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. (Sec. 29.53.220.) ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide

the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale.

Sec. 29.45.320. (Sec. 29.53.230.) REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

(b) If the tax on property described in Sec. 40 of this chapter or on a leasehold interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. (Sec. 29.53.240.) FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the superior court for judgment;

(2) publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed within the borough or, if there is no newspaper of general circulation distributed within the borough, post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appear on the list a notice advising of the foreclosure proceeding in which a

petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspection at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. (Sec. 29.53.250.) CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. (Sec. 29.53.260.) LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. (Sec. 29.53.270.) GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded

against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeals as provided in AS 29.33.130(e).

Sec. 29.45.370. (Sec. 29.53.280.) ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. (Sec. 29.53.290.) JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. (Sec. 29.53.300.) TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. (Sec. 29.53.310.) REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year.

During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

(b) A person holding a mortgage or other lien of record covering a part only of a parcel of real property included in the judgment and decree of foreclosure may redeem that part by paying the proportionate amount applicable under the judgment and decree.

Sec. 29.45.410. (Sec. 29.53.320.) EFFECT. Receipt of redemption money by the clerk releases all claims of the borough to the property. The clerk shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk shall file the certificate with the recorder and collect the recording fee from the person redeeming at the time of redemption. The court clerk shall file the certificate as part of the judgment roll.

Sec. 29.45.420. (Sec. 29.53.330.) ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. (Sec. 29.53.340.) POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. (Sec. 29.53.350.) EXPIRATION. (a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $10,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Sec. 29.45.450. (Sec. 29.53.360.) DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid

borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

(b) Conveyance gives the borough or the city clear title except for prior recorded liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

(d) No deed is invalid for irregularities, omissions or defects, unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner is forever barred.

Sec. 29.45.460. (Sec. 29.53.370.) DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist. The ordinance shall contain the information required in (a) of this section.

(c) The clerk shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the property owner at the last address of record.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. (Sec. 29.53.375.) REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale, including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350(a) of this chapter.

(b) After adoption of an ordinance providing for the retention of a parcel of tax-foreclosed property by the municipality for a public purpose, the right of the former record owner to repurchase the property ceases.

Sec. 29.45.480. (Sec. 29.53.380.) PROCEEDS OF TAX SALE. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and

the city having unpaid taxes against the property. The division is in proportion to the respe tive municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the lose of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs inc rred under Sec. 350(a) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.490. (Sec. 29.53.385.) PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

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& correction of clerical

Sec. 29.45.510. (Sec. 29.53.390.) REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

(c) The

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. (Sec. 29.53.400.) POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.540. (Sec. 29.53.410.) LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

ARTICLE 4. BOROUGH SALES & USE TAX

Sec. 29.45.570. (Sec. 29.53.415.) SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales or

deleted

rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed ~~eight~~ 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

Sec. 29.45.590. (Sec. 29.53.420.) REFERENDUM, ADOPTION AND MODIFICATION. (a) The assembly shall hold a referendum vote on the question of enacting a sales tax or increasing the rate of levy of sales taxes. Borough sales tax propositions may be presented only once in any 12-month period. A sales tax proposition may be submitted to the voters at a regular or special election or at a general election of the state.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. (Sec. 29.53.440.) POWER OF LEVY. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs.

Sec. 29.45.620. (Sec. 29.53.450.) POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. (Sec. 29.53.460.) COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

NOTES

VOTE: Assessment letter

CHAPTER 45. MUNICIPAL TAXATION

(Chapter 53. MUNICIPAL ASSESSMENT AND TAXATION)

Article 1. MUNICIPAL PROPERTY TAX

Sec. 29.45.010. (Sec. 29.53.010.) GENERAL PROPERTY TAX. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter.

Sec. 29.45.020. (Sec. 29.73.070) TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE
(AS 14.17) $

STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100) $

MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE
(AS 29.88) $

STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89) $

TOTAL AID $

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 (AS 29.88) and state aid for miscellaneous municipal services under AS 29.62 (AS 29.89). The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met. provided

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Sec. 29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a household [~~not exceeding $500 in value~~];

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(7) real property to the extent and subject to the conditions provided in (j) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization.

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

of persons there

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or educational groups [for classroom space]. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560-44.62.570.

(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

or such later date as may be prov. by reg. but not later than March 31.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under sec. 25(a) of this chapter.

(h) Except as provided in (g) of this section, nothing in (e)-(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in sec. 25 of this chapter.

(i) In (e)-(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Formerly: AS 29.53.020

Comments: Based on Alaska Association of Assessing Officers (AAAO) recommendation:

(1) Para. (a)(2): deletes $500 limit on exemption of household furniture;

(2) Para. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

(3) Para. (f): clarifies filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section.

Sec. 29.45.040. (Sec. 29.73.060.) PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. Optional exemptions and exclusions.

(a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage~~, a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;~~

broaden def.

(2) classify and exempt from taxation

(A) All or any portion of the household goods and furnishings in actual use by the owner thereof in ~~equipping and outfitting~~ his or her residence ~~or place of abode~~ and not for sale or commercial ~~use, and all~~ personal effects ~~held by~~ any person for his or her exclusive use ~~and benefit and~~ not for sale or commercial use ~~"Personal effects"~~ shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles, and the like [the household furniture over $500 in value and the effects of the head of a family or a householder]; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

Formerly: AS 29.53.025

Comments: modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects. Based upon recommendation of AAAO since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.060. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal ~~or otherwise~~, is exempt [~~fixed at $200 for each 20 acres or fraction of 20 acres~~]. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.

Formerly: AS 29.53.030

Comments: Deletes $200 valuation figure. AAAO recommends deletion since administrative costs exceed taxes to be realized in carrying property at $200 figure on roll.

Sec. 29.45.070. (Sec. 29.53.035.) FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other

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nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner

wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. (Sec. 29.53.040.) MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. (Sec. 29.53.045.) TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. Tax limitations.

(a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner or community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Formerly: AS 29.53.050

Comments: Technical change requested by AAAO to conform with provisions of AS 29.53.045 (SLA 80)

Sec. 29.45.110. (Sec. 29.53.055.) NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. Full and true value.

(a) The assessor shall value [assess] property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections [illegible], 70 [35] and 240 [160] of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Formerly: AS 29.53.060

Comments: Requested by AAAO

Sec. 29.53.130. (Sec. 29.53.070.) RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. (Sec. 29.53.080.) INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the

purposes of the investigation. ~~If refused entry~~, the assessor may seek a court order to compel entry. Production of records.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination ~~by the~~ assessor.

Sec. 29.45.150. (Sec. 29.53.090.) PENALTY STATEMENT. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a misdemeanor. Upon conviction, he is punishable by a fine of not more than ~~$500~~ $1000, or by imprisonment for not more than ~~90~~ 6 MO days, or by both, together with costs of prosecution. Class of Misdemeanor

Sec. 29.45.160. (Sec. 29.53.095.) REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. (Sec. 29.53.100.) ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the

name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. Assessment notice.

(a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Formerly: AS 29.53.110

Deletes requirement that assessor include in the assessment notice the date the board of equalization will meet since many times assessors at that time do not know the dates at the time the notices are mailed. Based on the recommendation of AAAO.

Sec. 29.45.190. (Sec. 29.53.120.) CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. (Sec. 29.53.130.) APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment ~~which is~~ being? appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

(f)? or

or II

Sec. 29.45.210. Board of Equalization. The ~~assembly sits as~~ a board of equalization for the purpose of hearing any appeal from determinations of value of the borough assessor. ~~However,~~ The Ass. may delegate this authority to one or more boards appointed by it for that purpose. An appointed board may be composed of not less than three (3) persons, who may be members of the assembly, private individuals, or a combination thereof. [The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business.] The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance establish the qualifications for membership and adopt rules of conduct of the board.

Dec of ASS AS to taxability ~~[illegible]~~ CAN be

Formerly: AS 29.53.135

Comments: Change would clarify authority to establish boards of equalization composed of other than assembly members and by ordinance to establish qualifications. Deletion required to allow appointment of boards of three members or more which number may be less than number required for quorum of assembly.

Sec. 29.45.220. Hearing.

(a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, ~~excessive~~ or improper, or valuation based on facts which are stated in a valid written appeal timely filed ~~and~~ or proved at the hearing.

# under valuation

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1 except as to supplementary assessments.

(f) [an] The appellant and the assessor may appeal the board's action to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on and limited to the record established at the hearing before the board of equalization. [for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial].

Formerly: AS 29.53.140

Comments: (1) Para. (c): Based on recommendation of AAAO, substitutes and for or to assure must set forth factual grounds in written appeal and prove at hearing;

(2) para. (e): Based on recommendation of AAAO, clarifies that there may be further proceedings after June 1 in event there are supplementary assessments per former section 29.53.150;

(3) para. (f): deletes provisions regarding trial de novo and jury trial and limits scope of review to substantial evidence rule and clarifies confusion created by Winegardner v. Greater Anchorage Area Borough (534 P.2d 541)

Sec. 29.45.230. Supplementary assessment rolls. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. Any supplementary roll must be finalized and certified on or before September 1 of the assessment year.

Formerly: AS 29.53.150

Comments: Recommended by AAAO. State assessor requires for his purposes all proceedings to be completed not later than September 1, including any supplemental assessments.

Sec. 29.45.240. (Sec. 29.53.160.) TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law. OR GOVERNOR under AK Disaster Act AS 26.23.010-230

Sec. 29.45.250. (Sec. 29.53.170.) TAX LEVY AND RATE. (a) The power granted to the assembly to assess, levy and collect a general property tax ~~shall~~ MAY be exercised by means of general ordinances, but the rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution. OR

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

CLEAN UP WHOLE SECTION

Sec. 29.45.260. (Sec. 29.53.180.) RATES OF PENALTY AND INTEREST. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 10 percent 8% may be added to all delinquent taxes, and interest at the rate of eight percent 15% a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments and the first half is not paid when due, the entire tax becomes delinquent and penalty and interest accrue as follows:

(1) ~~if~~ penalty the first half is paid when due, the second half is payable on the due date fixed by the assembly for the second half and if not paid is delinquent after that date;

(2) ~~a penalty~~ interest not to exceed eight percent shall be added to all taxes delinquent until the due date fixed for payment of the second half, and interest at the rate of eight percent a year shall be charged on



penalty & int. only Issue installment which is delinquent

the whole of the unpaid taxes, not including penalty, from due date until paid in full;

(3) after the due date for the payment of the second half, a total penalty of not more than 10 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalties, from due date until date paid in full.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

(c) If the assembly charges interest on property taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. (Sec. 29.53.200.) VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. (Sec. 29.53.210.) TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

(b) [redacted] property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. (Sec. 29.53.220.) ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide

the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. Excess returned. Insert language

Sec. 29.45.320. (Sec. 29.53.230.) REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

(b) If the tax on property described in Sec. ~~40.~~ of this chapter or on a ~~leasehold~~ taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. (Sec. 29.53.240.) FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the superior court for judgment;

(2) publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed within the borough or, if there is no newspaper of general circulation distributed within the borough, post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appear on the list a notice advising of the foreclosure proceeding in which a

petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspection at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. (Sec. 29.53.250.) CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. (Sec. 29.53.260.) LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. (Sec. 29.53.270.) GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded

against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeals as provided in AS 29.33.130(e).

Sec. 29.45.370. (Sec. 29.53.280.) ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. (Sec. 29.53.290.) JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. (Sec. 29.53.300.) TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. (Sec. 29.53.310.) REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year.

During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

Delete ~~(b) A person holding a mortgage or other lien of record covering a part only of a parcel of real property included in the judgment and decree~~ of foreclosure may redeem that part by paying ~~the~~ proportionate amount ~~applicable under the~~ judgment and ~~decree~~.

Sec. 29.45.410. (Sec. 29.53.320.) EFFECT. Receipt of redemption money by the ~~clerk~~ Borough releases ~~all claims of the borough to the property~~ the judgement obtained under. The clerk shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk shall file the certificate with the recorder and collect the recording fee from the person redeeming at the time of redemption. The court clerk shall file the certificate as part of the judgment roll.

Sec. 29.45.420. (Sec. 29.53.330.) ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. (Sec. 29.53.340.) POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

**Sec. 29.45.440. Expiration.**

(a) At least 30 days before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000 [$10,000], to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Formerly: AS 29.53.350

Comments: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgment of foreclosure.

Sec. 29.45.450. (Sec. 29.53.360.) DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid

borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

(b) Conveyance gives the borough or the city clear title except for prior recorded tax liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

(d) No deed is invalid for irregularities, omissions or defects in the proceedings pursuant to this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person is forever barred.

Sec. 29.45.460. (Sec. 29.53.370.) DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist. The ordinance shall contain the information required in (a) of this section.

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(c) The clerk or designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the property owner at the last address of record as his name appears. assessment rolls of the shown on the municipality.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. (Sec. 29.53.375.) REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, ~~delinquent taxes~~ penalties & interest assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale, including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350(a) of this chapter. see 480. for lang.

(b) After adoption of an ordinance providing for the retention of a parcel of tax-foreclosed property by the municipality for a public purpose, the right of the former record owner to repurchase the property ceases.

Sec. 29.45.480. (Sec. 29.53.380.) PROCEEDS OF TAX SALE. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and

the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under Sec. 350(a) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.490. (Sec. 29.53.385.) PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

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Sec. 29.45.510. (Sec. 29.53.390.) REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight pe[illegible]t from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. (Sec. 29.53.400.) POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.540. (Sec. 29.53.410.) LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum authorize the levy of ~~real and personal~~ property taxes as provided for first class cities. However, levy Ref. such by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

Sec. 29.45.570. (Sec. 29.53.415.) SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales or

rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

Sec. 29.45.590. (Sec. 29.53.420.) REFERENDUM, ADOPTION AND MODIFICATION. (a) The assembly shall hold a referendum vote on the question of enacting a sales tax or increasing the rate of levy of sales taxes. Borough sales tax propositions may be presented only once in any 12-month period. A sales tax proposition may be submitted to the voters at a regular or special election ~~or at a general election of the state~~.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

Sec. 29.45.570 (29.53.415). Sales and use tax. (a) A borough may levy and collect a sales tax not exceeding six per cent on sales ~~or~~, rents, and on services made within the borough and may provide for the creation and recording of a lien on real or personal property to secure the payment of the tax, and for interest, penalties and costs in the event of delinquencies. Such liens shall have the force, effect, priority and duration of a judgment lien. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed eight per cent 15% a year upon the delinquent taxes and shall be charged from the due date until paid in full.

* * * * *

Sec. 29.45.610 (29.53.440). Power of levy. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs including providing for the creation and recording of a lien on real or personal property to secure the payment thereof, and for interest, penalties and costs in the ~~amount~~ event of delinquencies. Such liens shall have the force, effect, priority and duration of a judgment lien.

* * * * *

Sec. 29.45.620 (29.53.450). Power of levy and collection. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs including providing for the creation and recording of a lien on real or personal property to secure the payment thereof, and for interest, penalties and costs in the event of delinquencies. Such liens shall have the force, effect, priority and duration of a judgment lien.

ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. (Sec. 29.53.440.) POWER OF LEVY. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs.

Sec. 29.45.620. (Sec. 29.53.450.) POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. (Sec. 29.53.460.) COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

prop tax election 2 nd class cities

(i) In (e) - (i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Sec. 29.45.040. (Sec. 29.73.060.) PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental

receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) Municipalities may exclude or exempt or partially exempt residential

SCOMM

#23:39

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.45.010. GENERAL PROPERTY TAX. A general law or home rule borough, other than a unified municipality, may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A unified municipality may levy areawide and nonareawide property taxes. ~~A property tax if levied must be assessed, levied and collected as provided in this chapter. on real and personal property, or either,~~

EXPLANATION: This section has been clarified as the the fact that a unified municipality may levy both areawide and nonareawide taxes. Limited the use of areawide taxes to areawide functions and nonareawide taxes of nonareawide functions makes little sense. It is made clear that taxes may be levied on personal and real property or either.

(1) tax if levied on real property, personal property, or both must be assessed, levied and collected as provided in this chapter.

Sec. 29.45.020. TAXPAYER NOTICE. (a) If a municipality levies and collects real and personal property taxes, or either, the governing body shall provide the following notice:...

EXPLANATION: The language "real and personal property taxes, or either," was added to conform to 29.45.010.

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that a private leasehold, contract, or other interest in the property shall be taxable to the extent of the interest;

(2) household furniture of the head of a family or household;

(4) property of a nonbusiness organization or its auxiliary composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable;

(b) (3) lots or portions of lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charibale, hospital or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 or a date provided by ordinance which is not later than March 31, of the assessment year for which the exemption is sought, ...
...If a claimant whose failure to file by January 15, or a date provided by ordinance which is not later than March 31...

EXPLANATION: Based on Alaska Association of Asessing Officers (AAAO) recommendations:

1. (a)(2): deletes $500 limit on exemption of household furniture.
2. (b)(3): narrows the language so that only portions of lots necessary or convenient use are exempt.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE - 06 DECEMBER 1980

3. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

4. (f): clarifies that filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section. Adds flexibility so that a local government may establish a date later than January 15 for filing for a senior citizen exemption.

I think highlighting the changes would speed things up at the policy mtg. But I don't like the way it looks & in some cases is silly.

Ok here

Well just not be consistent.

No underlines — just dressed work where we substantially re-draft.

Sec. 29.45.050. OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) No change

(b) A municipality may by ordinance

(1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage. [~~...~~] ← To hard to look all these up.

(2) classify and exempt from taxation

(A) ... [THE HOUSEHOLD FURNITURE OVER $500 IN VALUE AND THE EFFECTS OF THE HEAD OF A FAMILY OR A HOUSEHOLDER]... (The rest of the Subparagraph is left intact.)

↖ Type in application.

EXPLANATION: Eliminates in (b)(1) the $5 and $15 limitations, since with these limits, collecting a tax on boats does not pay administrative costs. Modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects, based on recommendations of AAAO, since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) No change.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the purposes of the investigation. The assessor may seek a court order to compel entry and production of records.

EXPLANATION: It was felt that the assessor ought to be able to seek production of records, as well as to compel entry, whether refused entry or not.

Sec. 29.45.150. PENALTY. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation is guilty of a class B misdemeanor.

EXPLANATION: This section was changed to classify the misdemeanor to conform with the criminal code. A class B misdemeanor carries a possible fine of $1,000 and term of imprisonment of 90 days, somewhat more severe chan existing law.

Sec. 29.45.250. TAX LEVY AND RATE. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of a general ordinance. ~~but~~ The rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by ordinance or resolution.

(b) No change The assembly shall annually determine the rate of levy on or before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

EXPLANATION: Allows rate of levy, date of equalization, date of delinquency to be fixed by ordinance as well as resolution

Sec. 29.45.260. RATES OF PENALTY AND INTEREST. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 20 percent may be added to all delinquent taxes, and interest at the rate of 15 percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments penalty and interest on an unpaid installment accrues from the date the installment becomes due.

(b) No changes.

(c) Repeal.

EXPLANATION: The penalty and interest rates are raised, so that people will not deliberately avoid paying taxes due to the high cost of borrowing from other sources. Penalty and interest on an unpaid installment accrues only from the date the installment is due. (c) is repealed as redundant. Since (a) provides for interest and penalty on all types of taxes, there is no need for special treatment of property taxes.

Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the assembly or other municipal residents. The assembly shall by ordinance establish the qualifications for membership.

(b) The board is governed in its proceedings by rules adopted by ordinance which are consistent with general rules of administrative procedure. The board may alter an assessment of a lot or parcel only pursuant to an appeal filed as to the particular lot or parcel.

(c) Nothwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law may be appealed directly to the superior court.

EXPLANATION: Removes the requirement that the board consist of a number over that required for a quorum of the assembly in favor of requiring not less than three members. Requires that an assessment be altered only as a result of an appeal filed as to the lot in question. Allows a determination of the taxability of property (for example, land held by Indians or in trust for Indians may not be taxable at all under federal law) to be appealed to the superior court.

Sec. 29.45.240. TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g or other federal law, or a disaster declared by the governor under AS 26.23.010-110.

EXPLANATION: Makes provision for special treatment of property affected by a disaster applicable if the governor, as well as the president, declares a disaster.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.240. TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) No change.

(b) No change.

(c) No change.

(d) No change.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g or other federal law, or a disaster declared by the governor under AS 26.23.010-110.

EXPLANATION: Makes provision for special treatment of property affected by a disaster applicable if the governor, as well as the president, declares a disaster.

Sec. 29.45.300. TAX LIABILITY. (a) No change.

(b) Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

EXPLANATION: The change makes it clear that a lien exists on personal as well as real property.

Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. If the property is sold for more money than is needed to satisfy the tax, upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

EXPLANATION: Allows the return of excess money received over the amount needed for the tax when property is sold to satisfy a tax lien.

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) No change.

(b) If the tax on property described in AS 29.45.080 or on a taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

EXPLANTION: The word "taxable" is substituted for "leasehold" so that any interest in tax exempt property which can be taxed can be enforced.

Sec. 29.45.400. REDEMPTION PERIOD. (a) No change.

(b) Repeal.

EXPLANATON: (b) is eliminated so that a person holding a lien on only part of a lot or parcel may no longer redeem just that part. This avoids the problem of splitting lots or parcels into what might be illegal subdivisions.

Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough releases the judgment obtained under AS 29.45.380. The clerk or his designee shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk or his designee shall collect the recording fee at the time of redemption and shall file the certificate with the record as part of the judgment roll.

EXPLANATION: Changed so that all claims of the borough are not released, i.e., improvement assessments. Redemption releases only the judgement obtained for delinquent taxes.

Sec. 29.45.440. EXPIRATION. (a) At least 30 days before the expiration of the redemption period the clerk or his designee shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgement of foreclosure has been taken and, if the assessed value of the property is more than $100,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) No change.

EXPLANATION: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgement of foreclosure. Burden placed on lienholder to protect his interest.

Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) No change.

(b) Conveyance gives the borough or the city clear title except for prior recorded tax liens of the United States and the state.

(c) No change.

(d) No deed is invalid for irregularities, omissions or defects in the proceedings under this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person having an interest in the property is forever barred.

EXPLANATION: (b) changes to clear title except for tax liens. (d) changed to include the interests in property of persons other than the owner within the limitation period. This clears the title.

Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) No change.

(b) No change.

(c) The clerk or his designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the last record owner of the property as his name appears on the assessment rolls of the municipality.

(d) No change.

EXPLANATION: Language of (a) inserted into last line of (c) for consistency. No substantive change.

Sec. 29.45.470. REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgement of foreclosure to the date of repurchase, delinquent taxes, including penalty and interest assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale, including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350 (a) of this chapter.

(b) No change.

EXPLANATION: Makes it clear that penalty and interest on due taxes continue to accumulate until the date of repurchase.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.470. REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgement of foreclosure to the date of repurchase, delinquent taxes, including penalty and interest assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale, including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350 (a) of this chapter.

(b) No change.

EXPLANATION: Makes it clear that penalty and interest on due taxes continue to accumulate until the date of repurchase.

Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition for second class city incorporation may request that a property tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails.

EXPLANATION: This is a new section similar to the provision in 29.45.630 allowing an incorporation petition to be tied to imposition of a sales tax.

Sec. 29.45.570. SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) No change.

(c) No change.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

EXPLANATION: (a) changed to make it clear that tax can be levied on sales and rents, not just one or the other. (d) interest rate raised from eight to 15 percent. (e) added to allow liens for the collection of sales and use taxes.

Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION. A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question at a regular or special election.

EXPLANATION: Simplifies the section and eliminates the provision that propositions may be brought only once a year.

Sec. 29.45.610. POWER OF LEVY. (a) A city within a borough which levies and collects a sales or use tax for areawide functions may levy a sales or use tax upon all sources taxed by the borough in the manner provided for a borough and may provide for a lien to secure payment of the tax as provided for a borough.

(b) A city within a borough which does not levy and collect a sales or use tax for areawide functions may levy and collect a sales or use tax in the manner provided for a borough and may provide for a lien to secure payment of the tax as provided for a borough.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Repeal.

EXPLANATION: Material contained in AS 29.45.620 has been combined into AS 29.45.610. The section has been altered to insure that a city may create a lien to secure payment of a sales and use tax as is recommended in AS 29.45.570 for boroughs.

Sec. 29.45.220. HEARING. (a) No change.

(b) No change.

(c) The only grounds for adjustment is proof of unequal, excessive, improper, or under valuation based on facts which are stated in a valid written appeal or ~~proved~~ proven at the appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(d) No change.

(e) Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

(f) The appellant or the assessor may appeal the board's determination to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

EXPLANATION: Change in (c) makes it clear that an assessment can be raised as the result of an appeal. Change in (e) to allow for supplementary assessments after June 1. Change in (f) so that appeals to the superior court will be heard on the record rather than de novo, as is now the case.

**CHANGE REQUESTED BY AAAO**

Sec. 29.45.100. TAX LIMITATIONS. (a) No change.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of the property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States bureau of the census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of the property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

EXPLANATION: Change requested by AAAO. No recommendation by the Technical Group.

Walker

Explanation: This section has been clarified as to the fact that a unified municipality may levy both areawide and nonareawide taxes. Limiting the use of areawide taxes to areawide functions and nonareawide taxes to nonareawide functions makes it little sense. It is made clear that taxes may be levied on personal and real property or either.

CHAPTER 45. MUNICIPAL TAXATION

(Chapter 53. MUNICIPAL ASSESSMENT AND TAXATION

Article 1. MUNICIPAL PROPERTY TAX

Sec. 29.45.010. (Sec. 29.53.010.) GENERAL PROPERTY TAX. ~~Home rule~~ and general law boroughs or home rule boroughs other than a unified municipality may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. (A unified municipality may levy areawide and nonareawide property taxes.) A property tax if levied must be assessed, levied and collected on real and personal property or either as provided in this chapter.

Sec. 29.45.020. (Sec. 29.73.070) TAXPAYER NOTICE. (a) If a municipality levies and collects real and personal property taxes or either, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE
(AS 14.17) $

STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100) $

MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE
(AS 29.88) $

STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89) $

TOTAL AID $

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

Note: checked Dickson— "and" means A and B or either "or" means A or B or both

Not, as Lee Shops suggests, that muni must tax both real & personal pply.

Insert, Lee's

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

Do not type

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 (AS 29.88) and state aid for miscellaneous municipal services under AS 29.62 (AS 29.89). The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of ~~those~~ the interests;

(2) household furniture of the head of a family or a household; ~~[not exceeding $500 in value]~~;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization, composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, ~~or the property of the auxiliary of such organization~~ or its auxiliary;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(7) real property to the extent and subject to the conditions provided in (j) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization.

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use; or portions of lots

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or educational groups ~~[for classroom space]~~. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

~~(d) A Cert P (d) [illegible]~~

(d) No change.

(e) No change

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560-44.62.570.

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(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

add

a date provided by ordinance which is not later than March 31

(g) No change

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under sec. 25(a) of this chapter.

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(h) No change

(h) Except as provided in (g) of this section, nothing in (e)-(i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in sec. 25 of this chapter.

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(i) No change

No change

(i) In (e)-(i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) No change

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Please put this subsection in the master work draft

~~Formerly~~: AS 29.53.020

Explanation?

~~Comments~~: Based on Alaska Association of Assessing Officers (AAAO) recommendation:

(1) ~~Para~~. (a)(2): deletes $500 limit on exemption of household furniture;

(2) (b)(3) narrows the language so that only portions of lots necessary to convenient use are exempt.

(3) ~~Para~~. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

(3) Para. (f): clarifies filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section. Adds flexibility so that a local government may establish a date later than Jan. 15 for filing for a senior citizen exemption.

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Sec. 29.45.040. (Sec. 29.73.060.) PROPERTY TAX EQUIVALENCY PAYMENTS.

(a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. Optional exemptions and exclusions.

No change.

(a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) A Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; ~~a tax based upon a tonnage valuation shall not exceed $5 a year for a boat or vessel of less than five net tons and shall not exceed $15 a year for a boat or vessel of more than five net tons;~~

~~$5 & $15 does not pay for administration costs~~

(2) classify and exempt from taxation

(A) All or any portion of the household goods and furnishings in actual use by the owner thereof in equipping and outfitting his or her residence or place of abode and not for sale or commercial use, and all personal effects held by any person for his or her exclusive use and benefit and not for sale or commercial use. "Personal effects" shall be construed to mean and include such tangible property as usually and ordinarily attends the person such as wearing apparel, jewelry, toilet articles, and the like ~~[the household furniture over $500 in value and the effects of the head of a family or a householder]~~; and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

~~Former~~: ~~AS 29.53.025~~

Comments: Modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects, based upon recommendation of AAAO, since assessors currently do not include household furnishings and personal effects of family members.

Sec. 29.45.060. Mining claims. The assessed value of an unimproved unpatented mining claim which is not producing, and a nonproducing patented mining claim upon which the improvements originally required for patent have become useless and valueless through depreciation, removal or otherwise, is exempt [fixed at $200 for each 20 acres or fraction of 20 acres]. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value.

Formerly: AS 29.53.030

Comments: Deletes $200 valuation figure. AAAO recommends deletion since administrative costs exceed taxes to be realized in carrying property at $200 figure on roll.

Sec. 29.45. 70. (Sec. 29.53.035.) FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other

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nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner

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wishing to file for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. (Sec. 29.53.040.) MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential, office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. (Sec. 29.53.045.) TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

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Sec. 29.45.100. Tax limitations.

(a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

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property tax?
No change
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(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaires or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner or community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Formerly: AS 29.53.050

Comments: Technical change requested by AAAO to conform with provisions of AS 29.53.045 (SLA 80)

Sec. 29.45.110. (Sec. 29.53.055.) NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do no apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

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Sec. 29.45.120. Full and true value. ← No change

(a) The assessor shall ~~value~~ [assess] property at its full and true value as of January 1 of the assessment year, except as provided in this section and sections ~~60~~ [30], 70 [35] and 240 [160] of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

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**(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.**

**(c) In case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.**

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Formerly: AS 29.53.060

Comments: Requested by AAAO

Sec. 29.53.130. (Sec. 29.53.070.) RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. (Sec. 29.53.080.) INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) No change.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the

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29.45.150

Explanation:
This section was changed to classify the misdemeanor to conform with the criminal code. It class B misdemeanor carries a possible fine of $1,000 and term of imprisonment of 90 days, somewhat more severe than existing law.

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Explanation: It was felt that the assessor ought to be able to seek production of records, as well as to compel entry, whether refused entry or not.

purposes of the investigation. ~~If refused entry,~~ The assessor may seek a court order to compel entry and production of records).

No Change

(c) ~~An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.~~

Sec. 29.45.150. (Sec. 29.53.090.) ~~STATEMENT~~ PENALTY. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a class B misdemeanor. ~~Upon conviction, he is punishable by a fine of not more than $500, or by imprisonment for not more than 30 days, or by both, together with costs of prosecution.~~

Sec. 29.45.160. (Sec. 29.53.095.) REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. (Sec. 29.53.100.) ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the

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name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. Assessment notice.

(a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Formerly: AS 29.53.110

Deletes requirement that assessor include in the assessment notice the date the board of equalization will meet since many times assessors at that time do not know the dates at the time the notices are mailed. Based on the recommendation of AAAO.

Sec. 29.45.190. (Sec. 29.53.120.) CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. (Sec. 29.53.130.) APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the assembly or other municipal residents. The assembly shall by ordinance establish the qualifications for membership. ~~and shall adopt rules of conduct~~

(b) The board is governed in its proceedings by ~~procedures~~ rules adopted by ordinance which are general rules of procedure. The board may alter consistent with ~~rules of~~ administrative law ~~adopted by ordinance~~ an assessment only pursuant to an appeal filed as to a particular lot or parcel.

(c) Notwithstanding other provisions in this section, a determination of the assessor as to ~~the~~ whether property is taxable under law may be appealed directly to the Superior Court.

EXPLANATION; Removes the requirement that the board consist of a number over that required for a quorum of the assembly in favor of requiring not less than three members. Requires that an assessment be altered only as a result of an appeal filed as to the lot in question. Allows a determination of the taxability of property (for example, land held by Indians or in trust for Indians may not be taxable at all under federal law) to be appealed to the Superior Court.

Sec. 29.45.220. HEARING.

(a) No change

(b) No change

(c) The only grounds for adjustment is proof of unequal, excessive, improper, or under valuation based on facts which are stated in a valid written appeal or proved at the ~~hearing~~ appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(d) No change

(e) Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

(f) The appellant or the assessor may appeal the board's determination to the superior court as provided by Rules of Court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

Explanation: Change in (c) makes it clear that an assessment can be raised as the result of an appeal. Change in (e) to allow for supplementary assessments after Junel. Change in (f) so that appeals to the superior court will be heard on the record rather than de novo, as is now the case.

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of notice of assessment [illegible] specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city. *The board may ~~increase or decrease~~ alter an assessment only pursuant to and appeal filed ~~in accordance with AS 29~~ as to a particular lot. ~~parcel~~

Sec. 29.45.210. Board of Equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, ~~however,~~ may delegate this authority to one or more boards appointed by it for that purpose. An appointed board may be composed of not less than three ~~(2)~~ persons, who may be members of the assembly or other municipal residents. ~~private individuals, or a combination thereof. [The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business.]~~ The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance establish the qualifications for membership and adopt rules of conduct of the board.

Add - determinations of assessor questions on taxability may be appealed directly to Superior Court. ~~(Seek declaratory judgment)~~

Formerly: AS 29.53.135

Comments: Change would clarify authority to establish boards of equalization composed of other than assembly members and by ordinance to establish qualifications. Deletion required to allow appointment of boards of three members or more which number may be less than number required for quorum of assembly.

Sec. 29.45.220. Hearing.

(a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal ~~excessive or~~ improper ~~unequal~~ valuation based on facts which are stated in a valid written appeal timely filed ~~and~~ [or] proved at the hearing.

change to indicate that taxes can be raised as a result of appeal

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1 except as to supplementary assessments.

(f) [an] The appellant and the assessor may appeal the board's action to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on and limited to the record established at the hearing before the board of equalization. [for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial].

Not adequate [illegible] no of appeals

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Formerly: AS 29.53.140

Comments: (1) Para. (c): Based on recommendation of AAAO, substitutes and for or to assure must set forth factual grounds in written appeal and prove at hearing;

(2) para. (e): Based on recommendation of AAAO, clarifies that there may be further proceedings after June 1 in event there are supplementary assessments per former section 29.53.150;

(3) para. (f): deletes provisions regarding trial de novo and jury trial and limits scope of review to substantial evidence rule and clarifies confusion created by Winegardner v. Greater Anchorage Area Borough (534 P.2d 541)

Sec. 29.45.230. Supplementary assessment rolls. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. ~~Any supplementary roll must be finalized and certified on or before September 1 of the assessment year.~~

No change to .230

Formerly: AS 29.53.150

Comments: Recommended by AAAO. State assessor requires for his purposes all proceedings to be completed not later than September 1, including any supplemental assessments.

Sec. 29.45.240. (Sec. 29.53.160.) TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) No change ~~The assembly may provide~~ for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) No change A ~~reassessment~~ may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall ~~recompute~~ this tax and refund taxes which have already been paid.

(c) No change The ~~borough~~ shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) No change In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

Explanation: makes provision for special treatment of property affected by a disaster applicable if governor, as well as the president, declares a disaster.

procedures, restrictions and conditions of assessing or reassessing propert and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law, or a disaster declared by the governor ~~under AK~~ under ~~Disaster Act~~ AS 26.23.010-110.

Sec. 29.45.250. (Sec. 29.53.170.) TAX LEVY AND RATE. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of a general ordinance~~s~~, but the rate of levy, t date of equalization and the date when taxes become delinquent ~~shall~~ shall be fixed by ordinance or resolution.

(b) The assembly shall annually determine the rate of levy (on or befo June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Explanation: Allows rate of levy, date of equalization, date of delinquency to be fixed by ordinances, as well as by resolution.

Sec. 29.45.260. (Sec. 29.53.180.) RATES OF PENALTY AND INTEREST. ( If the taxpayer is required to pay the entire tax on the due date set by t assembly, a penalty not to exceed ~~10~~ 20 percent may be added to all delinquen taxes, and interest at the rate of ~~eight~~ 15 percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installmen ~~and the first half is not paid when due, the entire tax becomes delinquent and~~ penalty and interest on an unpaid installment accrues ~~as follows:~~ from the date the installment becomes due.

~~(1) if the first~~ half is paid when due, the second half is ~~payable on the due date~~ fixed by the assembly for the second half and if n ~~paid is delinquent after that~~ date;

~~(2) a penalty not to~~ exceed ~~eight~~ 20 percent shall be added t ~~all taxes~~ delinquent until the due date fixed for payment of the second ~~half, and interest~~ at the rate of ~~eight~~ 15 percent a year shall be charged o

Explanation: The penalty and interest rates are raised, so that people will not deliberately avoid paying taxes due to the high cost of borrowing from other sources. Penalty and interest on an unpaid installment accrues only from the date the installment is due. (c) is repealed as redundant. Since (a) provides for interest and penalty on all types of taxes, there is no need for special treatment of property taxes

the whole of the unpaid taxes, not including penalty, from due date until paid in full;

(3) after the due date for the payment of the second half, total penalty of not more than 10 percent may be added to all delinquent taxes, and interest at the rate of eight percent a year shall accrue upon all unpaid taxes, not including penalties, from due date until date paid in full.

No change

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

repeal.

(c) If the assembly charges interest on property taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. (Sec. 29.53.200.) VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. (Sec. 29.53.210.) TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

(b) Real property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. (Sec. 29.53.220.) ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide

Explanation: change to make it clear that a lien exists on personal property.

If the property is sold ... satisfy the tax, upon presentation of a proper claim the municipality shall remit the excess to the record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Explanation: Allows the return of excess money received over the amount needed to satisfy the tax when property is sold to satisfy a tax lien.

the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. Any excess shall be returned (use lang. P. 147) remaining after payment shall be returned to the owner.

Sec. 29.45.320. (Sec. 29.53.230.) REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

(b) If the tax on property described in ~~Sec. 40 of this chapter~~ AS 29.45.030 or on a ~~leasehold~~ taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Explanation: The word "taxable" is substituted for "leasehold" to include all interests so that any interest in tax exempt property to which can be enforced.

Sec. 29.45.330. (Sec. 29.53.240.) FORECLOSURE LIST. (a) The borough shall

No change

(1) annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the superior court for judgment;

(2) publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed within the borough or, if there is no newspaper of general circulation distributed within the borough, post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appear on the list a notice advising of the foreclosure proceeding in which a

Do Not TYPE

petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of deliquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspection at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. (Sec. 29.53.250.) CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. (Sec. 29.53.260.) LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. (Sec. 29.53.270.) GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded

against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeal as provided in AS 29.33.130(e).

Sec. 29.45.370. (Sec. 29.53.280.) ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. (Sec. 29.53.290.) JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. (Sec. 29.53.300.) TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. (Sec. 29.53.310.) REDEMPTION PERIOD. ~~(a)~~ Properties transferred to the borough ~~are~~ is held by the borough for at least one year.

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Insert 29.45.410

The clerk or his designee shall collect the recording fee at the time of redemption and shall file the certificate with the recorder as part of the judgment roll.

Explanation: Changed so that all claims of the borough are not released, i.e., improvement assessments. Redemption releases only the judgment obtained for delinquent taxes.

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(b) Repeal.

→ Explanation: (b) is eliminated so that a person ~~holding a [illegible]~~ holding a lien on only part of a lot or parcel may no longer redeem just that part. This avoids the problem of splitting ~~the~~ lots or parcels into what might be illegal subdivisions.

During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under ~~Sec. 350(a) of this chapter~~ or AS 29.45.940(a). Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

(b) A person holding a mortgage or other lien of record covering a part only of a parcel of real property included in the judgment and decree of foreclosure may redeem that part by paying the proportionate amount applicable under the judgment and decree.

impossible for borough to release part of lot.

Sec. 29.45.410. (Sec. 29.53.320.) EFFECT. Receipt of redemption money by the ~~clerk~~ borough releases the judgment obtained under AS ~~29.~~ 29.45.390. all claims of the borough to the property. The clerk or his designee shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. ~~The clerk shall file the certificate with the recorder, and~~ INSERT or his designee shall collect the recording fee ~~from the person redeeming at the time of redemption~~ and ~~The court clerk~~ or his designee shall file the certificate as part of the ~~judgment roll~~.

This avoids releasing other assessments (super liens) or taxes which have been assessed after the time of the judgment

Sec. 29.45.420. (Sec. 29.53.330.) ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. (Sec. 29.53.340.) POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. Expiration. ~~mis~~

(a) At least 30 days or designee before the expiration of the redemption period the clerk shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000 [$10,000], to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) No change ~~Costs incurred~~ in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Formerly: ~~AS 29.53.350~~

~~Comments~~: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgment of foreclosure. Burden placed on lienholder to protect his interest; ~~rather than allowing municipality to be used as bill bank~~.

Ex

Sec. 29.45.450. (Sec. 29.53.360.) DEED TO BOROUGH OR CITY. (a) No change ~~Unredeemed~~ properties in the area of the borough outside cities are deeded ~~to the borough~~ by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid

LA-L 20

Explanation: (b) changed to clear title except for liens. (d) changed to include the interests of persons other than the owner within the limitation period. This clears the title.

borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

(b) Conveyance gives the borough or the city clear title except for prior recorded liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

(d) No deed is invalid for irregularities, omissions or defects in the proceedings under this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person having an interest in the property is forever barred.

Sec. 29.45.460. (Sec. 29.53.370.) DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist. The ordinance shall contain the information required in (a) of this section.

→ Explanation: language of (a) inserted into last line of (c) for consistency. No substantive change

(c) The clerk or his designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of th ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the ~~property owner at the last address of record.~~ last record owner of the property as his name appears on the assessment rolls of the municipality

Grammar (a) for consistency (d) No change The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. (Sec. 29.53.375.) REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes including penalty and interest assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale, including, but not limited to, costs of publication of notice and any costs associated with the determination of holders of mortgages and other liens of record under Sec. 350(a) of this chapter.

(b) No change After adoption of an ordinance providing for the retention of a parcel of tax-foreclosed property by the municipality for a public purpose, the ~~right~~ of the former record owner to repurchase the property ceases.

Explanation: makes it clear that penalty and interest on due taxes continue to accumulate until the date of repurchase.

Sec. 29.45.480. (Sec. 29.53.380.) PROCEEDS OF TAX SALE. (a) No change Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and

the city having unpaid taxes against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under Sec. 350(a) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.490. (Sec. 29.53.385.) PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

LA-L 20

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Adopted

November 26, 1980

James Nordale, Esq.
Borough Attorney
Fairbanks North Star Borough
P. O. Box 1267
Fairbanks, Alaska 99707

Re: Liens secured payment of sales taxes

Dear Jim:

In furtherance of our discussion, please find enclosed herewith a proposed amendment to existing sections 29.53.415, .440 and .450 to provide for the creation and recording of a lien on real or personal property to secure the payment of sales taxes, authorizing interest, penalties, and establishing the priority and duration of the lien.

We also enclose a proposed new article to provide for corrections, cancellations and refunds of taxes.

Any comments you have have would be appreciated.

Yours very truly,

Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

Explanation: Tax can be levied on sales and rents, not just on one or the other. (e) added to allow liens for the collection of sales and use taxes.

Sec. 29.45.570 (29.53.415). Sales and use tax. (a) A borough may levy and collect a sales tax not exceeding six per cent on sales, ~~or~~ rents, and on services made within the borough, and ~~may provide for the creation and recording~~ notice of a ~~lien~~ on real or personal property to secure the payment of the tax, and for interest, penalties and costs in the event of delinquencies. Such liens shall have the force, effect, priority ~~and duration of a judgment~~ lien. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

split rights into new subsection applicable to both sales/use taxes

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed ~~eight~~ 15 per cent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties, and administration costs in the event of delinquencies. A lien under this section has the force, priority and duration of a judgment lien.

* * * * *

Sec. 29.45.610 (29.53.440). Power of levy. A City within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs, ~~including providing~~ for the creation ~~and recording of a lien~~ on real or personal property to ~~secure the payment~~ thereof, and for interest, penalties and ~~costs in the amount~~ of delinquencies. Such liens shall have the ~~force~~, effect, priority and duration of a judgment lien.

DO NOT TYPE

A city may provide ... use language in (a)

(e) Same

Ex: Changed to conform to AS 29.45.570 to allow liens to be established for collection of sales and use taxes.

* * * * *

Sec. 29.45.620 (29.53.450). Power of levy and collection. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs including providing for the creation and recording of a lien on real or personal property to secure the payment thereof, and for interest, penalties and costs in the event of delinquencies. Such liens shall have the force, effect, priority and duration of a judgment lien.

Do Not TYPE

rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed eight percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

use Lee's (a)

Sec. 29.45.590. (Sec. 29.53.420.) ~~REFERENDUM~~, ADOPTION AND MODIFICATION. ~~(a) The assembly shall hold a referendum vote on the question~~ of enacting a sales tax or increasing the rate of levy of sales taxes. Borough sales tax propositions may be presented only once in any 12-month period. A sales tax proposition may be submitted to the voters at a regular or special election ~~or at a general election of the state~~. called for the purpose

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question at a regular or special election.

Ex: that Simplifies the section and eliminates the provision propositions may be brought only once a year.

~~Sec. 29.45.610. POWER OF LEVY.~~ Repeal.

~~Sec. 29.45.620. POWER OF LEVY AND COLLECTION.~~ Repeal

~~Sec. 29.45.625.~~

Sec. 29.45.610. POWER OF LEVY. (a) A city within a borough which levies and collects a sales or use tax for areawide functions may levy a sales or use tax upon all sources taxed by the borough in the manner provided for a borough and may provide for a lien to secure the payment of the tax as provided for a borough.

(b) A city within a borough which does not levy and collect a sales or use tax for areawide functions may levy and collect a sales or use tax in the manner provided for a borough and may provide for a lien to secure payment of the tax as provided for a borough.

Explanation

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Repeal.

Explanation: material contained in AS 29.45.620 has been combined into AS 29.45.610. The section has been altered to insure that a city may create a lien to secure payment of a sales and use tax as is recommended in AS 29.45.570 for boroughs.

Do Not TYPE

Sec. 29.45.510. (Sec. 29.53.390.) REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. (Sec. 29.53.400.) POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.540. (Sec. 29.53.410.) LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum authorize the levy of real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

→ Sec. 29.45.570. (Sec. 29.53.415.) SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales or

## ARTICLE 5. CITY ~~SALES~~ AND USE TAXES

**Sec. 29.45.610.** (Sec. 29.53.440.) POWER OF LEVY. Cities with borough which levies and collects ~~sales~~ or use taxes for areawide bor functions may levy sales or use taxes ~~upon~~ all sources taxed by the b in the manner provided for boroughs.

Sec. 29.45.620. (Sec. 29.53.450.) POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use t for areawide borough functions may levy and collect sales or use taxes the manner provided for boroughs.

Sec. 29.45.630. (Sec. 29.53.460.) COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may reque that a ~~sales~~ property tax proposal be placed on the same ballot. The petition mus state the proposed tax rate. The petition may request that incorporation dependent upon the passage of the ~~sales~~ property tax proposition. If so, the incorporation proposition fails if the ~~sales~~ property tax fails.

~~A~~ similar
Add section to apply Van Section

AS 29.45.545
COMBINING PROPERTY
TAX WITH INCORPORATION.

EX. New Section similar
to provision in 29.45.630
allowing an incorporation
petition to be
tied to imposition
of a sales tax.

CHANGE REQUESTED BY AAAO.

Sec. 29.45.100. TAX LIMITATIONS property tax?
(a) No change.

No change flag for policy

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaires or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 [$1,000] a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner or community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

~~Formerly:~~ ~~AS 29.53.0~~50

Comments: ~~Technical~~ change requested by AAAO, ~~to conform with provisions of AS 29.53.045 (SLA 80)~~

No recommendation by Technical Group

Sec. 29.45.110. ~~(Sec. 29.53.055.)~~ NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do no apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of

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## CHAPTER 48. SPECIAL ASSESSMENTS

****Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The governing body may assess against the property of a state or federal governmental unit and private real property benefited all or a portion of the cost of acquiring, installing or constructing capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8) ~~Sec. 15(a)(8) of this chapter~~. If a governmental unit other than the state benefited by an improvement refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the governing body of the owners of one-half in value of the property to be benefited or

(2) the governing body.

Sec. 29.48.020. PROCEDURE. ****(a) The governing body may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvments, including and subject to the following:

**** (1) a procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

**** (4) a resolution or ordinance of the governing body determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

**** (6) published notice of each public hearing required by this section and mailing notice to each ~~legal owner of~~ record owner of real property within the special assessment district;

**** (7) a resolution or ordinance confirming the special assessment roll for the local improvement;

(8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 percent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 percent, except upon approval of not fewer than three-fourths of the ~~assembly or council~~ governing body.

**** (b) To the extent that the governing body does not prescribe a procedure for special assessments as permitted by this section, the governing body shall comply with the special assessment procedures set out in AS 29.48.030 - 29.48.100.

Sec. 29.48.030. CREATION OF DISTRICT. **** (a) When an improvement proposal has been filed with the municipal clerk and presented to the governing body, it shall find by resolution or ordinance whether (1) the improvement requested is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the governing body are conclusive.

(b) If the governing body approves an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The governing body shall set a time for public hearing on the improvement plan and the period for filing objections to the plan. The governing body shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipal mail to every record owner of property within the special assessment district.

****Sec. 29.48.040. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate "unknown owner."

****Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of 60 days after publication of notice. The governing body may by resolution or ordinance approve the plan and order the improvement subject to the limitation of (b) of this section.

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the governing body may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan in accordance with AS 29.48.030.

Sec. 29.48.060. ASSESSMENT ROLL. ****(a) At any time after project approval, the governing body shall assess the authorized percentage of the cost against property within the district in proportion to benefit received.

**** (b) The special assessment roll shall contain property descriptions, names of record owners and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing.

****Sec. 29.48.070. HEARING AND SETTLEMENT After the public hearing, the governing body shall correct errors and any inequalities in the roll. If an assessment is increased, a new hearing shall be set and notice mailed, except that a new hearing and notice is not required of all record owners of property subject to the increased assessment consent in writing to the increase. Objections to the increased assessment shall be limited to record

owners of property on which the assessment was increased. When the roll is corrected, it shall be confirmed by resolution or ordinance of the governing body.

Sec. 29.48.080. PAYMENT. ****(a) The governing body shall fix times of payment, penalty on delinquent payments and the rate of interest on the unpaid balance of the assessment. Payment may be in one sum or by installments. If payment is to be in one sum, payment may not be required sooner than 60 days after mailing of the assessment statement. The entire assessment may be prepaid without interest or penalty within 30 days after mailing of the assessment statement; and thereafter the assessment may be prepaid in whole or in part with interest to the payment date.

**** (b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment, the time of delinquency, and penalties on delinquent payments.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.200-29.53.390 for enforcement of property tax liens.

Sec. 29.48.090. (Sec. 29.63.065.) EXEMPTION. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single-family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if

two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560-44.62.570.

**** (b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

**** (1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed and the time of payment fixed by the governing body. Within one year of the date the assessment roll is confirmed the governing body for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the deparment by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest

which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070-34.10.220. The lien becomes immediately due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

Sec. 29.48.100. REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

****Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment district is created, there may be included in the assessments

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs of all engineering and surveying to be done in connection with creating the district or improvement;

(3) the cost of mailing ~~of~~ and publishing of notices;

(4) interest ~~on~~ on interim financing;

(5) the cost of legal services and other expenses incurred in the formation of the special assessment district;

(6) the cost of completing the improvement and financing the improvement, including the issuance of any bonds.

(b) The total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

Sec. 29.48.110. OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

****Sec. 29.48.115. INTERIM FINANCING. (a) The governing body may provide by resolution or ordinance for the issuance of notes in payment of the costs of any local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance and shall be redeemed either in cash or bonds for the improvement project.

(b) All notes issued against assessments shall be claims against the assessments which are prior and superior to a right, lien or claim of a surety upon the bond given to the municipality to secure the performance of its contract for a local improvement project or to secure the payment of persons who have performed work or furnished materials under the contract.

(c) The municipal treasurer may accept notes against special assessments upon conditions prescribed by the governing body in payment of

(1) assessments against which the notes were issued in order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of assessments; and

(3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

**** (c) Before the governing body may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The ~~assembly or council~~ governing body may assess against the property of a state or federal governmental unit and private real property benefited all or a portion of the cost of acquiring, installing, or constructing [OR IMPROVING] capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an improvement [ASSESSMENT] refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the ~~assembly or council~~ governing body of the owners of one-half in value of the property to be benefited or

(2) the ~~assembly or council~~ governing body.

EXPLANATION: This is primarily a technical revision although the language is broadened to make it clear that all costs of capital improvements may be paid for by assessments.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.020. PROCEDURE. (a) The ~~assembly or council~~ governing body may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements [SPECIAL ASSESSMENT PROCEDURE FOR LOCAL IMPROVEMENTS], including and subject to the following:

(1) a [THE] procedure for filing petitions;

(2) no change;

(3) no change'

(4) a resolution or ordinance of the ~~assembly or council~~ governing body determining to proceed or not to proceed with the proposed local improvement;

(5) no change;

(6) published notice of each public hearing required by this section and mailing notice to each [LEGAL OWNER OF] record owner of real property within the special assessment district;

(7) a resolution or ordinance confirming the special assessment roll for the local improvement;

(8) no change;

(b) To the extent that [IF] the ~~assembly or council~~ governing body does not prescribe a procedure for special assessments as permitted by this section, the ~~assembly or council~~ governing body shall comply with the special assessment procedures set out in AS 29.48.030-100.

EXPLANATION: This is primarily a technical revision except that those items required to be done by resolution under existing law may be done by ordinance.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.030. Creation of District. [DECISION AND NOTICE]. (a) When an improvement proposal has been filed with the municipal clerk and presented to the ~~assembly or council~~ governing body, ~~the assembly or council~~ shall find by resolution or ordinance whether (1) the improvement requested [REQUEST] is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the ~~assembly or council~~ governing body are conclusive.

(b) If the ~~assembly or council~~ governing body approves an improvement proposal with the necessary findings [PASSES A RESOLUTION APPROVING] ~~an improvement proposal~~, it shall develop a proposed improvement plan including the ~~estimate of total cost and amount~~ cost and the percentage of the improvement cost to be assessed against each property benefited. This plan is to be filed with the municipal clerk.

(c) The ~~assembly or council~~ governing body shall set a time for public hearing on the improvement plan and the period for filing objections to the plan. The ~~assembly or council~~ governing body shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

EXPLANATION: (b) changed to require an estimate of the amount to be assessed to each property rather than an estimate of the percentage of the total cost. (c) requires a period for filing of objections and notice of the period.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.~~60~~40.040. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessemnt roll may designate [BE MADE AGAINST] "unknown owner".

EXPLANATION: Technical clean-up. No substantive change.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of 60 days [NOT LESS THAN 30 NOR MORE THAN 60 DAYS] after publication of notice [ON A DATE SPECIFIED BY THE ASSEMBLY OR COUNCIL]. The ~~assembly or council~~ governing body may by resolution or ordinance approve the plan and order [PROCEED WITH] the improvement subject to the limitation of (b) of this section [IF THE OWNERS OF ONE-HALF IN VALUE OF THE PROPERTY TO BE BENEFITED DO NOT OBJECT IN WRITING].

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the ~~assembly or council~~ governing body may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 percent. A revised plan shall be approved and adopted as an original plan in accordance with AS 29.48.030.

EXPLANATION: Eliminates option of allowing objections for only 30 days in favor of a 60 day period. Requires objections by property owners under (b) to be in writing.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.060. ASSESSMENT ROLL. (a) At any time after project approval, the ~~assembly or council~~ governing body shall assess the authorized percentage of the cost against property within the district [TRACTS] in proportion to benefit received. [ASSESSMENTS MAY NOT EXCEED ACTUAL COSTS.]

(b) The special assessment roll shall contain [CONTAINS] property descriptions, names of record owners [OF RECORD] and assessment amounts.

(c) No change.

EXPLANATION: Technical clean-up only. The last line of (a) is deleted as redundant.

Sec. 29.48.070. HEARING AND SETTLEMENT. After the public hearing, the ~~assembly or council~~ governing body shall correct errors and any inequalities in the roll. If an assessment is increased, a new hearing shall be set and notice mailed, except that a new hearing and notice is not required if all record owners of property subject to the increased assessment consent in writing to the increase. Objections to the increased assessment shall be limited to record owners of property on which the assessment was increased. When the roll is corrected, it shall be confirmed by resolution or ordinance of the ~~assembly or council~~ governing body. [THE CLERK SHALL SO CERTIFY].

EXPLANATION: Provides an opportunity for a new hearing if assessments are increased. Requires the governing body to confirm a new assessment roll.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.48.080. PAYMENT. (a) The ~~assembly or council~~ governing body shall fix times of payment, penalty on delinquent payments and the rate of interest on the unpaid balance of the assessment [INSTALLMENTS AND DELINQUENCY OF ASSESSMENTS. PAYMENT MAY NOT BE REQUIRED SOONER THAN 60 DAYS AFTER ASSESSMENT]. Payment may be in one sum or by installments. [BUT A SUM OR INSTALLMENT MAY NOT EXCEED 25 PERCENT OF THE ASSESSED VALUE OF THE PROPERTY AFFECTED.] If payment is to be in one sum, payment may not be required sooner than 60 days after mailing of the assessment statement. The entire assessment may be prepaid without interest or penalty within 30 days after mailing of the assessment statement; and thereafter the assessment may be prepaid in whole or in part with interest to the payment date. [PENALTY AND INTEREST ARE THE SAME AS FOR REAL PROPERTY TAXES.]

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment, the time of delinquency, and penalties on delinquent payments.

(c) No change.

(d) No change.

EXPLANATION: Removed the limitation that a payment not exceed 25 percent of the value of property. Allows a period of 30 days for payment without interest.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.090. EXEMPTION. (a) No change.

(b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed [CERTIFIED] and the time of payment fixed by the ~~assembly or council~~ governing body. Within one year of the date the assessment roll is confirmed [CERTIFIED] the ~~assembly or council~~ governing body for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

The rest of the section is unchanged.

EXPLANATION: Change in (b)(1) to conform to the change in AS 29.48.070 providing that the assessment roll be confirmed by the governing body.

Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment district is created, there may be included in the assessments

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs of all engineering and surveying to be done in connection with creating the district or improvement;

(3) the cost of mailing and publishing of notices;

(4) interest on interim financing;

(5) the cost of legal services and other expenses incurred in the formation of the special assessment district;

(6) The cost of completing the improvement and financing the improvement, including the issuance of any bonds.

(b) The total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

EXPLANATION: This is a new section clarifying which costs may be paid for through assessments.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.115. INTERIM FINANCING. (a) The ~~assembly or council~~ governing body may provide by resolution or ordinance for the issuance of notes in payment of the costs of any local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance and shall be redeemed either in cash or bonds for the improvement project.

(b) All notes issued against assessments shall be claims against the assessments which are prior and superior to a right, lien or claim of a surety upon the bond given to the municipality to secure the performance of its contract for a local improvement project or to secure the payment of persons who have performed work or furnished materials under the contract.

(c) The municipal treasurer may accept notes against special assessments upon conditions prescribed by the ~~assembly or council~~ governing body in payment of

(1) assessments against which the notes were issued in order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of the assessments; and

(3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

EXPLANATION: This new section has been added at the suggestion of bond counsel because no authorization now exists for interim financing.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) No change.

(b) No change.

(c) Before the ~~assembly or council~~ governing body may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. [INTEREST ON THE GUARANTEE FUNDS SHALL BE A COST OF THE IMPROVEMENT DISTRICT.]

EXPLANATION: It is felt that the last line of (c) makes no sense. Interest ought to be a credit to the district, if anything.

## CHAPTER 48. SPECIAL ASSESSMENTS

~~(CHAPTER 63. SPECIAL ASSESSMENTS AND SERVICE AREAS~~

~~ARTICLE 1. SPECIAL ASSESSMENTS~~

Sec. 29.48.010. (Sec. 29.63.010.) ASSESSMENT AND PROPOSAL. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of constructing or improving capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under Sec. 15(a)(8) of this chapter. If a governmental unit other than the state benefited by an assessment refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited or

(2) the assembly or council.

Sec. 29.48.020. (Sec. 29.63.015.) PROCEDURE. (a) The assembly or council may prescribe by ordinance the complete special assessment procedure for local improvements, including and subject to the following:

~~(1)~~ the procedure for filing petition;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

(4) a resolution of the assembly or council determining to ~~proceed~~ or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

(6) published notice of each public hearing required by this section and mailing notice to each legal owner of record of real property within the special assessment district;

(7) a resolution confirming the special assessment roll for the local improvement;

(8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 percent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 percent, except upon approval of not fewer than three-fourths of the assembly or council.

(b) If the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in Secs. 20-70 of this chapter.

Sec. 29.48.030. (Sec. 29.63.020.) DECISION AND NOTICE. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution whether (1) the improvement request is necessary and should be made, and (2) the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council passes a resolution approving an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on the improvement plan. The assembly or council shall publish a notice at least once a week for four consecutive weeks in a newspaper of general

circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

Sec. 29.48.040. (Sec. 29.63.025.) RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment may be made against "unknown owner."

Sec. 29.48.050. (Sec. 29.63.030.) OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed not less than 30 nor more than 60 days after publication of notice on a date specified by the assembly or council. The assembly or council may by resolution approve the plan and proceed with the improvement if the owners of one-half in value of the property to be benefited do not object in writing.

(b) If objections are made by the owners of property bearing one-half of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan.

Sec. 29.48.060. (Sec. 29.63.040.) ASSESSMENT ROLL. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against tracts in proportion to benefit received. Assessments may not exceed actual costs.

(b) The special assessment roll contains property descriptions, names of owners of record and assessment amounts.

6.F. (c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing.

Sec. 29.48.070. (Sec. 29.63.050.) HEARING AND SETTLEMENT. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll. When the roll is corrected, the clerk shall so certify.

Sec. 29.48.080. (Sec. 29.63.060.) PAYMENT. (a) The assembly or council shall fix times of payment, rate of interest on unpaid installments, and delinquency of assessments. Payment may not be required sooner than 60 days after assessment. Payment may be in one sum or by installments, but a sum or installment may not exceed 25 percent of the assessed value of the property affected. Penalty and interest are the same as for real property taxes.

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, the time of delinquency, and penalties.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.200-29.53.390 for enforcement of property tax liens.

Sec. 29.48.090. (Sec. 29.63.065.) EXEMPTION. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single-family residence is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if

two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560-44.62.570.

(b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claimant must file the initial application during the period of time between the date the assessment roll is certified and the time of payment fixed by the assembly or council. Within one year of the date the assessment roll is certified the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the deparment by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest

which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070-34.10.220. The lien becomes immediately due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

Sec. 29.48.100. (Sec. 29.63.070.) REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

Sec. 29.48.110. (Sec. 29.63.080.) OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

Sec. 29.48.120. (Sec. 29.63.085.) SPECIAL ASSESSMENT BONDS. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the

property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. Interest on the guarantee funds shall be a cost of the improvement district.

NOTES

## Article 1. Special Assessments


| Section | | Section | |
|---|---|---|---|
| 10. | Assessment and proposal | 60. | Payment |
| 15. | Procedure | 65. | Exemption |
| 20. | Decision and notice | 70. | Reassessment |
| 25. | Record owner | 75. | Allowable costs |
| 30. | Objections and revision | 80. | Objection and appeal |
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SEC. 29.63.010. ASSESSMENT AND PROPOSAL. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of acquiring, installing, making or constructing [OR IMPROVING] capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under § 15(a)(8) of this chapter. If a governmental unit other than the state benefited by an improvement [ASSESSMENT] refuses to pay the assessment, it shall be denied the benfit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited or

(2) the assembly or council.

SEC. 29.63.015. PROCEDURE. (a) The assembly or council may prescribe by ordinance the ~~complete~~ procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements [SPECIAL ASSESSMENT PROCEDURE FOR LOCAL IMPROVEMENTS], including and subject to the following:

(1) a [THE] procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

(4) a resolution or ordinance of the assembly or council determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

(6) published notice of each public hearing required by this section and mailing notice to each [LEGAL OWNER OF] record owner of real property within the special assessment district;

(7) a resolution or ordinance confirming the special assessment roll for the local improvement;

(8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 per cent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 per cent, except upon approval of not fewer than three-fourths of the assembly or council.

(b) To the extent that [IF] the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in §§ ~~20-70~~ 20. of this chapter.

SEC. 29.63.020. Creation of District [DECISION AND NOTICE]. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution or ordinance whether (1) the improvement requested [REQUEST] is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council approves [PASSES A RESOLUTION APPROVING] an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the ~~percentage~~ estimated amount of the % of the improvement plan cost to be assessed against ~~the~~ each property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on and the period for filing objections to the improvement plan. The assembly or council shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

SEC. 29.63.025. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate [BE MADE AGAINST] "unknown owner."

SEC. 29.63.030. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of ~~not less than 30~~ 60 fm 1st pub of notice. ~~within 60 days~~ [NOR MORE THAN 60] days [AFTER PUBLICATION OF NOTICE ON A DATE] as? specified by the assembly or council. The assembly or council may by resolution or ordinance approve the plan and order [PROCEED WITH] the improvement subject to the limitation ~~of~~ in (b) of this section [IF THE OWNERS OF ONE-HALF IN VALUE OF THE PROPERTY TO BE BENEFITED DO NOT OBJECT IN WRITING].

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan in accordance with 020(b) and (c) of this chapter.

SEC. 29.63.040. ASSESSMENT ROLL. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against property within the district [TRACTS] in proportion to benefit received. [ASSESSMENTS MAY NOT EXCEED ACTUAL COSTS.]

(b) The special assessment roll shall contain [CONTAINS] property descriptions, names of record owners [OF RECORD] and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing.

SEC. 29.63.050. HEARING AND SETTLEMENT. After the public hearing, the assembly or council shall correct errors and ~~any~~ inequalities in the roll. If any assessment is raised, a new hearing shall be set and notice mailed as for the original assessment roll except that a new hearing and notice is not required if all record owners of the property subject to the raised assessment consent in writing to the raise. Objections to the raised assessment shall be limited to record owners of property on which the assessment was raised. When the roll is corrected, it shall be confirmed by resolution or ordinance of the assembly or council. [THE CLERK SHALL SO CERTIFY.]

SEC. 29.63.060. PAYMENT. (a) The assembly or council shall fix times of payment, penalty ~~and interest on~~ on delinquent payments ~~and if payable in installments the~~ rate of interest on the unpaid balance of the assessment, [INSTALLMENTS] [AND DELINQUENCY OF ASSESSMENTS]. PAYMENT MAY NOT BE REQUIRED SOONER THAN 60 DAYS AFTER ASSESSMENT. Payment may be in one sum or by installments. [BUT A SUM OR INSTALLMENT MAY NOT EXCEED 25 PER CENT OF THE ASSESSED VALUE OF THE PROPERTY AFFECTED.] If payment is to be in one sum, payment may not

be required sooner than 60 days after mailing of the assessment statement. ~~If payment is to be by installment,~~ the entire assessment may be prepaid without interest or penalty within 30 days after mailing of the assessment statement; and thereafter the assessment may be prepaid in whole or in part with interest to the ~~next installment~~ payment date. [PENALTY AND INTEREST ARE THE SAME AS FOR REAL PROPERTY TAXES.]

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment ~~if payable in installments,~~ the time of delinquency, and penalties ~~and interest~~ on delinquent payments.

(c) Within five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) Assessments are liens upon the property assessed and are prior and paramount to all liens except municipal tax liens. They may be enforced as provided in AS 29.53.200-29.53.390 for enforcement of property tax liens.

SEC. 29.63.065. EXEMPTION. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single-family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benfit of the exemption. No real property may be exempted under this subsection which the municipality determines, after

notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560 - 44.62.570.

(b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed [CERTIFIED] and the time of payment fixed by the assembly or council. Within one year of the date the assessment roll is confirmed [CERTIFIED] the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the department by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070 - 34.10.220. The lien becomes immediately due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

SEC. 29.63.070. REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

SEC. 29.63.075. ALLOWABLE COSTS. Whenever a special assessment district is created, there may be included in the cost and expense of the district

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs and expenses of all engineering and surveying necessary to be done in connection with creating the district or with the improvement;

(3) the cost of all advertising, mailing, and publishing of all notices;

(4) interest on interim financing;

(5) the cost of legal services and any other expenses incurred for district or in the formation of the district, or in connection with making the improvement and in the financing the improvement, including the issuance of any bonds;

(6) the total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

SEC. 29.63.080. OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation or

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

SEC. 29.63.083. INTERIM FINANCING. (a) The assembly or council may provide by resolution or ordinance for the issuance of ~~warrants~~ NOTES in payment of the costs and expenses of any local improvement project, payable out of the special assessments for such improvement. The ~~warrants~~ NOTES shall bear interest at a rate or rates as authorized by the resolution or ordinance and shall be redeemed either in cash or by bonds for the same project.

(b) All ~~warrants~~ NOTES issued against any assessments shall be claims and liens against those assessments prior and superior to any right, lien or claim of any surety upon the bond given to the borough or city by or for the contract to secure the performance of its contract or to secure the payment of persons who have performed work thereon, furnished materials therefor or furnished provisions and supplies for the carrying on of the work.

ASK TAA re BOND LANGUAGE.

(c) The municipal treasurer may accept ~~warrants~~ NOTES against special assessments upon conditions as the assembly or council may prescribe in payment of

(1) assessments against which the ~~warrants~~ NOTES were issued in due order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of such assessments; and

(3) certificates of purchase in cases where property of delinquent ~~taxpayers~~ concerning property owners has been sold under execution or at tax sale for failure to pay the assessments.

**SEC. 29.63.085. SPECIAL ASSESSMENT BONDS.** (a) The assembly or council may be ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. [INTEREST ON THE GUARANTEE FUNDS SHALL BE A COST OF THE IMPROVEMENT DISTRICT.]

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**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of <u>acquiring, installing,</u> or constructing [OR IMPROVING] capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an <u>improvement</u> [ASSESSMENT] refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited or

(2) the assembly or council.

EXPLANATION: This is primarily a technical revision although the language is broadened to make it clear that all costs of capital improvements may be paid for by assessments.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.020. PROCEDURE. (a) The assembly or council may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements [SPECIAL ASSESSMENT PROCEDURE FOR LOCAL IMPROVEMENTS], including and subject to the following:

(1) a [THE] procedure for filing petitions;

(2) no change;

(3) no change'

(4) a resolution or ordinance of the assembly or council determining to proceed or not to proceed with the proposed local improvement;

(5) no change;

(6) published notice of each public hearing required by this section and mailing notice to each [LEGAL OWNER OF] record owner of real property within the special assessment district;

(7) a resolution or ordinance confirming the special assessment roll for the local improvement;

(8) no change;

(b) To the extent that [IF] the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in AS 29.48.030-100.

EXPLANATION: This is primarily a technical revision except that those items required to be done by resolution under existing law may be done by ordinance.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.030. Creation of District. [DECISION AND NOTICE]. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution or ordinance whether (1) the improvement requested [REQUEST] is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council approves with the necessary findings [PASSES A RESOLUTION APPROVING] an improvement proposal, it shall develop a proposed improvement plan including the estimate of total cost and amount of the improvement cost to be assessed against each property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on the improvement plan and the period for filing objections to the plan. The assembly or council shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

EXPLANATION: (b) changed to require an estimate of the amount to be assessed to each property rather than an estimate of the percentage of the total cost. (c) requires a period for filing of objections and notice of the period.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.68.040. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessemnt roll may designate [BE MADE AGAINST] "unknown owner".

EXPLANATION: Technical clean-up. No substantive change.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of 60 days [NOT LESS THAN 30 NOR MORE THAN 60 DAYS] after publication of notice [ON A DATE SPECIFIED BY THE ASSEMBLY OR COUNCIL]. The assembly or council may by resolution or ordinance approve the plan and order [PROCEED WITH] the improvement subject to the limitation of (b) of this section [IF THE OWNERS OF ONE-HALF IN VALUE OF THE PROPERTY TO BE BENEFITED DO NOT OBJECT IN WRITING].

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 percent. A revised plan shall be approved and adopted as an original plan in accordance with AS 29.48.030.

EXPLANATION: Eliminates option of allowing objections for only 30 days in favor of a 60 day period. Requires objections by property owners under (b) to be in writing.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.060. ASSESSMENT ROLL. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against property within the district [TRACTS] in proportion to benefit received. [ASSESSMENTS MAY NOT EXCEED ACTUAL COSTS.]

(b) The special assessment roll shall contain [CONTAINS] property descriptions, names of record owners [OF RECORD] and assessment amounts.

(c) No change.

EXPLANATION: Technical clean-up only. The last line of (a) is deleted as redundant.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.070. HEARING AND SETTLEMENT. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll. If an assessment is increased, a new hearing shall be set and notice mailed, except that a new hearing and notice is not required if all record owners of property subject to the increased assessment consent in writing to the increase. Objections to the increased assessment shall be limited to record owners of property on which the assessment was increased. When the roll is corrected, it shall be confirmed by resolution or ordinance of the assembly or council. [THE CLERK SHALL SO CERTIFY].

EXPLANATION: Provides an opportunity for a new hearing if assessments are increased. Requires the governing body to confirm a new assessment roll.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.080. PAYMENT. (a) The assembly or council shall fix times of payment, penalty on delinquent payments and the rate of interest on the unpaid balance of the assessment [INSTALLMENTS AND DELINQUENCY OF ASSESSMENTS. PAYMENT MAY NOT BE REQUIRED SOONER THAN 60 DAYS AFTER ASSESSMENT]. Payment may be in one sum or by installments. [BUT A SUM OR INSTALLMENT MAY NOT EXCEED 25 PERCENT OF THE ASSESSED VALUE OF THE PROPERTY AFFECTED.] If payment is to be in one sum, payment may not be required sooner than 60 days after mailing of the assessment statement. The entire assessment may be prepaid without interest or penalty within 30 days after mailing of the assessment statement; and thereafter the assessment may be prepaid in whole or in part with interest to the payment date. [PENALTY AND INTEREST ARE THE SAME AS FOR REAL PROPERTY TAXES.]

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment, the time of delinquency, and penalties on delinquent payments.

(c) No change.

(d) No change.

EXPLANATION: Removed the limitation that a payment not exceed 25 percent of the value of property. Allows a period of 30 days for payment without interest.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.090. EXEMPTION. (a) No change.

(b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed [CERTIFIED] and the time of payment fixed by the assembly or council. Within one year of the date the assessment roll is confirmed [CERTIFIED] the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

The rest of the section is unchanged.

EXPLANATION: Change in (b)(1) to conform to the change in AS 29.48.070 providing that the assessment roll be confirmed by the governing body.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment district is created, there may be included in the assessments

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs of all engineering and surveying to be done in connection with creating the district or improvement;

(3) the cost of mailing and publishing of notices;

(4) interest on interim financing;

(5) the cost of legal services and other expenses incurred in the formation of the special assessment district;

(6) The cost of completing the improvement and financing the improvement, including the issuance of any bonds.

(b) The total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

EXPLANATION: This s a new section clarifying which costs may be paid for through assessments.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.115. INTERIM FINANCING. (a) The assembly or council may provide by resolution or ordinance for the issuance of notes in payment of the costs of any local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance and shall be redeemed either in cash or bonds for the improvement project.

(b) All notes issued against assessments shall be claims against the assessments which are prior and superior to a right, lien or claim of a surety upon the bond given to the municipality to secure the performance of its contract for a local improvement project or to secure the payment of persons who have performed work or furnished materials under the contract.

(c) The municipal treasurer may accept notes against special assessments upon conditions prescribed by the assembly or council in payment of

(1) assessments against which the notes were issued in order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of the assessments; and

(3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

EXPLANATION: This new section has been added at the suggestion of bond counsel because no authorization now exists for interim financing.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) No change.

(b) No change.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. [INTEREST ON THE GUARANTEE FUNDS SHALL BE A COST OF THE IMPROVEMENT DISTRICT.]

EXPLANATION: It is felt that the last line of (c) makes no sense. Interest ought to be a credit to the district, if anything.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of <u>acquiring, installing,</u> or constructing [OR IMPROVING] capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an <u>improvement</u> [ASSESSMENT] refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited or

(2) the assembly or council.

EXPLANATION: This is primarily a technical revision although the language is broadened to make it clear that all costs of capital improvements may be paid for by assessments.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.020. PROCEDURE. (a) The assembly or council may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements [SPECIAL ASSESSMENT PROCEDURE FOR LOCAL IMPROVEMENTS], including and subject to the following:

(1) a [THE] procedure for filing petitions;

(2) no change;

(3) no change;

(4) a resolution or ordinance of the assembly or council determining to proceed or not to proceed with the proposed local improvement;

(5) no change;

(6) published notice of each public hearing required by this section and mailing notice to each [LEGAL OWNER OF] record owner of real property within the special assessment district;

(7) a resolution or ordinance confirming the special assessment roll for the local improvement;

(8) no change;

(b) To the extent that [IF] the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in AS 29.48.030-100.

EXPLANATION: This is primarily a technical revision except that those items required to be done by resolution under existing law may be done by ordinance.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.030. Creation of District. [DECISION AND NOTICE]. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution or ordinance whether (1) the improvement requested [REQUEST] is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council approves with the necessary findings [PASSES A RESOLUTION APPROVING] an improvement proposal, it shall develop a proposed improvement plan including the estimate of total cost and amount of the improvement cost to be assessed against each property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on the improvement plan and the period for filing objections to the plan. The assembly or council shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

EXPLANATION: (b) changed to require an estimate of the amount to be assessed to each property rather than an estimate of the percentage of the total cost. (c) requires a period for filing of objections and notice of the period.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.060. ASSESSMENT ROLL. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against property within the district [TRACTS] in proportion to benefit received. [ASSESSMENTS MAY NOT EXCEED ACTUAL COSTS.]

(b) The special assessment roll shall contain [CONTAINS] property descriptions, names of record owners [OF RECORD] and assessment amounts.

(c) No change.

EXPLANATION: Technical clean-up only. The last line of (a) is deleted as redundant.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment district is created, there may be included in the assessments

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs ~~and expenses~~ of all engineering and surveying [necessary] [to be done in connection with creating the district or improvement;] ?

(3) the cost of ~~all advertising~~, mailing, and publishing of ~~all~~ notices;

(4) interest on interim financing;

(5) the cost of legal services and ~~any~~ other expenses incurred ~~for district or~~ in the formation of the district (special assessment). ~~or in connection with making~~ (6) the cost of completing the improvement and ~~in the~~ financing the improvement, including the issuance of any bonds;

(b) ~~(6)~~ The total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

EXPLANATION: This s a new section clarifying which costs may be paid for through assessments.

Horrible drafting!

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.115. INTERIM FINANCING. (a) The assembly or council may provide by resolution or ordinance for the issuance of notes in payment of the costs of any local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance and shall be redeemed either in cash or bonds for the improvement project.

(b) All notes issued against assessments shall be claims against the assessments which are prior and superior to a right, lien or claim of a surety upon the bond given to the municipality to secure the performance of its contract for a local improvement project or to secure the payment of persons who have performed work or furnished materials under the contract.

(c) The municipal treasurer may accept notes against special assessments upon conditions prescribed by the assembly or council in payment of

(1) assessments against ~~with~~ which the notes were issued in order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of the assessments; and

(3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

EXPLANATION: This new section has been added at the suggestion of bond counsel because no authorization now exists for interim financing.

## Article 1. Special Assessments


| Section | | Section | |
|---|---|---|---|
| 10. | Assessment and proposal | 60. | Payment |
| 15. | Procedure | 65. | Exemption |
| 20. | Decision and notice | 70. | Reassessment |
| 25. | Record owner | 75. | Allowable costs |
| 30. | Objections and revision | 80. | Objection and appeal |
| 40. | Assessment roll | 83. | Interim financing |
| 50. | Hearing and settlement | 85. | Special assessment bonds |


SEC. 29.~~63.010~~ 48.010. ASSESSMENT AND PROPOSAL. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of acquiring, installing, ~~making~~ or constructing [OR IMPROVING] capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under ~~§ 15(a)(8) of this chapter~~ AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an improvement [ASSESSMENT] refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited or

(2) the assembly or council.

Ex: This is primarily a technical revision although the language is broadened to make it clear that all costs of capital improvements may be paid for by assessment.

SEC. 29.~~63.015~~ 48.020. PROCEDURE. (a) The assembly or council may prescribe by ordinance the ~~complete~~ procedure relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements [SPECIAL ASSESSMENT PROCEDURE FOR LOCAL IMPROVEMENTS], including and subject to the following:

(1) a [THE] procedure for filing petitions;

(2) ~~a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;~~ No change.

(3) ~~a public hearing on the necessity for the local improvement;~~ No change.

(4) a resolution or ordinance of the assembly or council determining to proceed or not to proceed with the proposed local improvement;

(5) ~~a public hearing~~ by the assembly or council on the ~~special assessment roll~~ for the local improvement;

(6) published notice of each public hearing required by this section and mailing notice to each [LEGAL OWNER OF] record owner of real property within the special assessment district;

(7) a resolution or ordinance confirming the special assessment roll for the local improvement;

(8) ~~if protests~~ as to the necessity of a local improvement ~~are~~ made by owners of property which will bear 50 per ~~cent or~~ more of the estimated cost of the improvement, the ~~assembly~~ or council may not proceed with the improvement ~~until~~ the objections have been reduced to less than 50 per ~~cent,~~ except upon approval of not fewer than three-fourths ~~of the~~ assembly or council.

(b) To the extent that [IF] the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in ~~§§ 20-70 of this chapter~~ AS. 29.48.030 - .100

SEC. 29.~~63.020~~ 48.030. Creation of District [DECISION AND NOTICE]. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution or ordinance whether (1) the improvement requested [REQUEST] is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council approves [PASSES A RESOLUTION APPROVING] an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the ~~cost~~ estimate of total cost and ~~and estimated the~~ amount and ~~the percentage~~ of the improvement plan cost to be assessed against each ~~the~~ property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on and the period for filing objections to the plan. the improvement plan. The assembly or council shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

Explanation: (b) changed to require an estimate of the amount to be assessed to each property rather than an estimate of the percentage of the total cost. (c) requires a period for filing of objections and notice of the period.

SEC. 29.~~63~~.025. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate [BE MADE AGAINST] "unknown owner."

Explanation: Technical clean-up. No substantive change.

SEC. 29.~~63~~.030. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of [~~not less than 30~~ [(NOR MORE THAN 60] days [AFTER PUBLICATION OF NOTICE [ON A DATE] specified by the assembly or council]. The assembly or council may by resolution or ordinance approve the plan and order [PROCEED WITH] the improvement subject to the limitation of (b) of this section [IF THE OWNERS OF ONE-HALF IN VALUE OF THE PROPERTY TO BE BENEFITED DO NOT OBJECT IN WRITING].

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 per cent. A revised plan shall be approved and adopted as an original plan in accordance with ~~020(b) and (c) of this chapter.~~

Explanation: Eliminates option of allowing objections for only 30 days in favor of a 60 day period. Requires objections by property owners under (b) to be in writing.

48.060

SEC. 29.~~63~~.040. ASSESSMENT ROLL. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against property within the district [TRACTS] in proportion to benefit received. [ASSESSMENTS MAY NOT EXCEED ACTUAL COSTS.]

(b) The special assessment roll shall contain [CONTAINS] property descriptions, names of record owners [OF RECORD] and assessment amounts.

(c) No change. ~~The assembly or~~ council shall fix a time to hear ~~objections to~~ the roll. The municipal clerk shall send an ~~assessment~~ and hearing notice by mail to each record owner ~~of an~~ assessed tract not less than 15 days before the hearing.

Explanation: Technical clean-up only. The last line of (a) is deleted as redundant.

SEC. 29.~~63.050~~. 48.070 HEARING AND SETTLEMENT. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll. If an increased assessment is ~~raised~~, a new hearing shall be set and notice mailed, ~~as for the original assessment roll~~ except that a new hearing and notice is not required if all record owners of ~~the~~ property subject to the increased ~~raised~~ assessment consent in writing to the increase ~~raise~~. Objections to the increased ~~raised~~ assessment shall be limited to record owners of property on which the assessment was increased ~~raised~~. When the roll is corrected, it shall be confirmed by resolution or ordinance of the assembly or council. [THE CLERK SHALL SO CERTIFY.]

Explanation: Provides an opportunity for a new hearing if assessments are increased. Requires the governing body to confirm a new assessment roll.

SEC. 29.63.060. PAYMENT. (a) The assembly or council shall fix times of payment, penalty ~~and interest~~ on delinquent payments and ~~if payable in installments the~~ the rate of interest and the rate of interest on the unpaid balance of the assessment[, INSTALLMENTS] [AND DELINQUENCY OF ASSESSMENTS]. PAYMENT MAY NOT BE REQUIRED SOONER THAN 60 DAYS AFTER ASSESSMENT]. Payment may be in one sum or by installments. [BUT A SUM OR INSTALLMENT MAY NOT EXCEED 25 PER CENT OF THE ASSESSED VALUE OF THE PROPERTY AFFECTED.] If payment is to be in one sum, payment may not

be required sooner than 60 days after mailing of the assessment statement. ~~If payment is to be by installment,~~ the entire assessment may be prepaid without interest or penalty within 30 days after mailing of the assessment statement; and thereafter, the assessment may be prepaid in whole or in part with interest to the ~~next installment~~ payment date. [PENALTY AND INTEREST ARE THE SAME AS FOR REAL PROPERTY TAXES.]

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment ~~if payable in installments~~, the time of delinquency, and penalties ~~and interest~~ on delinquent payments.

(c) No change. ~~Within~~ five days after the statements are mailed, the clerk shall publish notice that the statements have been mailed.

(d) No change. ~~Assessments~~ are liens upon the property assessed and are prior and paramount to all liens except municipal ~~tax~~ liens. They may be enforced as provided in AS 29.53.200-29.53.390 for enforcement of property tax liens.

Explanation: Removed the limitation that a payment not exceed 25 percent of the value of property. Allows a period of 30 days for payment without interest.

SEC. 29.~~63.065~~ 45.090. EXEMPTION. (a) The real property owned and occupied by a resident 65 years of age or over, or the spouse, widow, widower, or minor heir of the original applicant, on which is located only his permanent abode which is a single-family residence, is exempt from (1) special sewer assessments levied by a home rule or general law municipality after September 2, 1975 and (2) special water assessments levied by a home rule or general law municipality after September 2, 1975. Only one exemption may be granted with respect to the same property, and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benfit of the exemption. No real property may be exempted under this subsection which the municipality determines, after

NO

Type → Sec. 29.45.090. EXEMPTION. (a) No change.

notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560 - 44.62.570.

TYP 2 Pd

(b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed [CERTIFIED] and the time of payment fixed by the assembly or council. Within one year of the date the assessment roll is confirmed [CERTIFIED] the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(The rest of the section is unchanged.)

(2) a claimant receiving the exemption must file with the department by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

Explanation: Change in (b)(1) to conform to the change in AS 29.48.070 providing that the assessment roll be confirmed by the ~~assembly~~ governing body.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070 - 34.10.220. The lien becomes immediately due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

SEC. 29.63.070. REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

48.105 (Do not underline)

SEC. 29.~~63.075.~~ ALLOWABLE COSTS. Whenever a special assessment district is created, there ~~shall~~ may be included in the assessments ~~cost and expense of the district~~,

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs and expenses of all engineering and surveying necessary to be done in connection with creating the district or with the improvement;

(3) the cost of all advertising, mailing, and publishing of all notices;

(4) interest on interim financing;

(5) the cost of legal services and any other expenses incurred for district or in the formation of the district, or in connection with making the improvement and in the financing the improvement, including the issuance of any bonds;

(6) the total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

Explanation: This is a new section clarifying which costs may be paid for through assessments.

SEC. 29.63.080. OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

Do Not THIS

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

H.B. 115 (Do Not underline)

Change "warrant" to "note"

SEC. 29.~~63.083~~. INTERIM FINANCING. (a) The assembly or council may provide by resolution or ordinance for the issuance of ~~warrants~~ notes in payment of the costs ~~and expenses~~ of any local improvement project, payable out of ~~the~~ special assessments for ~~such~~ the improvement. The ~~warrants~~ notes shall bear interest at a rate or rates ~~as~~ authorized by the resolution or ordinance and shall be redeemed either in cash or ~~by~~ bonds for the ~~same~~ improvement project.

(b) All ~~warrants~~ notes issued against ~~the~~ assessments shall be claims ~~and liens~~ against ~~those~~ the assessments, prior and superior to ~~any~~ the right, lien or claim of ~~any~~ a surety upon the bond given to the ~~borough or city~~ municipality by or for the contractor to secure the performance of its contract for a local improvement project, or to secure the payment of persons who have performed work thereon, ~~or~~ furnished materials therefor, or furnished provisions and supplies for the carrying on of the work under the contract.

(c) The municipal treasurer may accept ~~warrants~~ notes against special assessments upon conditions ~~as~~ prescribed by the assembly or council may prescribe in payment of

(1) assessments against which the ~~warrants~~ notes were issued in ~~the~~ order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of ~~such~~ the assessments; and

(3) certificates of purchase ~~in cases~~ where property ~~of delinquents~~ has been sold under execution or at tax sale for failure to pay the assessments.

Explanation: This new section has been added at the suggestion of bond counsel because no authorization now exists for interim financing.

Nothing authorizing interim financing now.

SEC. 29.63.085. SPECIAL ASSESSMENT BONDS. (a) No change. The assembly ~~or council~~ may be ordinance authorize the issuance and ~~sale of~~ special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on ~~the bonds~~. The property benefited may be pledged by the assembly or council to secure a payment.

(b) No change. Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. [INTEREST ON THE GUARANTEE FUNDS SHALL BE A COST OF THE IMPROVEMENT DISTRICT.]

Explanation: It is felt that the last line of (c) makes no sense. Interest ought to be a credit to the district, if anything.

scomm

#23:42

## CHAPTER 51. MUNICIPAL DEBT.

### ARTICLE 1. REVENUE ANTICIPATION NOTES.

Sec. 29.51.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

Sec. 29.51.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

Sec. 29.51.030. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New

notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

Sec. 29.51.040. PRIORITY OF REPAYMENT. The payment of the principal and interest on revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

****Sec. 29.51.050. Repeal.

ARTICLE 2. BOND ANTICIPATION NOTES.

Sec. 29.51.080. BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance.

Sec. 29.51.090. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

Sec. 29.51.100. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue.

Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

Sec. 29.51.110. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

Sec. 29.51.120. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

Sec. 29.51.130. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

Sec. 29.51.140. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

****Sec. 29.51.150. Repeal.

ARTICLE 3. GENERAL OBLIGATION BONDS.

Sec. 29.51.180. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

Sec. 29.51.190. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

****Sec. 29.51.200. Repeal.

Sec. 29.51.210. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

Sec. 29.51.240. REVENUE BONDS. ****(a) A municipality may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenue of the public enterprise or corporation.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage

loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

**** (c) Repeal.

Sec. 29.51.250. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance.

Sec. 29.51.260. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.270. Repeal.

****Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

ARTICLE 5. REFUNDING BONDS.

Sec. 29.51.300. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance for the issuance of general obligation or revenue refunding bonds.

Sec. 29.51.310. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

Sec. 29.51.320. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

Sec. 29.51.330. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to Sec. 180 of this chapter. Revenue refunding bonds are payable according to Sec. 220 of this chapter.

****Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation or revenue refunding bonds may, at the discretion of the governing body, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

****Sec. 29.51.350. OTHER MUNICIPAL FINANCING. (a) A municipality may authorize by ordinance or resolution the issuance of revenue bonds to finance any project which serves a public purpose, and the bonds shall be secured and payable solely from the revenue and property of the project.

(b) Bonds issued under this section are not a debt or liability of the municipality and do not create or constitute an indebtedness, liability or obligation of the municipality nor do they constitute a pledge of faith, credit or taxing power of the municipality. Each bond must contain on its face a statement that the principal and interest on the bond are payable solely from the revenues and property of the project being financed, that the municipality is not obligated to pay the principal or the interest on the bonds except from those sources, and that neither the faith and credit nor the taxing power of the municipality is pledged to the payment of principal or interest on the bond.

(c) A municipality may

(1) loan the proceeds of the bonds issued under this section;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the project being financed;

(3) enter into covenants and agreements concerning bonds issued under this section which the municipality determines to be desirable;

(4) provide for any matter which effects the security of the bonds.

(d) In this section

(1) "bonds" means bonds, notes, or other evidence of indebtedness;

(2) "project" includes but is not limited to commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism, and medical projects and programs.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

****Sec. 29.51.370. SALE. Bonds and notes issued under this chapter may be sold at either public or private sale by the municipality in the manner and at the price it determines.

****Sec. 29.51.375. FORMS AND TERMS. The governing body may by ordinance or resolution fix the date, denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and other requirements for issuing bonds or notes. If an official whose signature appears on the bonds or coupons ceases to be an official before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.380. INTEREST RATE. The interest rate payable on a bond or note shall be determined by the governing body and is not subject to the usury rate limitations of AS 45.45.010.

****Sec. 29.51.390. Repeal.

Sec. 29.51.400. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

****Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a nonareawide basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and only the full faith and credit of the area voting on the indebtedness is pledged for the payment of the debt.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

****Sec. 29.51.420. Repeal.

****Sec. 29.51.430. Repeal.

****Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

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CHAPTER 51. MUNICIPAL DEBT.

ARTICLE 1. REVENUE ANTICIPATION NOTES.

Sec. 29.51.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

Sec. 29.51.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

Sec. 29.51.030. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New

notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

Sec. 29.51.040. PRIORITY OF REPAYMENT. The payment of the principal and interest on revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

****Sec. 29.51.050. Repeal.

ARTICLE 2. BOND ANTICIPATION NOTES.

Sec. 29.51.080. BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance.

Sec. 29.51.090. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

Sec. 29.51.100. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue.

Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

Sec. 29.51.110. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

Sec. 29.51.120. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

Sec. 29.51.130. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

Sec. 29.51.140. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

****Sec. 29.51.150. Repeal.

ARTICLE 3. GENERAL OBLIGATION BONDS.

Sec. 29.51.180. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

Sec. 29.51.190. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

****Sec. 29.51.200. Repeal.

Sec. 29.51.210. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

Sec. 29.51.240. REVENUE BONDS. ****(a) A municipality may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenues of the public enterprise or corporation.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage

loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

**** (c) Repeal.

Sec. 29.51.250. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance.

Sec. 29.51.260. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.270. Repeal.

****Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

ARTICLE 5. REFUNDING BONDS.

Sec. 29.51.300. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance for the issuance of general obligation or revenue refunding bonds.

Sec. 29.51.310. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

Sec. 29.51.320. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

Sec. 29.51.330. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to Sec. 180 of this chapter. Revenue refunding bonds are payable according to Sec. 220 of this chapter.

****Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation or revenue refunding bonds may, at the discretion of the governing body, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

****Sec. 29.51.350. OTHER MUNICIPAL FINANCING. (a) A municipality may authorize by ordinance or resolution the issuance of revenue bonds to finance any project which serves a public purpose, and the bonds shall be secured and payable solely from the revenue and property of the project.

(b) Bonds issued under this section are not a debt or liability of the municipality and do not create or constitute an indebtedness, liability or obligation of the municipality nor do they constitute a pledge of faith, credit or taxing power of the municipality. Each bond must contain on its face a statement that the principal and interest on the bond are payable solely from the revenues and property of the project being financed, that the municipality is not obligated to pay the principal or the interest on the bonds except from those sources, and that neither the faith and credit nor the taxing power of the municipality is pledged to the payment of principal or interest on the bond.

(c) A municipality may

(1) loan the proceeds of the bonds issued under this section;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the project being financed;

(3) enter into covenants and agreements concerning bonds issued under this section which the municipality determines to be desirable;

(4) provide for any matter which effects the security of the bonds.

(d) In this section

(1) "bonds" means bonds, notes, or other evidences of indebtedness;

(2) "project" includes but is not limited to commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism, and medical projects and programs.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

****Sec. 29.51.370. SALE. Bonds and notes issued under this chapter may be sold at either public or private sale by the municipality in the manner and at the price it determines.

****Sec. 29.51.375. FORMS AND TERMS. The governing body may by ordinance or resolution fix the date, denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and other requirements for issuing bonds or notes. If an official whose signature appears on the bonds or coupons ceases to be an official before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.380. INTEREST RATE. The interest rate payable on a bond or note shall be determined by the governing body and is not subject to the usury rate limitations of AS 45.45.010.

****Sec. 29.51.390. Repeal.

Sec. 29.51.400. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

****Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a nonareawide basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and only the full faith and credit of the area voting on the indebtedness is pledged for the payment of the debt.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxatior to amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

****Sec. 29.51.420. Repeal.

****Sec. 29.51.430. Repeal.

****Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

29.51.050
29.51.150 Also repeal A.S. 29.58.060, 29.58.140 and ~~29.58.220~~. use

.050 .150

29.51.200
29.51.270

Repeal the following provisions--A.S. ~~29.58.220~~, 29.58.170.

29.51.270, 2951, 200

.240 OK

5. A.S. 29.~~58.200~~ 51.240 is amended to read:

Sec. 29.58.200. REVENUE BONDS. (a) A municipality ~~of the State~~ may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenues of the public enterprise or corporation. [A MUNICIPALITY MAY ACQUIRE, CONSTRUCT, IMPROVE AND EQUIP CAPITAL IMPROVEMENTS TO BE OPERATED UPON A REVENUE-PRODUCING BASIS, AND BONDS FOR THESE PURPOSES ARE PAYABLE SOLELY FROM UNPLEDGED REVENUE OF THE PUBLIC FACILITIES FOR WHICH THE BONDS ARE ISSUED.]

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

[(c) A MUNICIPALITY MAY ALSO ISSUE REVENUE BONDS FOR ANY LAWFUL PURPOSE. THE BONDS ARE PAYABLE FROM ANY AMOUNTS PLEDGED BY THE MUNICIPALITY EXCEPT TAXES AND DO NOT CONSTITUTE GENERAL OBLIGATIONS OF THE MUNICIPALITY.]

.270 REPEAL.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

EXPLANATION: The following provision is made inapplicable to the use of proceeds from revenue bonds:

Sec. 37.10.085. FINANCIAL AID TO CORPORATIONS BY STATE OR POLITICAL SUBDIVISION. Neither the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

It is felt by bond counsels that this section currently forbids a municipality to use proceeds of revenue bond sales for loans and other expenditures designed to encourage industrial development.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation refunding bonds or revenue refunding bonds may, at the discretion of the ~~assembly or council~~ governing body, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be delivered issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

51.350

6. A new section 29.~~58.290~~ as follows:

OK

Sec. 29.58.290. OTHER MUNICIPAL FINANCING. (a) A municipality may authorize by ordinance or resolution the issuance of revenue bonds to finance any ~~public purpose~~ project ~~or program, which bonds~~ which serves a public purpose, and the bonds shall be secured and payable solely from the revenue and property of ~~such~~ the project ~~or program~~.

(b) Bonds issued under this section are not a debt or liability of the municipality and do not create or constitute an indebtedness, liability or obligation of the municipality nor do they constitute a pledge of faith, credit or taxing power of the municipality. Each bond must contain on its face a statement ~~to the effect~~ that the principal and interest on the bond are payable solely from the revenues and property of the project ~~or program~~ being financed, ~~and~~ that the municipality is not obligated to pay the principal of or the interest on the bonds except from those ~~for those sources of the project or program~~, and that neither the faith and credit nor the taxing power of the municipality is pledged to the payment of ~~such~~ principal of or interest on the bond.

350

~~(1) A municipality may in connection with the issuance of bonds under this section~~

issued under this section

(1) loan the proceeds of the bonds;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the project or ~~projects~~ being financed;

(3) ~~make and~~ enter into ~~any and all~~ covenants and agreements concerning bonds issued under this section which the municipality ~~may~~ determines to be ~~necessary or~~ desirable;

(4) provide for any ~~other~~ matter which ~~in any way~~ affects the security ~~or protection~~ of the bonds.

~~(c)~~ In this section the word "bonds" includes bonds, notes or other evidence of indebtedness. In this section, the words "project" or "program" shall include without limitation commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism and medical projects and programs.

(d) In this section

(1) "bonds" means bonds, notes, or other evidences of indebtedness;

(2) "project" includes but is not limited to commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism, and medical projects and programs.

370

3. Sec. 29.58.308 should be amended to read:

OK → Sec. 29.58.308. [PUBLIC] SALE. Bonds and notes issued under this chapter may be sold by the municipality in the manner and at the price it determines at either public or private sale. [THE MUNICIPALITY SHALL SELL ALL BONDS AT A PUBLIC OR PRIVATE SALE AS PROVIDED BY ORDINANCE, NO BONDS MAY BE SOLD AT LESS THAN PAR VALUE.]

4. A new Section A.S. 29.58.305 to read as follows:

51.375

375. Sec. 29.58.305. FORMS AND TERMS. The assembly or council may by ordinance or resolution fix the date, denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and all other details of the requirements for issuing bonds or notes. If an official whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

51.380

2. Sec. 29.58.310 should be amended to read:

51.370

380 Sec. 29.58.310. INTEREST RATE. The interest rate payable on a bond or note shall be determined by the governing body assembly or council and is not subject to the usury rate limitations of A.S. 45.45.010. [NO MUNICIPAL BOND OR NOTE MAY BEAR AN INTEREST RATE EXCEEDING THE CONTRACT USURY RATE OR INTEREST PROVIDED BY LAW.]

OK

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.390. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. Repeal.

OK

EXPLANATION: This section is repealed as unnecessary since the governing body has control through approving or disapproving the issuance of bonds. Arguably, contracting is an executive function.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; fm text

or

(2) on a ~~nonareawide~~ nonareawide basis for functions performed in the area outside cities only; or fm text

(3) on a service area basis for functions performed in a service area only. fm text

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest. fm text

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and the full faith and credit of the area is pledged for the payment of the debt. added fm text

(d) no change.

↑ voting on the indebtedness ~~pledged~~

incorporate existing (c)

+ changes in last 2 times

EXPLANATION: Minor technical clean-up in (a) and (b). Language at the end of (c) added to make it clear that a service area general obligation bond can be issued.

M. use existing (c) and add "and only the full faith and credit of the area voting on the indebtedness is pledged for the payment of the debt."

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.420. BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. Repeal.

Sec. 29.51.430. BOND GUARANTEE FUND. Repeal

EXPLANATION: These sections have never been used and appear to serve no useful purpose. They are repealed at the request of the State Assessor.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

EXPLANATION: This is a new section. The Alaska Constitution prohibits the establishment of service areas when the function can be performed by a city or another service area. No guidelines have been established, leaving the legality of some service areas in doubt. This provides for the continuation of a debt should a service area subsequently be declared invalid, creating a de facto service area for purposes of the debt. (It may be unconstitutional)

# CHAPTER 51. MUNICIPAL DEBT

~~(CHAPTER 58. MUNICIPAL DEBT)~~

## ARTICLE 1. REVENUE ANTICIPATION NOTES

Sec. 29.51.010. ~~(Sec. 29.58.010.)~~ BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

Sec. 29.51.020. ~~(Sec. 29.58.020.)~~ ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

Sec. 29.51.030. ~~(Sec. 29.58.040.)~~ ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New

notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

Sec. 29.51.040. (Sec. 29.58.050.) PRIORITY OF REPAYMENT. The payment of the principal and interest on revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

Sec. 29.51.050. (Sec. 29.58.060.) SALE OF NOTES. The municipality may sell revenue anticipation notes in the manner and at the price it determines, at either public or private sale.

ARTICLE 2. BOND ANTICIPATION NOTES.

Sec. 29.51.080. (Sec. 29.58.070.) BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance.

Sec. 29.51.090. (Sec. 29.58.080.) ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

Sec. 29.51.100. (Sec. 29.58.090.) ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in

order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue. Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

Sec. 29.51.110. (Sec. 29.58.100.) REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

Sec. 29.51.120. (Sec. 29.58.110.) SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

Sec. 29.51.130. (Sec. 29.58.120.) LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

Sec. 29.51.140. (Sec. 29.58.130.) USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

Sec. 29.51.150. (Sec. 29.58.140.) SALE OF NOTES. Notes issued under this chapter shall be sold by the municipality in the manner and at the price it determines, at either public or private sale, but no note may be sold for less than par and accrued interest.

ARTICLE 3. GENERAL OBLIGATION BONDS.

Sec. 29.51.180. (Sec. 29.58.150.) GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

Sec. 29.51.190. (Sec. 29.58.160.) VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

Sec. 29.51.200. (Sec. 29.58.170.) FORM AND TERMS OF SALE. The assembly or council shall fix the date of the bonds, denominations, maturities, rate of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, and signatures required. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

Sec. 29.51.210. (Sec. 29.58.180.) PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

Sec. 29.51.240. (Sec. 29.58.200.) REVENUE BONDS. (a) A municipality may acquire, construct, improve and equip capital improvements to be operated upon a revenue-producing basis, and bonds for these purposes are payable solely from unpledged revenue of the public facilities for which the bonds are issued.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

(c) A municipality may also issue revenue bonds for any lawful purpose. The bonds are payable from any amounts pledged by the municipality except taxes and do not constitute general obligations of the municipality.

Sec. 29.51.250. (Sec. 29.58.205.) NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance.

Sec. 29.51.260. (Sec. 29.58.210.) FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

Sec. 29.51.270. (Sec. 29.58.220.) PAYMENT. Bonds issued under AS 29.58.200 - 29.58.220 or the proceedings of the assembly or council authorizing their issuance may contain the covenants which the assembly or council considers advisable concerning

(1) the rates or fees to be charged for services rendered by the public facilities, the revenue of which is pledged to the payment of the bonds, or the terms and conditions of any other amounts collected which are pledged to the payment of the bonds;

(2) the deposit and use of the revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(3) the issuance of additional bonds payable from revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(4) the rights of the bondholders in case of default in the payment of the principal or interest on the bonds, including the appointment of a receiver to operate the public facilities;

(5) other covenants as the assembly or council determines.

ARTICLE 5. REFUNDING BONDS

Sec. 29.51.300. (Sec. 29.58.240.) AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the

bonds, the assembly or council may provide by ordinance for the issuance of general obligation or revenue refunding bonds.

Sec. 29.51.310. (Sec. 29.58.250.) EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

Sec. 29.51.320. (Sec. 29.58.260.) NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

Sec. 29.51.330. (Sec. 29.58.270.) PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to Sec. 180 of this chapter. Revenue refunding bonds are payable according to Sec. 220 of this chapter.

Sec. 29.51.340. (Sec. 29.58.280.) SALE. General obligation or revenue refunding bonds may, in the discretion of the assembly or council, be exchanged at par for the bonds being refunded, or may be sold at public or private sale for an amount not less than par and accrued interest. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

ARTICLE 6. MISCELLANEOUS PROVISIONS

Sec. 29.51.370. (Sec. 29.58.300.) PUBLIC SALE. The municipality shall sell all bonds at a public or private sale as provided by ordinance. No bonds may be sold at less than par value.

Sec. 29.51.380. (Sec. 29.58.310.) INTEREST RATE. No municipal bond or note may bear an interest rate exceeding the contract usury rate of interest provided by law.

Sec. 29.51.390. (Sec. 29.58.315.) BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. The governing body or its designee of a home rule or general law municipality shall be the sole contracting authority for bond attorneys, bond consultants and financial consultants engaged in long range financial planning of the municipality which leads to sale of bonds.

Sec. 29.51.400. (Sec. 29.58.320.) REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

Sec. 29.51.410. (Sec. 29.58.340.) BOROUGH INDEBTEDNESS. (a) Boroughs may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a noncity basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be limited to the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to

amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

Sec. 29.51.420. (Sec. 29.58.345.) BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. A home rule city levying property taxes for schools, upon furnishing proof satisfactory to the Department of Education and the Department of Community and Regional Affairs of the needs for school facilities which, if provided, will require the city to exceed limits on authorizing or issuing bonds which may be established by charter, may exceed the limits to the extent necessary to pay costs of school construction. In this section "costs of school construction" means costs as defined in AS 43.18.100(g)(2).

Sec. 29.51.430. (Sec. 29.58.350.) BOND GUARANTEE FUND. (a) To guarantee payment by the state of the principal and interest of bonds issued under the enabling authority of Sec. 345 of this chapter, there is in the Department of Community and Regional Affairs a special fund called the local school bond guarantee fund in which there shall be deposited all money appropriated by the legislature for the purpose of the fund and other money which may be made available for the purpose of the fund from any other source. Money in the fund shall be held and applied solely to further guarantee and provide an additional pledge of payment of all bonds issued under the provisions of Sec. 345 of this chapter. Money shall not be withdrawn from the fund if a withdrawal would reduce the amount in the fund to an amount equal to less than the "maximum debt service reserve" (as defined in this section), except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and for the retirement of bonds in accordance with the terms of a contract between the municipality and its bondholders and for the payments on account of which interest or principal or retirement of bonds other money is not then available in accordance with the terms of the contract. In this

section "maximum debt service reserve" means, as of any date of computation, the largest amount of money required by the terms of all contracts between municipalities and their bondholders as to bonds issued under Sec. 345 of this chapter to be raised in any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds and payments required by the terms of the contracts to sinking funds established for the payment or redemption of the bonds, all calculated on the assumption that bonds will cease to be outstanding after the date of the computation by reason of the payment of bonds at their respective maturities and the payments of the required money to sinking funds and the application of the money in accordance with the terms of the contracts to the retirement of bonds.

(b) Money in the guarantee fund at any time in excess of the maximum debt service reserve, whether by reason of investment or otherwise, may be withdrawn by the department and transferred to the general fund.

(c) Money at any time in the guarantee fund may be invested in any direct obligation of, or obligations as to which principal and interest is guaranteed by, the United States, the state or a political subdivision.

(d) For purposes of valuation, investments in the guarantee fund shall be valued at the lowest of the par value, cost to the authority, or market value of the investments. Valuation on any particular date shall include the amount of interest then earned or accrued to that date on any money or investments in the fund.

(e) Other provisions of this section notwithstanding, no bonds may be issued carrying the guarantee provided in this section unless there is in the guarantee fund the maximum debt service reserve for all bonds then issued and outstanding and the bonds about to be issued, but nothing prevents or precludes a municipality from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds about to be

issued, upon their issuance, as is needed to achieve the maximum debt service reserve.

(f) In order to assure the maintenance of the maximum debt service reserve in the guarantee fund, there is authorized to be appropriated

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation refunding bonds or revenue refunding bonds may, at the discretion of the ~~assembly or council~~, be exchanged for the bonds being refunded, or may be sold at public or private sale. ~~They~~ may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

51.350

6. A new section 29.~~50.290~~ as follows:

OK

Sec. 29.58.290. OTHER MUNICIPAL FINANCING. (a) A municipality may authorize by ordinance or resolution the issuance of revenue bonds to finance any ~~public purpose~~ project ~~or program~~, ~~which bonds~~ shall be secured and payable solely from the revenue and property of ~~such~~ project ~~or program~~.

(b) Bonds issued under this section are not a debt or liability of the municipality and do not create or constitute an indebtedness, liability or obligation of the municipality nor do they constitute a pledge of faith, credit or taxing power of the municipality. Each bond must contain on its face a statement ~~to the effect~~ that the principal and interest on the bond are payable solely from the revenues and property of the project ~~or program~~ being financed, ~~and~~ that the municipality is not obligated to pay the principal of or the interest on the bonds except ~~for those sources of the project or program~~ and that neither the faith and credit nor the taxing power of the municipality is pledged to the payment of ~~such~~ principal of or interest on the bond.

(c) A municipality may in connection with the issuance of bonds under this section

(1) loan the proceeds of the bonds;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the project or program being financed;

(3) make and enter into any and all covenants and agreements which the municipality may determine to be necessary or desirable;

(4) provide for any other matter which in any way effects the security or protection of the bonds.

(d) In this section the word "bonds" includes bonds, notes or other evidence of indebtedness. In this section, the words "project" or "program" shall include without limitation commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism and medical projects and programs.

51 370

370 3. Sec. 29.58.300 should be amended to read:

OK → Sec. 29.58.300. ~~[PUBLIC]~~ SALE. Bonds and notes issued under this chapter may be sold by the municipality in the manner and at the price it determines at either public or private sale. ~~[THE MUNICIPALITY SHALL SELL ALL BONDS AT A PUBLIC OR PRIVATE SALE AS PROVIDED BY ORDINANCE. NO BONDS MAY BE SOLD AT LESS THAN PAR VALUE.]~~

4. A new Section A.S. 29.58.305 to read as follows:

51 375

375. Sec. 29.58.305. FORMS AND TERMS. The ~~assembly or council~~ may by ordinance or resolution fix the date, denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and ~~all~~ other ~~details of the~~ bonds or notes. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

51 380

2. Sec. 29.58.310 should be amended to read:

~~51.370~~

380 Sec. 29.58.310. INTEREST RATE. The interest rate payable on a bond or note shall be determined by the ~~assembly or council~~ governing body and is not subject to the usury rate limitations of A.S. 45.45.010. ~~[NO MUNICIPAL BOND OR NOTE MAY BEAR AN INTEREST RATE EXCEEDING THE CONTRACT USURY RATE OR INTEREST PROVIDED BY LAW.]~~

OK

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.390. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. Repeal.

OK

EXPLANATION: This section is repealed as unnecessary since the governing body has control through approving or disapproving the issuance of bonds. Arguably, contracting is an executive function.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a ~~nonelty~~ basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) ~~of this section~~, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and the full faith and credit of the area is pledged for the payment of the debt.

(d) no change.

EXPLANATION: Minor technical clean-up in (a) and (b). Language at the end of (c) added to make it clear that a service area general obligation bond can be issued.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.420. BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. Repeal.

Sec. 29.51.430. BOND GUARANTEE FUND. Repeal

EXPLANATION: These sections have never been used and appear to serve no useful purpose. They are repealed at the request of the State Assessor.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

EXPLANATION: This is a new section. The Alaska Constitution prohibits the establishment of service areas when the function can be performed by a city or another service area. No guidelines have been established, leaving the legality of some service areas in doubt. This provides for the continuation of a debt should a service area subsequently be declared invalid, creating a de facto service area for purposes of the debt.

Four Notes

# CHAPTER 58. MUNICIPAL DEBT.

ARTICLE


1. Revenue Anticipation Notes (§§ 29.58.010--29.58.060)
2. Bond Anticipation Notes (§§ 29.58.070--29.58.140)
3. General Obligation Bonds (§§ 29.58.150--29.58.180)
4. Revenue Bonds (§§ 29.58.200--29.58.230)
5. Refunding Bonds (§§ 29.58.240--29.58.280)
6. Miscellaneous Provisions (§§ 29.58.300--29.58.350)


## ARTICLE 1. REVENUE ANTICIPATION NOTES.

SECTION


10. Borrowing in anticipation of revenue
20. Issuance of notes
30. [REPEALED]
40. Issuance of notes in anticipation of state, federal grants
50. Priority of repayment
60. Sale of notes


SEC. 29.58.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

SEC. 29.58.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

SEC. 29.58.030. LIMITATION ON ISSUANCE OF NOTES. REPEALED. ~~The aggregate amount of revenue anticipation notes at any time outstanding may not exceed 50 percent of the amount of revenues estimated to be collected in the fiscal year in which the notes are issued, less the amount of estimated revenues actually collected in the fiscal year before the issuance of the notes.~~

SEC. 29.58.040. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

SEC. 29.58.050. PRIORITY OF REPAYMENT. The payment of the principal and interest on the revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

SEC. 29.58.060. SALE OF NOTES. The municipality may sell revenue anticipation notes in the manner and at the price it determines, at either public or private sale.

ARTICLE 2. BOND ANTICIPATION NOTES.


| SECTION | | SECTION | |
|---|---|---|---|
| 70. | Bond anticipation borrowing | 110. | Security |
| 80. | Issuance of notes | 120. | Limitation |
| 90. | Issuance of new notes | 130. | Use of proceeds |
| 100. | Repayment of notes | 140. | Sale of notes |

**SEC. 29.58.070. BOND ANTICIPATION BORROWING.** A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance.

SEC. 29.58.080. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued unless the bonds have not been sold by the maturity date of the notes.

SEC. 29.58.090. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue. Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

SEC. 29.58.100. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

SEC. 29.58.110. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

SEC. 29.58.120. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

SEC. 29.58.130. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

SEC. 29.58.140. SALE OF NOTES. Notes issued under this chapter shall be sold by the municipality in the manner and at a price it determines, at either public or private sale, but no note may be sold for less than par and accrued interest.

ARTICLE 3. GENERAL OBLIGATION BONDS.


| SECTION | | SECTION | |
|---|---|---|---|
| 150. | General obligation bonds | 170. | Form and terms of sale |
| 160. | Vote and notice of existing indebtedness required | 180. | Payment |


SEC. 29.58.150. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

**SEC. 29.58.160. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED.** (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

SEC. 29.58.170. FORM AND TERMS OF SALE. The assembly or council shall fix the date of the bonds, denominations, maturities, rate of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, and signatures required. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

SEC. 29.58.180. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other

revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

SECTION

200. Revenue bonds
210. Forms and terms
220. Payment
230. Operation of AS 37.10.085

SEC. 29.58.200. REVENUE BONDS. (a) A municipality may acquire, construct, improve and equip capital improvements to be operated upon a revenue-producing basis, and bonds for these purposes are payable [SOLELY] ~~solely~~ from [UNPLEDGED] revenue of the public facilities for which the bonds are issued or from revenue of other public revenue-producing facilities. Revenue bonds shall not be payable from taxes or from the general funds of the municipality.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

(c) A municipality may also issue revenue bonds for any lawful purpose. The bonds are payable from any amounts pledged by the municipality except taxes and do not constitute general obligations of the municipality.

SEC. 29.58.210. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before

delivery of the bonds, his signature is valid as if he had remained in office until delivery.

SEC. 29.58.220. PAYMENT. Bonds issued under AS 29.58.200--29.58.220 or the proceedings of the assembly or council authorizing their issuance may contain the covenants which the assembly or council considers advisable concerning

(1) the rates or fees to be charged for services rendered by the public facilities, the revenue of which is pledged to the payment of the bonds, or the terms and conditions of any other amounts collected which are pledged to the payment of the bonds;

(2) the deposit and use of the revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(3) the issuance of additional bonds payable from revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(4) the rights of the bondholders in case of default in the payment of the principal or interest on the bonds, including the appointment of a receiver to operate the public facilities;

(5) other covenants as the assembly or council determines.

SEC. 29.58.230. OPERATION OF AS 37.10.085. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

ARTICLE 5. REFUNDING BONDS.


| SECTION | | SECTION | |
|---|---|---|---|
| 240. | Authorization | 270. | Payment of refunding bonds |
| 250. | Effect of bonds | 280. | Sale |
| 260. | No election required | | |


SEC. 29.58.240. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance or resolution

for the issuance of general obligation or revenue refunding bonds.

SEC. 29.58.250. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

SEC. 29.58.260. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

SEC. 29.58.270. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to § 180 of this chapter. Revenue refunding bonds are payable according to § 220 of this chapter.

SEC. 29.58.280. SALE. General obligation or revenue refunding bonds may, in the discretion of the assembly or council, be exchanged at par for the bonds being refunded, or may be sold at public or private sale for an amount not less than par and accrued interest. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

ARTICLE 6. MISCELLANEOUS PROVISIONS.


| SECTION | | SECTION | |
|---|---|---|---|
| 300. | Public sale | 320. | Redemption before maturity |
| 310. | Interest rate | 340. | Borough indebtedness |
| 315. | Bond attorneys, bond and financial consultants | 345. | Bonded indebtedness |
| | | 350. | Bond Guaranty Fund |

SEC. 29.58.300. PUBLIC SALE. The municipality shall sell all bonds ~~at a public or private sale~~ as provided by ordinance. No general obligation bonds may be sold at less than par value.

OK

ALTERNATE SEC. 29.58.300. PUBLIC SALE. The municipality shall sell all bonds at a public or private sale as provided by ordinance (NO BONDS MAY BE SOLD AT LESS THAN PAR VALUE).

SEC. 29.58.310. INTEREST RATE. No municipal bond or note may bear an interest rate exceeding the contract usury rate of interest provided by law.

SEC. 29.58.315. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. The governing body or its designee of a home rule or general law municipality shall be the sole contracting authority for bond attorneys, bond consultants and financial consultants engaged in long-range financial planning of the municipality which leads to sale of bonds.

SEC. 29.58.320. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

SEC. 29.58.340. BOROUGH INDEBTEDNESS. (a) Boroughs may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a noncity basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be limited to the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

SEC. 29.58.345. BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. A home rule city levying property taxes for schools, upon furnishing proof satisfactory to the Department of Education and the Department of Community and Regional Affairs of the needs for school facilities which, if provided, will require the city to exceed limits on authorizing or issuing bonds which may be established by charter, may exceed the limits to the extent necessary to pay costs of school construction. In this section "costs of school construction" means costs as defined in AS 43.18.100(g)(2).

SEC. 29.58.350. BOND GUARANTEE FUND. (a) To guarantee payment by the state of the principal and interest of bonds issued under the enabling authority of § 345 of this chapter, there is in the Department of Community and Regional Affairs a special fund called the local school bond guarantee fund in which there shall be deposited all money appropriated by the legislature for the purpose of the fund and other money which may be made available for the purpose of the fund from any other source. Money in the

fund shall be held and applied solely to further guarantee and provide an additional pledge of payment of all bonds issued under the provisions of § 345 of this chapter. Money shall not be withdrawn from the fund if a withdrawal would reduce the amount in the fund to an amount equal to less than the "maximum debt service reserve" (as defined in this section), except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and for the retirement of bonds in accordance with the terms of a contract between the municipality and its bondholders and for the payments on account of which interest or principal or retirement of bonds other money is not then available in accordance with the terms of the contract. In this section "maximum debt service reserve" means, as of any date of computation, the largest amount of money required by the terms of all contracts between municipalities and their bondholders as to bonds issued under § 345 of this chapter to be raised in any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds and payments required by the terms of the contracts to sinking funds established for the payment or redemption of the bonds, all calculated on the assumption that bonds will cease to be outstanding after the date of the computation by reason of the payment of bonds at their respective maturities and the payments of the required money to sinking funds and the application of the money in accordance with the terms of the contracts to the retirement of bonds.

(b) Money in the guarantee fund at any time in excess of the maximum debt service reserve, whether by reason of investment or otherwise, may be withdrawn by the department and transferred to the general fund.

(c) Money at any time in the guarantee fund may be invested in any direct obligation of, or obligations as to which principal and interest is guaranteed by, the United States, the state or a political subdivision.

(d) For purposes of valuation, investments in the guarantee fund shall be valued at the lowest of the par value, cost to the authority, or market value of the investments. Valuation on any particular date shall include the amount of interest then earned or accrued to that date on any money or investments in the fund.

(e) Other provisions of this section notwithstanding, no bonds may be issued carrying the guarantee provided in this section unless there is in the guarantee fund the maximum debt service reserve for all bonds then issued and outstanding and the bonds about to be issued, but nothing prevents or precludes a municipality from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds about to be issued, upon their issuance, as is needed to achieve the maximum debt service reserve.

(f) In order to assure the maintenance of the maximum debt service reserve in the guarantee fund, there is authorized to be appropriated annually and paid to the authority for deposit in the fund, the sum, if any, that is certified by the commissioner of community and regional affairs to the governor as necessary to restore the fund to an amount equal to the maximum debt service reserve. The chairman shall annually, before December 2, deliver to the governor his certificate stating the sum, if any, required to restore the fund to that amount, and the sum so certified is authorized to be appropriated and paid to the fund during the then current state fiscal year.

(g) Nothing in this section may be considered to cause bonds, payment of which is guaranteed from money in the fund established under this section, to be in any way a debt or liability of the state or any political subdivision of the state other than the political subdivision issuing the bonds, and the bonds, whether or not payable from the maximum debt service reserve created and established under this section, shall not create or constitute an indebtedness, liability or obligation of the state or be or constitute a pledge of the faith and credit of the state.

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AREA CODE 907
276-6401

November 18, 1980

RECEIVED
NOV 19 1980
Dept. of Law
Administration

Ted Berns, Esq.
Municipal Attorney
Municipality of Anchorage
Pouch 6-650
Anchorage, Alaska 99502

Dear Ted:

I have reviewed the draft of Chapter 58 of the Municipal Code regarding Municipal Debt. I have a few suggestions as follows:

1. AS 29.58.030. This section was repealed in 1974. I don't know why it should be reenacted.

2. AS 29.58.160(a). Delete "ordinance." Before the last Title 29 revision most communities put bond questions on the ballot by resolution. Since the public has the final say on bonds at the election the additional public hearing that an ordinance provides seems superfluous. The ordinance procedure also causes timing problems due to the two reading requirement. Since small communities often meet only once or twice per month this can be serious.

3. AS 29.58.200. Subsection (a) seems superfluous; given the broad authority of (c). Thus (a) could simply be deleted. I suggest deleting "except taxes" in (c) since a project may need a limited tax backing short of full faith and credit to be marketable. The Palmer Industrial Park bonds were sold by pledging sales tax revenues. Tax increment financing is another possibility. Similarly if (a) is retained "solely" should be deleted.

4. Industrial Development Bonds. General law municipalities should have the authority to issue the IDB's permitted by Section 103(c) of the Internal Revenue Code as well as home mortgage bonds. A new section permitting this is attached.

5. AS 29.58.280 and 29.58.300. Delete "at par" and "for an amount not less than par and accrued interest" from 29.58.280 and use alternate 29.58.300. The ability to sell at less than par can be a useful marketing tool.

6. AS 29.58.310. Delete this section which serves no purpose.

7. AS 29.58.340(c). Add the following sentence at the end: "The full faith and credit of the area voting on the indebtedness is pledged for the payment of the debt." This makes it clear that there can be a service area general obligation bond.

8. AS 29.58.360. Add a new section as follows:

> AS 29.58.360. Service Area Debt. The indebtedness of a service area issued pursuant to §340(a)(3) of this chapter shall remain the indebtedness of the area incurring the debt notwithstanding a subsequent determination by a court that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. Not less than all property within the service area remains subject to taxation to pay the bonded indebtedness.

The Alaska Constitution prohibits the establishment of service areas when the function can be performed by a city or another service area. No guidelines have ever been established, leaving the legality of some areas in doubt. This language provides for the continuation of a debt should such an area subsequently be declared to have violated constitutional standards. In effect it creates a de facto service area for the purpose of the debt.

Very truly yours,

WOHLFORTH & FLINT

By
Robert B. Flint

RBF/am
Attachment
cc: Senator Arliss Sturgulewski

Sec. 29.58.200(c) [or(d) if (a) is retained]. A municipality shall have the power to borrow money and to issue bonds or other evidence of indebtedness for the purpose of promoting economic development in and adjacent to the municipality. Such indebtedness may be authorized by the municipality without a vote of the electorate for obligations which are defined as industrial development bonds by the United States Internal Revenue Code, as amended. The municipality may, with respect to the issuance of such debt, acquire, purchase, lease, construction, sell, sublease or otherwise dispose of projects by action of the council or assembly. No bonds or other indebtedness issued by the municipality under this section shall be repayable from taxes levied by the municipality nor be a charge against the general credit of the municipality.

SCOMM

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**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

**Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.**

EXPLANATION: The following provision is made inapplicable to the use of proceeds from revenue bonds:

Sec. 37.10.085. FINANCIAL AID TO CORPORATIONS BY STATE OR POLITICAL SUBDIVISION. Neither the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

It is felt by bond counsels that this section currently forbids a municipality to use proceeds of revenue bond sales for loans and other expenditures designed to encourage industrial development.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation refunding bonds or revenue refunding bonds may, at the discretion of the assembly or council, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

EXPLANATION: It is felt by bond counsels that the flexibility of allowing a refunding bond to be exchanged or sold at other than par value ought to be provided. It is felt that the policy of notifying the public of the value of bonds should not become an hinderance to obtaining the best deals through discounting bonds. It has become difficult to market revenue bonds at par value according to bond counsels.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.370. PUBLIC SALE. Repeal.

EXPLANATION: This section is repealed as redundant since other provis ,ns deal with the sale of bonds.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.390. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. Repeal.

EXPLANATION: This section is repealed as unnecessary since the governing body has control through approving or disapproving the issuance of bonds. Arguably, contracting is an executive function.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

**Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness**

**(1) on an areawide basis for areawide functions; or**

**(2) on a noncity basis for functions performed in the area outside cities only; or**

**(3) on a service area basis for functions performed in a service area only.**

**(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.**

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and the full faith and credit of the area is pledged for the payment of the debt.

(d) no change.

EXPLANATION: Minor technical clean-up in (a) and (b). Language at the end of (c) added to make it clear that a service area general obligation bond can be issued.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

Sec. 29.51.420. BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. Repeal.

Sec. 29.51.430. BOND GUARANTEE FUND. Repeal

EXPLANATION: These sections have never been used and appear to serve no useful purpose. They are repealed at the request of the State Assessor.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

**Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.**

EXPLANATION: This is a new section. The Alaska Constitution prohibits the establishment of service areas when the function can be performed by a city or another service area. No guidelines have been established, leaving the legality of some service areas in doubt. This provides for the continuation of a debt should a service area subsequently be declared invalid, creating a de facto service area for purposes of the debt.

Sec. 29.~~50.200~~ 51.340 OF REFUNDING BONDS. SALE. General obligation or revenue refunding bonds may, ~~in~~ OTF the discretion of the assembly or council, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

EXPLANATION: ~~The~~ During It is felt by bond counsels that the flexibility of allowing a bond to be exchanged or sold at other than par value ought to be provided.

Add material from p. 70

Sec. 29.51.250 CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

EXPLANATION: The following provision is made inapplicable to the use of proceeds from revenue bonds:

Sec. 37.10.085. FINANCIAL AID TO CORPORATIONS BY STATE OR POLITICAL SUBDIVISION. Neither the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

It is felt by bond counsels that this section currently forbids a municipality to use proceeds of revenue bond sales for loans and other expenditures designed to encourage industrial development.

INSERT



(d) As used in this section, the term "commissioner of revenue" means the commissioner of revenue or any other officer, board, commission or committee of the state authorized to invest money of the general fund. (§ 1 ch 207 SLA 1970; am §§ 1 — 3 ch 112 SLA 1975)

**Revisor's note (1979).** — To correct a clerical error, the word "or" has been inserted at the end of AS 37.10.079(b)(1), added by ch. 207, SLA 1970 (HCS CSSB 593 am H). See 1970 House Journal, page 1589.

**Effect of amendment.** — The 1975 amendment substituted "he may" for "up to $18,365,000 of them may be used to" in subsection (a), and in paragraph (2) of subsection (b), substituted the language beginning "the bonds cannot be sold" for "the buyer has proper cause to avoid his contract for the purchase of the bonds" at the end of subparagraph (B), deleted subparagraph (C), and inserted the language beginning "municipality is" and ending "so that the" in subparagraph (D). The amendment also so changed subsection (c) that a detailed comparison is impracticable.

**Sec. 37.10.080. Sale of bonds held as investments.** Bonds purchased by the Department of Revenue for the benefit of the state from funds set apart for a specific purpose may be sold by the Department of Revenue at the terms and conditions which the governor approves, and the money received shall be credited to the fund for which the bonds were purchased. (§ 13-1-3 ACLA 1949)

**Sec. 37.10.085. Financial aid to corporations by state or political subdivision.** Neither the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation. ~~(55 4-9-1, 12-1-3 ACLA 1949)~~

**Bond issue to encourage industrial development.** — A general obligation bond issue for the purpose of encouraging industrial development within a municipality was held valid in Wright v. City of Palmer, Sup. Ct. Op. No. 605 (File No. 1192), 468 P.2d 326 (1970).

**Quoted** in Burton v. Matanuska Valley Lines, 17 Alas. 298, 244 F.2d 647 (9th Cir. 1957).

**ALR references.** — Encouragement or promotion of industry not in nature of public utility, carried on by private enterprise, as public purpose for which public money may be appropriated, 112 ALR 571.

Validity, construction and effect of statutes authorizing public funds for urban redevelopment by private enterprise, 44 ALR2d 1420, 1431.

**Sec. 37.10.087. Loans to bond construction funds.** (a) When a construction fund or account established to receive the proceeds of state general obligation bonds is temporarily exhausted the commissioner of administration on recommendation of the state bond committee, and with the approval of the Legislative Budget and Audit Committee, may temporarily transfer money from the general fund to the bond construction fund or account.

(b) Transfers under (a) of this section may be made only when the commissioner of revenue determines and certifies to the state bond committee that there is in the general fund an amount sufficient to meet current cash expenditure needs of the state.

Explanation: The following provision is made inapplicable to the use of proceeds from revenue bonds:

It is felt by bond counsels that this section currently

and other expenditures designed to encourage industrial development.

Repeal

Sec. 29.51.370. PUBLIC SALE. ~~The municipality shall sell all bonds at a public or private sale as provided by ordinance.~~

EXPLANATION: ~~The requirement that no bonds be sold at less than par value has been eliminated.~~ It is felt that the policy of notifying the public of the value of bonds should not become a hinderance to obtaining the best deals through discounting bonds. It has become difficult to market revenue bonds at par value according to bond counsels.

p.69

This section is repealed as redundant since other provision deal with the sale of bonds.

Sec. 29. ~~50.915~~ 51.390. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. Repeal.

EXPLANATION: This section is repealed as unnecessary since the governing body has control through approving or disapproving the issuance of bonds. Arguably, contracting is an executive function.

Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a noncity basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and the full faith and credit of the area is pledged for the payment of the debt.

(d) no change.

EXPLANATION: Minor technical clean-up in (a) and (b). Language at the end of (c) added to make it clear that a service area general obligation bond can be issued.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.~~58.345~~ 51.420. BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. Repeal.

Sec. 29.~~58.350~~ 51.430. BOND GUARANTEE FUND. Repeal.

EXPLANATION: These sections have never been used and appear to serve no useful purpose. They are repealed at the request of the State Assessor.

Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

EXPLANATION: This is a new section. The Alaska Constitution prohibits the establishment of service areas when the function can be performed by a city or another service area. No guidelines have been established, leaving the legality of some service areas in doubt. This provides for the continuation of a debt should a service area subsequently be declared invalid, creating a de facto service area for purposes of the debt.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 37.30.100. PROHIBITED BIDDING ON BONDS. Repeal.

EXPLANATION: It is felt that this section should be repealed because it unduly restricts the selling of bonds. ~~This~~ *It* creates a hardship on smaller municipalities which may have only one financial advisor available. The municipality is protected by SEC disclosure requirements and by the fact that a "person" can't buy bonds without permission of the municipality. Also (b) created a cloud on bonds, since there ~~was~~ always a possibility that they ~~were~~ void if the wrong person provided marketing assistance.

Sec. 37.30.100. PROHIBITED BIDDING ON BONDS. Repeal.

EXPLANATION: It is felt that this section should be repealed because it unduly restricts the selling of bonds. This creates a hardship on smaller municipalities which may have ~~to depend on~~ only one financial advisor available. ~~for both financial planning and the sale of bonds~~. The municipality is protected by ~~federal~~ SEC disclosure requirements and by the fact that a "person" can't buy bonds without permission of the municipality. Also (b) created a cloud on bonds, since there was always a possibility that they were void if the wrong person provided marketing assistance.

(Set out section)

**ALTERNATE 1.**

AS 37.30.100 is repealed.

SEC. 29.58.317. PROHIBITED BIDDING ON BONDS. (a) No person who provides financial programming or marketing assistance to a political subdivision of the state, whether home rule or otherwise, in connection with the issuance or sale of general obligation bonds, revenue bonds or bond anticipation notes of the political subdivision may bid on the bonds or notes if offered at public sale, or negotiate for their purpose if sold at private sale.

(b) The sale of general obligation, revenue bonds or bond anticipation notes of a political subdivision to a person prohibited from bidding on, or negotiating for the sale of bonds or notes under (a) of this section is against public policy and the sale is void.

(c) In this section "person" means an individual, firm, agent, factor, intermediary, partnership, corporation, association, bond house, stockbroker or bond broker.

---

→ **ALTERNATE 2.**

OK

AS 37.30.100 is repealed.

approved.

Cuts down on people who bid on your bonds and on important people to advise a town. Now there is a SEC fed disclosure requirement to municipality & "person" can't buy w/out permission of municipality anyway.

Problem is with smaller communities. Always a cloud on bonds as void under (b) — who provided marketing assistance?

and (2) the original obligation date is not more than two years from the requested date of disbursement. (§ 1 ch 113 SLA 1962)

**Sec. 37.25.020. Unexpended balances of appropriation for capital projects.** An appropriation made for a capital project is valid for the life of the project and the unexpended balance shall be carried forward to subsequent fiscal years. Between July 1 and August 31 of each fiscal year, a statement supporting the amount of the unexpended balance required to complete the projects for which the initial appropriation was made and the amount that may be lapsed shall be recorded with the Department of Administration. (§ 2 ch 113 SLA 1962)

## Chapter 30. Local Government Bonding.

Article
1. Anticipatory Borrowing (Repealed)
2. Restrictions on Sale of Bonds and Bond Anticipation Notes (§ 37.30.100)

### Article 1. Anticipatory Borrowing.

Section
10—90. [Repealed]

**Secs. 37.30.010 — 37.30.090.**
Repealed by § 1 ch. 118 SLA 1972.

Editor's note. — The repealed article derived from § 1, ch. 117, SLA 1964; § 1, ch. 189, SLA 1970.

### Article 2. Restrictions on Sale of Bonds and Bond Anticipation Notes.

Section
100. Prohibited bidding on bonds

**Sec. 37.30.100. Prohibited bidding on bonds.** (a) No person who provides financial programming or marketing assistance to a political subdivision of the state, whether home rule or otherwise, in connection with the issuance or sale of general obligation bonds, revenue bonds or bond anticipation notes of the political subdivision may bid on the bonds or notes if offered at public sale, or negotiate for their purchase if sold at private sale.

(b) The sale of general obligation, revenue bonds or bond anticipation notes of a political subdivision to a person prohibited from bidding on, or negotiating for the sale of bonds or notes under (a) of this section is against public policy and the sale is void.

(c) In this section "person" means an individual, firm, agent, factor, intermediary, partnership, corporation, association, bond house, stockbroker or bond broker. (§ 2 ch 109 SLA 1974)

~~Sec. 29.51.440. SERVICE AREA DEBT.~~

Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall reamin the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

Explanation: This is a new section. The Alaska Constitution prohibits the establishment of service areas where the functions can be performed by a city or another service area. No guidelines have been established, leaving the legality of some service areas in doubt. This provides for the continuation of a debt should a service area subsequently be declared invalid, creating a de facto service area for purposes of the debt.

## CHAPTER 58. MUNICIPAL DEBT.

ARTICLE


1. Revenue Anticipation Notes (§§ 29.58.010--29.58.060)
2. Bond Anticipation Notes (§§ 29.58.070--29.58.140)
3. General Obligation Bonds (§§ 29.58.150--29.58.180)
4. Revenue Bonds (§§ 29.58.200--29.58.230)
5. Refunding Bonds (§§ 29.58.240--29.58.280)
6. Miscellaneous Provisions (§§ 29.58.300--29.58.350)


### ARTICLE 1. REVENUE ANTICIPATION NOTES.

SECTION


10. Borrowing in anticipation of revenue
20. Issuance of notes
30. [REPEALED]
40. Issuance of notes in anticipation of state, federal grants
50. Priority of repayment
60. Sale of notes


No change Do not Type

SEC. 29.~~58.010~~ 51.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

No change Do not Type

SEC. 29.58.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

Repealed

SEC. 29.58.030. LIMITATION ON ISSUANCE OF NOTES. REPEALED. ~~The aggregate amount of revenue anticipation notes at any time outstanding may not exceed 50 percent of the amount of revenues estimated to be collected in the fiscal year in which the notes are issued, less the amount of estimated revenues actually collected in the fiscal year before the issuance of the notes.~~

Do not type

SEC. 29.58.040. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

SEC. 29.58.050. PRIORITY OF REPAYMENT. The payment of the principal and interest on the revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

SEC. 29.58.060. SALE OF NOTES. The municipality may sell revenue anticipation notes in the manner and at the price it determines, at either public or private sale.

ARTICLE 2. BOND ANTICIPATION NOTES.

SECTION


70. Bond anticipation borrowing
80. Issuance of notes
90. Issuance of new notes
100. Repayment of notes
110. Security
120. Limitation
130. Use of proceeds
140. Sale of notes

**SEC. 29.58.070. BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if**

No change Do not type

**(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;**

**(2)** the revenue bonds to be sold have been authorized by ordinance.

SEC. 29.58.080. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued unless the bonds have not been s ld by the maturity date of the notes.

No change Do not type

SEC. 29.58.090. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue. Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

No change Do not type

SEC. 29.58.100. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

**SEC. 29.58.110. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.**

No change Do not type

**(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.**

No change Do not type

SEC. 29.58.120. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

No change Do not type

SEC. 29.58.130. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

No change Do not type

SEC. 29.58.140. SALE OF NOTES. Notes issued under this chapter shall be sold by the municipality in the manner and at a price it determines, at either public or private sale, but no note may be sold for less than par and accrued interest.

No change Do not type

ARTICLE 3. GENERAL OBLIGATION BONDS.


| SECTION | | SECTION | |
|---|---|---|---|
| 150. | General obligation bonds | 170. | Form and terms of sale |
| 160. | Vote and notice of existing indebtedness required | 180. | Payment |


No change Do not type

**SEC. 29.58.150. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.**

SEC. 29.58.160. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

SEC. 29.58.170. FORM AND TERMS OF SALE. The assembly or council shall fix the date of the bonds, denominations, maturities, rate of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, and signatures required. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

SEC. 29.58.180. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other

revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

## ARTICLE 4. REVENUE BONDS.

SECTION


200. Revenue bonds
210. Forms and terms
220. Payment
230. Operation of AS 37.10.085


SEC. 29.58.200. REVENUE BONDS. (a) A municipality may acquire, construct, improve and equip capital improvements to be operated upon a revenue-producing basis, and bonds for these purposes are ~~payable solely~~ [SOLELY] secured from [UNPLEDGED] revenue of the public facilities for which the bonds are issued or from revenue of other public revenue-producing facilities. Revenue bonds shall not be payable from taxes or from the general funds of the municipality.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection ~~are payable~~ may be secured are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

(c) A municipality may also issue revenue bonds for any lawful purpose. The bonds are payable from any amounts pledged by the municipality except taxes and do not constitute general obligations of the municipality.

SEC. 29.58.210. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before

delivery of the bonds, his signature is valid as if he had remained in office until delivery.

SEC. 29.58.220. PAYMENT. Bonds issued under AS 29.58.200--29.58.220 or the proceedings of the assembly or council authorizing their issuance may contain the covenants which the assembly or council considers advisable concerning

(1) the rates or fees to be charged for services rendered by the public facilities, the revenue of which is pledged to the payment of the bonds, or the terms and conditions of any other amounts collected which are pledged to the payment of the bonds;

(2) the deposit and use of the revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(3) the issuance of additional bonds payable from revenue of the public facilities or of other amounts collected which are pledged to the payment of the bonds;

(4) the rights of the bondholders in case of default in the payment of the principal or interest on the bonds, including the appointment of a receiver to operate the public facilities;

(5) other covenants as the assembly or council determines.

SEC. 29.~~58.230.~~ 51.280. Construction. ~~OPERATION OF AS 37.10.085.~~ The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

Municipality may want to issue bonds & use proceeds to loan (Industrial development) Bond counsels have raised as a concern esp. where muni wants to get into industrial dev.

ARTICLE 5. REFUNDING BONDS.

| SECTION | | SECTION | |
|---|---|---|---|
| 240. | Authorization | 270. | Payment of refunding bonds |
| 250. | Effect of bonds | 280. | Sale |
| 260. | No election required | | |

SEC. 29.58.240. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may ~~provide~~ authorize by ordinance ~~on recalculation~~

Acting quickly to gain advantage in bond market

~~for~~ the issuance of general obligation or revenue refunding bonds. Terms of refunding bonds may be established by resolution

SEC. 29.58.250. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

No change Do Not type

SEC. 29.58.260. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

No change Do Not type

SEC. 29.58.270. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to § 180 of this chapter. Revenue refunding bonds are payable according to § 220 of this chapter.

No Change Do not type

SEC. 29.58.280. SALE. General obligation or revenue refunding bonds may, in the discretion of the assembly or council, be exchanged ~~at par~~ for the bonds being refunded, or may be sold at public or private sale, ~~for an amount not less than par and accrued interest.~~ They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

EXPLANATION: It is felt by bond counsels that the flexibility of allowing a bond to be exchanged at other than par value ought to be provided. ~~This section retains the requirement that bonds be~~ sold at not less than par

ARTICLE 6. MISCELLANEOUS PROVISIONS.

SECTION

300. Public sale
310. Interest rate
315. Bond attorneys, bond and financial consultants

SECTION

320. Redemption before maturity
340. Borough indebtedness
345. Bonded indebtedness
350. Bond Guaranty Fund

Id. 51.370

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EXPLANATION: The requirement that no bonds be sold at less than par value has been eliminated. It is felt that the policy of notifying the public of the value of bonds should not become a hinderance to obtaining the best financial deals though discounting bonds. It has become difficult to market revenue bonds at par value according to bond counsels.

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repeated

SEC. 29.58.300. PUBLIC SALE. The municipality shall sell all bonds at a public or private sale as provided by ordinance. No general obligation bonds may be sold at less than par value.

change etc

~~ALTERNATE~~ SEC. 29.~~58.300~~ 51.370. PUBLIC SALE. The municipality shall sell all bonds at a public or private sale as provided by ordinance, ~~(NO BONDS MAY BE SOLD AT LESS THAN PAR VALUE)~~.

Add Explanation
Hard to market revenue bonds at par. Policy behind this is notice to public of value of bonds, Shouldn't hinder financial experts in getting best deal thru discount

SEC. 29.58.310. INTEREST RATE. No municipal bond or note may bear an interest rate exceeding the contract usury rate of interest provided by law.

Hold

SEC. 29.58.315. BONDS ATTORNEYS, BOND AND FINANCIAL CONSULTANTS. Repeal.
The governing body or its designee of a home rule or general law municipality shall be the sole contracting authority for bond attorneys, bond consultants and financial consultants engaged in long-range financial planning of the municipality which leads to sale of bonds.

repeal
Arguably legislative executive powers

Unnecessary assembly has control over approving bonds for protection
Explanation: This Section is repealed as unnecessary since the
governing body has control through approving & disapproving the issuance
of bonds. Arguably contracting is an executive function

SEC. 29.58.320. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

No change

SEC. 29.~~58.340~~ 51.410. BOROUGH INDEBTEDNESS. (a) ~~Boroughs~~ A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a noncity basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be ~~limited to~~ derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

Need Section 29.58.340

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and the full faith and credit of the area is pledged for the payment of the debt.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

No change

(d) No change. Explanation: Minor technical clean-up in (a) and (b) language at the end of (c) added to make it clear that a service area general obligation bond can be issued.

SEC. 29.58.345. BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. A home rule city levying property taxes for schools, upon furnishing proof satisfactory to the Department of Education and the Department of Community and Regional Affairs of the needs for school facilities which, if provided, will require the city to exceed limits on authorizing or issuing bonds which may be established by charter, may exceed the limits to the extent necessary to pay costs of school construction. In this section "costs of school construction" means costs as defined in AS 43.18.100(g)(2).

repeal

SEC. 29.58.350. BOND GUARANTEE FUND. (a) To guarantee payment by the state of the principal and interest of bonds issued under the enabling authority of § 345 of this chapter, there is in the Department of Community and Regional Affairs a special fund called the local school bond guarantee fund in which there shall be deposited all money appropriated by the legislature for the purpose of the fund and other money which may be made available for the purpose of the fund from any other source. Money in the

repeal

Sec. 29.51.420. Bonded indebtedness for school construction. Repeal.

Sec. 29.51.430 Bond Guarantee Fund. Repeal

fund shall be held and applied solely to further guarantee and provide an additional pledge of payment of all bonds issued under the provisions of § 345 of this chapter. Money shall not be withdrawn from the fund if a withdrawal would reduce the amount in the fund to an amount equal to less than the "maximum debt service reserve" (as defined in this section), except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and for the retirement of bonds in accordance with the terms of a contract between the municipality and its bondholders and for the payments on account of which interest or principal or retirement of bonds other money is not then available in accordance with the terms of the contract. In this section "maximum debt service reserve" means, as of any date of computation, the largest amount of money required by the terms of all contracts between municipalities and their bondholders as to bonds issued under § 345 of this chapter to be raised in any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds and payments required by the terms of the contracts to sinking funds established for the payment or redemption of the bonds, all calculated on the assumption that bonds will cease to be outstanding after the date of the computation by reason of the payment of bonds at their respective maturities and the payments of the required money to sinking funds and the application of the money in accordance with the terms of the contracts to the retirement of bonds.

(b) Money in the guarantee fund at any time in excess of the maximum debt service reserve, whether by reason of investment or otherwise, may be withdrawn by the department and transferred to the general fund.

(c) Money at any time in the guarantee fund may be invested in any direct obligation of, or obligations as to which principal and interest is guaranteed by, the United States, the state or a political subdivision.

(d) For purposes of valuation, investments in the guarantee fund shall be valued at the lowest of the par value, cost to the authority, or market value of the investments. Valuation on any particular date shall include the amount of interest then earned or accrued to that date on any money or investments in the fund.

(e) Other provisions of this section notwithstanding, no bonds may be issued carrying the guarantee provided in this section unless there is in the guarantee fund the maximum debt service reserve for all bonds then issued and outstanding and the bonds about to be issued, but nothing prevents or precludes a municipality from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds about to be issued, upon their issuance, as is needed to achieve the maximum debt service reserve.

(f) In order to assure the maintenance of the maximum debt service reserve in the guarantee fund, there is authorized to be appropriated annually and paid to the authority for deposit in the fund, the sum, if any, that is certified by the commissioner of community and regional affairs to the governor as necessary to restore the fund to an amount equal to the maximum debt service reserve. The chairman shall annually, before December 2, deliver to the governor his certificate stating the sum, if any, required to restore the fund to that amount, and the sum so certified is authorized to be appropriated and paid to the fund during the then current state fiscal year.

(g) Nothing in this section may be considered to cause bonds, payment of which is guaranteed from money in the fund established under this section, to be in any way a debt or liability of the state or any political subdivision of the state other than the political subdivision issuing the bonds, and the bonds, whether or not payable from the maximum debt service reserve created and established under this section, shall not create or constitute an indebtedness, liability or obligation of the state or be or constitute a pledge of the faith and credit of the state.

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CHAPTER 62. STATE PROGRAMS

(CHAPTER 88. MUNICIPAL TAX RESOURCE EQUALIZATION)

ARTICLE 1. MUNICIPAL TAX RESOURCE EQUALIZATION

Sec. 29.62.010. (Sec. 29.88.010.) STATE EQUALIZATION OF TAX RESOURCES FOR LOCAL GOVERNMENT SERVICES. (a) During each fiscal year the department shall compute an equalization entitlement for local government services provided by a taxing unit.

(b) The equalization entitlement computed for a taxing unit is based on the population, relative ability to generate revenue, and local tax burden of the taxing unit and is determined by the application of the formula

Entitlement = P x R where P = population, and R = millage rate equivalent, determined by dividing the

sum of the locally generated revenue of the taxing unit by one-tenth of one percent (0.1) of the full and true value of assessed property of the taxing unit determined under AS 29.88.020(d); however, the property value used under this subsection may not be less than 15 percent of the statewide average per capita full and true assessed property value.

(c) For purposes of this section, locally generated revenue

(1) includes

(A) the actual revenue derived from the levy and collection of local taxes in the taxing unit for local government services during the preceding fiscal year of the taxing unit;

(B) motor vehicle payments received by the municipality during the preceding fiscal year under AS 28.10.431;

(C) revenue from fees, rentals, leases, penalties, licenses or permits received during the preceding fiscal year by the municipality for a function or service over which it has control, including revenues derived from parks and recreation ser-

vices, mass transit, offstreet parking, and garbage and solid waste disposal services;

(D) special assessments received during the preceding fiscal year; and

(E) payments received by a municipality from a utility which are in place of taxes levied and collected by the municipality;

(2) excludes

(A) revenue derived from the levy and collection of municipal taxes and appropriated for the operating expenses and debt service of utilities;

(B) revenue from interest earned on investments and from the sale and lease of land or equipment; and

(C) all other revenue from whatever service derived.

Sec. 29.62.020. (Sec. 29.88.015.) DETERMINATION OF POPULATION. (a) For purposes of this chapter, the population of a taxing unit shall be determined annually by the latest figures of the United States Bureau of the Census or other population data which, in the judgment of the department, is reliable.

(b) The population of the taxing unit includes the population of any military reservation which is a part of the taxing unit.

Sec. 29.62.030. (Sec. 29.88.020.) DETERMINATION OF MILLAGE RATE EQUIVALENT. (a) The department may require a municipality to return a certification, signed by the municipal treasurer or manager and the mayor, which provides an estimate of the locally generated revenue received by the municipality during the preceding fiscal year.

(b) By October 15 of each year, the department shall make an initial determination of the millage rate equivalent of each taxing unit to be used

for computing and distributing equalization entitlements for the current fiscal year under this chapter. The department shall base the initial determination on the estimates in the certification returned by a municipality under (a) of this section.

(c) As early as possible, but not later than December 15 of each year, the department shall make a final determination of the millage rate equivalent of each taxing unit to use to compute and distribute equalization entitlements under this chapter. The department shall base the determination on audits, financial statements and other financial reports prepared and submitted by a municipality. The department shall adjust the locally generated revenue reported by a municipality to exclude the municipal revenue claimed by the municipality which does not qualify for inclusion in or recognition as locally generated revenue for local government purposes under AS 29.88.010(c)(1). The adjustment shall be made by deducting from total revenue claimed by the municipality the amount of the department's estimate of revenue which is not recognized for local government purposes.

(d) The full and true assessed property value shall be determined by the department in the manner provided for the computation of state aid to education under AS 14.17.140. When the determination of locally generated revenue includes revenue of a utility received under AS 29.88.010(c)(1)(E), the full and true assessed property value shall include the computed assessed value of the utility, determined by dividing the amount of the payment in place of taxes made by the utility by the millage rate which would apply to the utility if the utility were subject to levy and collection of taxes under AS 29.53.

(e) In addition to the computation for municipalities which levy and collect a property tax, the department shall determine an estimated full and true assessed property value under (d) of this section for

(1) each municipality which is a school district and which does not levy and collect a property tax;

(2) each second class city with a population of 750 or more persons; however, a computation is not required under this paragraph more often than once during a period of three successive calendar years; and

(3) all other second class cities, by determining the average per capita full and true assessed property value of all cities having a population of less than 750 persons in which an assessment has been completed by a municipality or for which a determination is not made under (1) or (2) of this subsection.

(f) The department shall annually compute a statewide average per capita full and true assessed property value.

Sec. 29.62.040. (Sec. AS 29.88.025.) REPORTS. A payment of an equalization entitlement may not be made to a municipality under this chapter until the municipality has submitted its certificate of estimated revenue and its finanical report to the department for the fiscal year preceding the year for which the equalization entitlement is sought, together with a budget for the municipality's current fiscal year. The financial report shall include a listing of general revenue collected from taxes levied and assessed by the municipality and any other revenue which, in the opinion of the municipal officials, is eligible for inclusion in computations of the locally generated revenue of the taxing unit.

Sec. 29.62.050. (Sec. 29.88.030.) LIMITATION ON COMPUTATION AND USE OF PAYMENTS. (a) An equalization entitlement generated by the general tax levy of a taxing unit may be used only for authorized expenditures of that taxing unit, but up to 15 percent of the payment of an equalization entitlement generated by areawide revenue of a municipality may be used by the municipality for areawide or nonareawide purposes at the descretion of its assembly or council.

(b) An equalization entitlement determined with reference to revenue other than revenue obtained from the levy and collection of taxes may be used for areawide or nonareawide purposes, at the discretion of the assembly or council.

Sec. 29.62.060. (Sec. 29.88.035.) TAX EQUALIZATION ACCOUNT. The tax equalization account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account. The amount allocated to the account shall be fully distributed by the department as payments to municipalities to fulfill each municipality's share authorized under AS 29.62.010. (AS 29.88.010.). The amount allocated to the account shall be distributed by the department pro rata among eligible municipalities.

Sec. 29.62.070. (Sec. 29.88.040.) ADMINISTRATION. (a) The department may adopt regulations necessary to implement this chapter. The regulations shall include, among other provisions,

(1) procedures and filing dates for submitting certification and financial reports;

(2) procedures for obtaining information required to compute and determine the municipality's millage rate equivalent; and

(3) procedures by which the department shall notify a municipality in writing of the reasons for a proposed disallowance or adjustment of any factor bearing upon the determination of the municipality's entitlement and by which the municipality will be provided reasonable time in which to respond or to challenge the department's determination.

(b) The department shall make reasonable efforts to advise and assist municipalities in collecting information and completing reports necessary for the determination of entitlements under this chapter.

(c) The department shall, by regulation, classify for inclusion or exclusion as a component of a municipality's millage rate equivalent under AS 29.62.010 (AS 29.88.010) any tax revenue appropriated for a utility not included in the definition set out in AS 29.62.080(4) [(AS 29.88.045(4)].

Sec. 29.62.080. (Sec. 29.88.045.) DEFINITIONS. In this chapter

(1) "department" means the department of Community and Regional Affairs;

(2) "municipality" means a city, borough or unified municipality incorporated under the laws of the state;

(3) "taxing unit" means a municipality and

(A) in a borough or unified municipality, a service area or the entire area outside cities;

(B) in a city, a differential tax zone;

(4) "utilities" means electricty, water, sewer, gas heat, or telephone services, and refuse and garbage collection services.

Article 2. STATE AID FOR MISCELLANEOUS MUNICIPAL PURPOSES

(CHAPTER 89. STATE AID FOR MISCELLANEOUS MUNICIPAL PURPOSES.)

Sec. 29.62.110. (Sec. 29.89.010.) REVENUE SHARING PAYABLE. In addition to the equalization entitlements paid under AS 29.62 (AS 29.88), during each fiscal year the department shall pay aid

(1) to a municipality or other eligible recipient which has the power to provide the services described in AS 29.62.030 - AS 29.62.070 (AS 29.88.020 - AS 29.88.040) and exercises the power in the manner required by this chapter;

(2) to a Native village government under AS 29.62.150 (AS 29.89.050).

Sec. 29.62.120. (Sec. 29.89.020.) STATE AID TO MUNICIPALITES FOR ROADS. (a) The department shall pay to a municipality which has power to

provide for road maintenance and exercises that power, $2,500 a mile for each mile of road, street or highway maintained by the local government, excluding (1) the official state highway system, (2) roads, streets or highways not dedicated to public use, (3) roads, streets or highways maintained under the local service road program (AS 19.30.111 - 19.30.251), and (4) alleyways, in accordance with regulations adopted by the Department of Transportation and Public Facilities. A payment may not be made under this subsection for maintenance of a road which is not used by automotive equipment.

(b) A frozen waterway and a connection from an inhabited area to a waterway which may be safely used for public transportation by automotive equipment and is so used during a portion of a year is eligible for a payment of $1,500 per mile if the waterway and connection are maintained during the period of use by a municipality or combination of municipalities. The department, after consulation with the Department of Transportation and Public Facilities, shall determine which waterways and connections qualify and, where the waterways or connections lie outside the corporate limits of a municipality, which municipalities shall receive the payments under this subsection, unless the municipalities involved have agreed in writing to a particular distribution.

Sec. 29.62.130. (Sec. 29.89.030.) STATE AID TO MUNICIPALITIES AND OTHER ELIGIBLE RECIPIENTS FOR HEALTH FACILITIES AND HOSPITALS. (a) The department shall pay

(1) to a municipality which has the power to provide hospital facilities and services and which exercises that power, $1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the hospital, or $75,000 a hospital for those hospitals with 10 or more beds, or $25,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; money

received under this paragraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the municipality determines;

(2) on the basis set out in (1) of this subsection to a municipality for a nonprofit hospital not operated by a municipality if the municipality first certifies to the department that the nonprofit hospital is in compliance with all standards for hospitals which have been adopted by the municipality; money may not be paid on behalf of a nonprofit hospital without this certification; payments to the municipality shall be transferred to the nonprofit hospital in accordance with the basis by which the payment was generated by the hospital, and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

(3) to a municipality in which a health facility is operated, $1,000 per bed for each bed actually used for patient care, limited to the number of beds provided for in the construction design of the health facility, or $4,000 per health facility as the municipality determines.

(b) A hospital may not receive payment under both (a)(1) and (a)(2) of this section.

(c) Money received by a municipality under (a)(3) of this section shall be used for expenses of health services or operation and maintenance of health facilities as the municipality determines.

(d) Before money may be distributed under this section, the commissioner of health and social services shall certify to the commissioner of community and regional affairs that any accumulation of assets by nonprofit corporations or other recipients under this section is dedicated irrevocably to a public purpose.

Sec. 29.62.140. (Sec. 29.89.040.) STATE AID TO VOLUNTEER FIRE DEPARTMENTS IN THE UNORGANIZED BOROUGH. (a) The department shall pay to a volunteer fire department registered with the state fire marshal and serving an area not in an organized borough or city a sum for protection purposes equal to $10 per capita for the population served by the department, as determined by the state fire marshal.

(b) A grant shall be made under (a) of this section to facilitate the organization of a volunteer fire department in an area not in an organized borough or city, upon application of the proposed fire protection group to the state fire marshal and upon approval of applications according to standards of organization and service prescribed by regulations adopted by the state fire marshal.

Sec. 29.62.150. (Sec. 29.89.050.) STATE AID TO NATIVE VILLAGE GOVERNMENTS. The state shall pay $25,000 to a Native village government for a village which is not incorporated as a city under this title. In this section, "Native village government" means

(1) a local governing body organized by authority of the Act of Congress of June 18, 1934 (25 U.S.C. sec. 476); or

(2) a traditional village council or, if there is no traditional village council, the paramount chief or other governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act (43 U.S.C. sec 1601 - 1628).

Sec. 29.62.160. (Sec. 29.89.060.) POPULATION DETERMINATION. For purposes of this chapter, population shall be determined by the latest figures of the United States Bureau of the Census or other reliable population data, including but not limited to public school enrollment figures, public utility connection, registered voters or certified employment payrolls.

Sec. 29.62.170. (Sec. 29.89.070.) AREA COST-OF-LIVING DIFFERENTIAL. (a) Payments to a municipality or other eligible recipient under AS 29.62.120 - 29.62.130 (AS 29.89.020 - 29.89.030) shall reflect area cost-of-living differentials. Payments shall be based upon the sum of per capita, per mile and per bed or facility grants due each municipality or other recipient multiplied by the appropriate area cost-of-living differential. The area cost-of-living differential for each recipient shall be determined annually by election district under the provisions of AS 39.27.030. Application of the area cost-of-living differential may not result in distribution of an amount less than the amount of the payment determined without reference to application of this section.

(b) The election districts used to establish area cost-of-living differentials under (a) of this section are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965.

Sec. 29.62.180. (Sec. 29.89.080.) MISCELLANEOUS SERVICES ACCOUNT. The miscellaneous services account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.95.010. If amounts in the account are insufficient to pay each municipality's or other recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible municipalities and other recipients.

Sec. 29.62.190. (Sec. 29.89.090.) REGULATIONS. The department shall adopt regulations necessary to carry out the purposes of this chapter. The regulations shall include minimum standards required to qualify a municipality or other recipient for payments for each service. The department may require a municipality or other recipient to submit a performance report adequate to demonstrate to the department that a service

for which payment is requested under this chapter was performed by the municipality or other recipient and meets minimum standards of service prescribed by regulation.

Sec. 29.62.200. (Sec. 29.89.100.) DEFINITIONS. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "health facility"

(A) means a facility which is licensed, when required, by the state under AS 18.20.010-18.20.130 and which is owned or operated or both by a municipality or by a nonprofit corporation or other nonprofit sponsor;

(B) includes a public health center, maternity home, community mental health center, facility for the mentally or physically handicapped, nursing home or convalescent center;

(C) excludes a facility operated or wholly supported by the state or the federal government;

(3) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general hospital; the term excludes a facility operated or wholly supported by the state or the federal government.

Article 3. STATE AID FOR HOSPITAL CONSTRUCTION

(CHAPTER 90. STATE AID FOR HOSPITAL CONSTRUCTION)

Sec. 29.62.230. (Sec. 29.90.010.) STATE AID FOR HOSPITAL CONSTRUCTION. If construction of a hospital began after January 1, 1968, and state matching aid for construction approved for payment to the municipality or other hospital sponsor constitutes less than 25 percent of the total project cost, the department shall pay to the municipality or other hospital sponsor each fiscal year $2,500 a bed for the maximum number of beds provided for in the construction design of the facility or five percent of

the total project cost, whichever is greater. State aid provided for in this section shall continue until the municipality or other hospital sponsor has received an amount which, combined with state matching money for construction of the hospital, equals 25 percent of the total project cost. Money received for construction may not be used for any other purpose.

Sec. 29.62.240. (Sec. 29.90.020.) HOSPITAL CONSTRUCTION ASSISTANCE ACCOUNT. The hospital construction assistance account is established. Money to carry out the provisions of this chapter shall be allocated by the department to the account in accordance with AS 29.62.280 (AS 29.95.010). If amounts in the account are insufficient to pay each recipient's share authorized under this chapter, the amounts which are available shall be distributed pro rata among eligible recipients.

Sec. 29.62.250. (Sec. 29.90.030.) DEFINITIONS. In this chapter

(1) "department" means the Department of Community and Regional Affairs;

(2) "hospital" means a licensed hospital determined by the Department of Health and Social Services to be a general hospital; the term excludes a facility operated or wholly supported by the state or the federal government;

(3) "total project cost" means

(A) costs directly related to the project; and

(B) the total of all costs of financing and carrying out the project, including but not limited to,

(i) the costs of all necessary studies, surveys, plans and specifications, architectural, engineering or other special services, acquisition of real property, site preparation and development, purchase, construction, reconstruction and improvement of real property, and the acquisition of machinery and equipment as may be necessary in connection with the project;

(ii) an allocable portion of the administrative and operating expenses of the municipality or other hospital sponsor;

(iii) the cost of financing the project, including interest on bonds issued to finance the project; and

(iv) the cost of other items, including any indemnity and surety bonds and premiums on insurance, legal fees, fees and expenses of trustees, depositaries, financial advisors, and paying agents for the bonds issued as the issuer considers necessary.

Article 4. ADMINISTRATION OF MUNICIPAL FINANCIAL PROGRAMS

(CHAPTER 95. ADMINISTRATION OF MUNICIPAL FINANCIAL ASSISTANCE PROGRAMS)

Sec. 29.62.280. (Sec. 29.95.010.) ALLOCATION AND DISTRIBUTION. (a) Each year, the Department of Community and Regional Affairs shall allocate money appropriated to the accounts established in AS 29.62 (AS 29.88, AS 29.89, and AS 29.90) in the amounts determined by the legislature.

(b) Money in the miscellaneous services account established in AS 29.62.180 (AS 29.89.080) which exceeds the amount required to fully fund distributions authorized by AS 29.62 (AS 29.89) shall be reallocated to the tax equalization account established in AS 29.62.060 (AS 29.88.035) and distributed according to the provisions of AS 29.62 (AS 29.88).

(c) Money in the hospital construction assistance account established in AS 29.62.240 (AS 29.89.020) which exceeds the amount required to fully fund distributions authorized by AS 29.62 (AS 29.90) shall be reallocated to the tax equalization account established in AS 29.62.060 (AS 29.88.035) and distributed according to the provisions of AS 29.62 (AS 29.88).

Sec. 29.62.290. (Sec. 29.95.020.) QUALIFICATION FOR MINIMUM PAYMENT. (a) A municipality qualifying for an entitlement under AS 29.62 (AS 29.88

or AS 29.89) shall receive a minimum payment of $25,000 plus an area cost-of-living differential for each fiscal year if:

(1) the municipality has conducted a regular election under AS 29.30.010 - 29.30.060 (AS 29.28.010 - 29.28.050) during the fiscal year preceding the year for which payment of an entitlement is authorized by AS 29.62 (AS 29.88 or AS 29.89) and has reported the results of the election to the commissioner of the Department of Community and Regional Affairs;

(2) regular council meetings are held in the municipality in accordance with the requirements of AS 29.24.290 (AS 29.23.210) during the fiscal year preceding the year for which payment of an entitlement is authorized by AS 29.62 (AS 29.88 or AS 29.89) and a record of the proceedings is maintained;

(3) a municipal budget has been adopted for the fiscal year during which payment of an entitlement is authorized by AS 29.62 (AS 29.88 or AS 29.89) and an audit or financial statement for the preceding fiscal year has been prepared and furnished to the Department of Community and Regional Affairs in accordance with AS 29.24.700(a) [AS 29.23.560(a)]; and

(4) local ordinances adopted by the governing body of the municipality have been codified in accordance with AS 29.27.060 (AS 29.48.180).

(b) The area cost-of-living differential payable to each municipality under this section shall be determined annually by election district under the provisions of AS 39.27.030. Except as provided in AS 29.62.300 (AS 29.95.030), application or the area cost-of-living differential may not result in a payment which is less than the minimum payment determined under (a) of this section. For purposes of this subsection, the election districts used are those designated by the proclamation of reapportionment and redistricting of December 7, 1961, and retained for the house of representatives by proclamation of the governor September 3, 1965.

(c) The Department of Community and Regional Affairs shall pay to each municipality eligible to receive a minimum payment under this section an amount equal to the difference between the minimum payment determined under (a) and (b) of this section and the sum of the amounts payable for the same fiscal year under AS 29.62 (AS 29.88 and AS 29.89).

(d) A payment under this section may be prorated and reduced under AS 29.62.300 (AS 29.95.030).

(e) Payments under this section shall be made from the money allocated to the tax equalization account established in AS 29.62.060 (AS 29.88.035).

Sec. 29.62.300. (Sec. 29.95.030.) PRORATION OF PAYMENTS. (a) Payments under AS 29.62.290 (AS 29.95.020) and AS 29.62. art.4.,(AS 29.88) shall equal the amount allocated to the tax equalization account AS 29.62.060 (AS 29.88.035), adjusted in accordance with AS 29.62.80 (AS 29.95.010).

(b) Adjustments of payments shall be determined by prorating amounts payable under AS 29.62.290 (AS 29.95.020) and amounts payable under article 1 of this chapter (AS 29.88) by a factor which, when applied, reduces all payments in equal proportion so that payment under AS 29.95.020 and payments under AS 29.88 equal the amount allocated to the tax equalization account established in AS 29.88.035.

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## CHAPTER 65. GENERAL GRANT LAND

(CHAPTER 18., ARTICLE 3A., GENERAL GRANT LAND)

Sec. 29.65.010. (Sec. 29.18.201.) DETERMINATION OF ENTITLEMENT OF BOROUGHS AND UNIFIED MUNICIPALITIES. The general grant land entitlement of each of the municipalities in this section is the amount set out opposite each:

(1) Municipality of Anchorage - 44,893 acres;

(2) City and Borough of Juneau - 19,584 acres;

(3) City and Borough of Sitka 10,500 acres;

(4) Bristol Bay Borough - 2,898 acres;

(5) Fairbanks North Star Borough - 112,000 acres;

(6) Haines Borough - 2,800 acres;

(7) Kenai Peninsula Borough - 155,780 acres;

(8) Ketchikan Gateway Borough 11,593 acres;

(9) Kodiak Island Borough - 56,500 acres;

(10) Matanuska-Susitna Borough - 355, 210 acres;

(11) North Slope Borough - 89,850 acres.

Sec. 29.65.020. (Sec. 29.18.202.) DETERMINATION OF ENTITLEMENT FOR CITIES. The general grant land entitlement of a city formerly eligible to receive general grant land under the provisions of secs. 190 and 200 of this chapter, as repealed by this act, is 10 percent of the maximum total acreage of vacant, unappropriated, unreserved land within the boundaries of each city at any time between the initial date of eligibility under former secs. 190 and 200 of this chapter and July 1, 1978. Within six months of July 1, 1978, the director shall determine the entitlement for each city eligible to receive general grant land under this section and certify that entitlement to the city.

Sec. 29.65.030. (Sec. 29.18.203.) DETERMINATION OF ENTITLEMENT FOR NEWLY INCORPORATED MUNICIPALITIES. (a) The general grant land entitlement

of a municipality incorporated after July 1, 1978 is 10 percent of the total acreage of vacant, unappropriated, unreserved land within the boundaries of the municipality on the date of incorporation of that municipality.

(b) Within six months of the date of incorporation of a municipality which is incorporated after July 1, 1978, the director shall determine the entitlement of each municipality eligible to receive general grant land under (a) of this section and certify the entitlement to the municipality.

Sec. 29.65.040. (Sec. 29.18.204.) STATUS OF ENTITLEMENTS. (a) After July 1, 1978, general grant land entitlements provided in AS 29.18.201 and 29.18.202 are vested property rights which must be fulfilled as provided in AS 29.18.205 or 29.18.208.

(b) General grant land entitlements provided by AS 29.18.203 are property rights which vest on the date of incorporation of the municipality. The entitlement must be fulfilled as provided in AS 29.18.205.

(c) Land may be selected by a municipality to satisfy a general grant land entitlement under AS 29.18.201 and 29.18.202 at any time before October 1, 1980.

(d) Land may be selected by a municipality to satisfy a general grant land entitlement under AS 29.18.203 at any time within one year after the director certifies the entitlement to the municipality.

(e) The time limitations imposed by (c) and (d) of this section for exercising a vested general grant land entitlement do not apply to

(1) the portion of an entitlement which cannot be satisfied by that date because of a shortage of land suitable for residential, commercial and industrial purposes which is vacant, unappropriated, unreserved land;

(2) payments for land deficiency under AS 29.18.208;

(3) the portion of an entitlement which cannot be satisfied because the land selected by a municipality has been selected by a party entitled to select land owned by the United States or the state; or

(4) the portion of an entitlement which cannot be satisfied because the land nominated for selection by the municipality is not tentatively approved for patent to the state.

Sec. 29.65.050. (Sec. 29.18.205.) FULFILLMENT OF LAND ENTITLEMENTS (a) The acreage of each municipality's land selections under former secs. 190 and 200 of this chapter for which patent has been issued before July 1, 1978 shall be credited toward fulfillment of the entitlement of that municipality.

(b) All approved selections under former secs. 190 and 200 of this chapter for which patent has not been issued to a municipality on July 1, 1978 shall be reviewed by the director within nine months of July 1, 1978. Any approved selection of land which was vacant, unappropriated or unreserved on the date of selection is valid as of the date of the approval under former secs. 190 and 200 of this chapter, and a patent shall be issued to the municipality within three months after approval by the director of a plat of survey. The acreage shall be credited toward fulfillment of the municipality's entitlement. No municipality is entitled to receive patent under this chapter to more than its entitlement determined under secs. 201 - 203 of this chapter. Any prior approval by the director of municipal selections for land which was not vacant, unappropriated or unreserved on the date of selection shall be rescinded, and patent may not be issued except when disposal to a third party by sale or lease has occurred. Transfers of land to municipalities under this chapter are subject to AS 38.05.321. Classification actions as reflected upon the land status records of the Department of Natural Resources are determinative of land classification status for purposes of this chapter.

(c) Repealed by sec. 45 ch 85 SLA 1979.

(d) Repealed by sec. 45 ch 85 SLA 1979.

(e) Repealed by sec. 45 ch 85 SLA 1979.

(f) The director shall approve each selection for patent within nine months of its selection by a municipality, and a patent shall be issued to the municipality for land selected in satisfaction of a general grant land entitlement vested under AS 29.18.201 - 29.18.203 within three months after approval by the director of a plat of survey.

(g) Repealed by sec. 45 ch 85 SLA 1979.

(h) Repealed by sec. 45 ch 85 SLA 1979.

(i) Repealed by sec. 45 ch 85 SLA 1979.

Sec. 29.65.060. (Sec. 29.18.206.) SCHOOL, UNIVERSITY AND MENTAL HEALTH LAND. (a) If an entitlement determined in sec. 201 or 202 of this chapter results in a per capita entitlement for the municipality of less than one and one-half acre, the municipality may select vacant school, university or mental health land within the municipality in partial fulfillment of its land entitlement under this chapter. School, university or mental health land may be selected notwithstanding the fact that these lands are not unappropriated and unreserved within the meaning of this chapter and secs. 190 and 200 of this chapter, repealed by this act, but each selection of school, university or mental health land by a municipality must be vacant, unappropriated, or unreserved land as defined in this chapter, except that it need not be general grant land.

(b) The acreage of school, university or mental health land, if any, within a municipality may not be included in the determination of entitlement under sec. 201 or 202 of this chapter.

(c) Land conveyed under this section will be credited against a municipality's remaining land entitlement under this chapter.

(d) Within six months after approval of a municipal selection of school, university, or mental health land, the director shall identify state general grant land of approximately equal value to the land requested by the municipality, and shall propose the replacement land for the concurrence of the appropriate board. If a proposal by the director is rejected by the board, the director shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence, and shall propose the replacement land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired by the Territory and State of Alaska.

(e) The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to the designation of other general grant land as school, university or mental health land in replacement of land selected under this section. The provisions of AS 38.50 and AS 38.05.032 do not apply to such designations under this section. The provisions of AS 38.05.030(a), 38.05.030(e), and 38.05.035(a)(13) which require the approval of the respective trust board before disposal of lands by the director do not apply to selections of school, university or mental health land by a municipality under this section.

(f) For purposes of determining the per capita entitlement under (a) of this section, the population of a municipality shall be the population determined by the commissioner of the Department of Community and Regional Affairs under AS 43.18.010 for the program year beginning July 1, 1978 for a municipality whose entitlement is determined under sec. 201 or 202 of this chapter.

Sec. 29.65.070. (Sec. 29.18.207.) SELECTION AND CONVEYANCE PROCEDURE. (a) Repealed by sec. 45 ch 85 SLA 1979.

(b) Repealed by sec. 45 ch 85 SLA 1979.

(c) If land selected by a municipality is unsurveyed at the time of approval, the director shall survey, or may approve the municipality's survey of, the exterior boundaries of an approved selection without interior subdivision, and shall issue patent in terms of the exterior boundary survey. The cost of the survey shall be borne by the municipality. If land selected by a municipality has been surveyed at the time of its selection, the boundaries shall conform to the public land subdivisions established by the approved survey.

(d) The director may approve municipal selections of land which have been tentatively approved or patented to the state by the federal government, but he may not issue patent to a municipality until the land has first been patented to the state. After approval of a selection by the director, but before patent to a municipality, the municipality may execute conditional leases and make conditional sales only with the consent of the director. Conditional sales and conditional leases made before July 1, 1978 do not require the consent of the director.

(e) Nothing in this chapter affects a valid existing claim, location or entry under the laws of the state or the United States whether for homestead, mineral, right-of-way or other purposes. Nothing in this chapter affects the rights of an owner, claimant, locater or entryman to the full use and enjoyment of the land so occupied.

Sec. 29.65.080. (Sec. 29.18.208.) PAYMENT FOR LAND DEFICIENCY. (a) There is established within the general fund the Alaska municipal land account for the following purposes:

(1) providing payment to the boroughs and unified municipalities designated in AS 29.18.201 for a deficiency of land physically suitable for residential, commercial or industrial purposes; or

(2) providing payment to the boroughs and unified municipalities designated in sec. 201 of this chapter for certain general grant lands selected by the state and conveyed to a Native corporation under the provisions of the Alaska Native Claims Settlement Act.

(b) A municipality shall receive payment for its land deficiency from the account established in (a) of this section. A municipality is eligible to receive payment for land deficiency if, after July 1, 1980, the amount of land selected by a municipality which is physically suitable for residential, commercial or industrial purposes amounts to less than one-third acre per capita. Any entitlement under AS 29.18.201 which is less than one-third acre per capita will, for the purposes of this subsection, be considered a land deficiency. An unselected remaining entitlement will, for the purpose of deficiency payment under this subsection, be considered as land physically suitable for residential, commercial or industrial purposes. A municipality eligible under this subsection is entitled to receive a payment for land deficiency equal to $1,000 per acre for a number of acres equal to the difference between one-third of the population of the municipality less the number of acres physically suitable for residential, commercial or industrial purposes which has been selected by the municipality. For the purpose of this subsection, the population of the municipality shall be the population determined in accordance with AS 29.18.206(f). No payment may be made to a municipality under this subsection in excess of $9,000,000.

(c) If a municipality selected vacant, unappropriated, unreserved land on or before December 18, 1971, to which the state had received tentative approval or patent, and such land was also selected by a Native corporation organized under the Alaska Native Claims Settlement Act (P.L. 92-203), and title to that land is ultimately vested in that Native corporation, the municipality may, at its option, request payment for land

deficiency from the account established in (a) of this section. The acceptance of payment under this subsection by a municipality constitutes a relinquishment of any other right, title or claim to the land by that municipality. The total payment to a municipality under this subsection may not exceed $1,000 per acre to a maximum of 8,000 acres.

(d) The governor shall annually submit to the legislature a request for an appropriation to the account for the municipalities which have elected to receive payments under (b) or (c) of this section. The request for appropriation shall distinguish between amounts necessary to make payments for land deficiency under (b) of this section and those required to make payments for land deficiency under (c) of this section.

(e) For purposes of fulfilling entitlements under this section, the legislature is authorized to appropriate

(1) not more than $4,000,000 per fiscal year, and not more than $12,000,000 in total, for the purpose of paying entitlements under (b) of this section;

(2) not more than $1,000,000 per fiscal year, and not more than $8,000,000 in total, for the purpose of paying entitlements under (c) of this section.

(f) If an annual appropriation is not sufficient to meet the amount due to all municipalities which have elected to accept payment for land deficiency under (b) or (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under (c) of this section, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An appropriation made under this section is in addition to other grants and entitlements authorized to eligible municipalities.

(g) Payments authorized by this section may not be made to a municipality eligible for an entitlement under sec. 202 or 203 of this chapter.

(h) Payments made under this section shall be used by those local governments which levy property taxes to reduce those levies in proportion to the amount of state payments received by a local government for a given fiscal year. The governing body of each local government shall furnish a notice with the tax statement describing the effect on property tax levies of payments received under this section.

Sec. 29.65.090. (Sec. 29.18.209.) AUTHORIZATION FOR LAND EXCHANGES. The director, with the concurrence of the commissioner, and any municipality are authorized to exchange land or interests in land when it is in the public interest. Land or interests in land exchanged under this section must be of approximately equal value, including the non-monetary value of public benefits. Exchange procedures shall comply with applicable law and municipal ordinances. The notice and review provisions of AS 38.05.305 and 38.05.345 are applicable to exchanges of land under this section. The provisions of AS 38.50 do not apply to exchanges of land under this section.

Sec. 29.65.100. (Sec. 29.18.210.) PUBLIC PURPOSE AND EXPANSION NEEDS. (a) Consistent with the best interests of the state, if a municipality does not contain and cannot reasonably acquire sufficient nonfederal land within its boundaries to meet its legitimate needs for public or private settlement or development, it shall be the policy of the state to select federal land reasonably necessary to meet the needs of the municipality and to make the land selected available to the municipality under AS 38.05.315 or (b) of this section.

(b) Where state land is the most logical location for demonstrated municipal expansion for nonpublic settlement and development purposes, and when an exchange of land under sec. 209 of this chapter is not possible or

is not in the public interest, it is the policy of the state to sell or lease the land at public auction. The state may contract with a municipality to act as its agent in an auction of state land under applicable statutes. When a municipality acts as the agent of the state in an auction, the municipality may retain from the proceeds of the auction the expenses which the director determines to be necessary and reasonable.

(c) Nothing in this chapter limits or impairs the authority of the director to transfer land to municipalities, without limit or consideration, for public purposes in accordance with AS 38.05.315. If there is a remaining entitlement of the municipality, land transferred under AS 38.05.315 shall be credited toward fulfillment of the entitlement.

Sec. 29.65.110. (Sec. 29.18.211.) ELECTION OF BENEFITS. (a) A municipality which on July 1, 1978 is engaged in litigation, or which becomes engaged in litigation, regarding a claim to state land under former secs. 190 and 200 of this chapter shall elect either to obtain the benefits provided in secs. 201 -213 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under secs. 201 213 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in sec. 201 of this chapter, the municipality shall file its motion for dismissal within 60 days of July 1, 1978. If the claim involves a city eligible to receive an entitlement under sec. 202 of this chapter, the city shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the director under sec. 202 of this chapter. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under secs. 201 - 213 of this chapter.

(b) A municipality which was eligible to file land selections under former secs. 190 and 200 of this chapter and which does not enter

into litigation over a claim to rights under those sections before the expiration of the time period within which it could make an election under (a) of this section shall be considered to have elected to receive benefits under secs. 201 - 213 of this chapter and to have waived any claim which might have been raised under former secs. 190 and 200 of this chapter.

(c) The provisions of secs. 201 - 213 of this chapter do not affect the rights, if any, of any party to litigation regarding the former AS 29.18.190 29.18.200 or 29.18.420, which litigation is maintained by a municipality that has elected not to obtain the benefits provided by secs. 201 - 213 of this chapter.

Sec. 29.65.120. (Sec. 29.18.212.) ADMINISTRATION. The commissioner may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) necessary to carry out the purposes of secs. 201 - 213 of this chapter.

Sec. 29.65.130. (Sec. 29.18.213.) DEFINITIONS. In secs. 201 - 213 of this chapter, unless the context otherwise requires,

(1) Repealed by sec. 45 ch 85 SLA 1979.

(2) "approved selection" means a municipal land selection which has been approved in writing by the director for transfer by patent to a municipality;

(3) "director" means the director of the division of lands, Department of Natural Resources, or his designee;

(4) "general grant land" means land patented or tentatively approved to the state from the United States under sec. 6(a) or (b) of the Alaska Statehood Act;

(5) "mental health land" means land granted under Title II, sec. 202 of P.L. 84-830, as amended before or after July 1, 1978;

(6) "municipal land selection" means a request by a municipality, filed in writing with the director under authority of secs.

190 and 200 of this chapter repealed by this act or under secs. 201 - 213 of this chapter for vacant, unappropriated, unreserved general grant land within its municipal boundaries in partial fulfillment of its municipal entitlement;

(7) "municipality" means a home rule or general law city or organized borough of any class, and includes unified municipalities established under AS 29.68.240 - 29.68.440;

(8) "patent" means a document, issued by the director to a municipality for a previously approved selection, which conveys and quitclaims all the right, title and interest of the state without reservation or condition except as may be required by law;

(9) "remaining entitlement" means the general grant land entitlement determined in accordance with secs. 201 - 203 of this chapter, reduced by the total acreage of approved selections, including both patented and unpatented parcels;

(10) "school land" means those rectangular sections 16 and 36 within each township surveyed on or before January 3, 1959, and confirmed and transferred to the State of Alaska upon its admission under sec. 6(k), Alaska Statehood Act, 72 Stat. 339, and any other land designated solely for school revenues;

(11) "university land" means all sections 33 reserved to the university under 38 Stat. 1214, as amended (48 U.S.C. 353) and all land granted to or reserved for the benefit of the university;

(12) "vacant, unappropriated, unreserved land" means general grant land as defined in (4) of this section, excluding minerals as required by sec. 6(i) of the Alaska Statehood Act, which

(A) has not been set aside by statute for one or more particular uses or purposes;

(B) has not been approved for patent to a municipality under secs. 201-213 of this chapter or former secs. 190 and 200 of this chapter repealed by this act; or

(C) is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry purposes,

NEW LANGUAGE

Sec. 29.65.050. FULFILLMENT OF LAND ENTITLEMENTS.

(j) Notwithstanding AS 29.65.010 - 29.65.130, a municipality which is unable to satisfy its entitlement due to a shortage of vacant, unappropriated, unreserved general grant land suitable for residential, commercial or industrial purposes may fulfill its remaining entitlement by selection of other state land which is vacant, unappropriated and unreserved.

NO OBJECTION

EXPLANATION: This added subsection addresses a problem which has come up when a municipality is formed in an area with little vacant state land nearby. This allows a municipality the option of selecting vacant state land which is not general grant land if general grant land is unavailable.

SCOMM

#23:46

## CHAPTER 68. MUNICIPAL PROGRAMS

### ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT

Sec. 29.68.010. (Sec. 29.23.395.) INTENT OF SECS. 397-401. It is the intent of Secs. 397-401 of this chapter to provide an opportunity for the young people of Alaska to become involved in the institutions and processes of local government comparable to that embodied in legislation under consideration at the First Session of the Seventh Legislature providing for participation in the executive branch of state government.

Sec. 29.68.020. (Sec. 29.23.397.) COMMISSION. (a) The governing body of a municipality may by ordinance establish a commission on the involvement of young people in local government.

(b) The commission may consist of not more than nine members, drawn from fields of public affairs, education, the sciences, the professions, other fields of private endeavor, from the state or local service, and three additional members from the 17-22 age group, and shall include women and representatives of minority groups. The members shall be appointed by the governing body in the manner prescribed by ordinance without regard to political affiliation and shall serve at the pleasure of that body. One member shall be designated by the governing body as chairman of the commission.

(c) Members of the commission serve without compensation but are entitled to per diem and travel expenses as may be authorized by ordinance.

(d) The commission shall establish procedures to enable it to recommend annually to the governing body a group of promising young men and women from whom the governing body may select interns and youth voting members of municipal boards and commissions. The commission, in establishing these procedures, shall enlist the aid of municipal residents who are actively interested in working with young people. Following adoption of the procedures, the commission shall accept applications from

persons and nominations for consideration, and shall interview all applicants or nominees.

(e) Recommendations of the commission shall be limited to young people who

(1) have a capacity, desire, interest, ability and potential for leadership and service to the community and to the state;

(2) will have attained the age of 17 but not the age of 22 before the beginning of their service.

(f) Annually, the commission shall evaluate the program and shall submit a written report to the governing body.

Sec. 29.68.030. (Sec. 29.23.399.) INTERNS. An intern may be appointed to serve on the staff of the governing body or the municipal administration for a period of time prescribed by the governing body, with a maximum of one year. He may be assigned responsibilities in any office, department or agency of the municipality. Service will begin at a time prescribed by the governing body. Interns shall be appointed without regard to political affiliation. Salaries shall be individually established by the governing body on the basis of prior experience and the responsibilities of the position to which the intern is assigned.

ARTICLE 2. HISTORICAL DISTRICTS

Sec. 29.68.060. (Sec. 29.48.108.) CREATION OF HISTORICAL DISTRICT COMMISSIONS. The governing body of a general law or home rule municipality may establish a historical district commission or designate the planning and zoning commission or itself to serve as the historical district commission.

Sec. 29.68.070. (Sec. 29.48.110.) ESTABLISHMENT OF HISTORICAL DISTRICTS. (a) In addition to existing municipal authority providing for the preservation, protection, and maintenance of historic sites, the local historical district commission established under Sec. 108 of this chapter, in consultation with the Historic Sites Advisory Committee within the

Department of Natural Resources, may establish a historical district within the boundaries of the municipality.

(b) A historical district shall be a reasonably compact area of historical significance in which two or more structures important in state or national history, and related by physical proximity or historical association, are located. For purposes of this section, "structures important in state or national history" means properties recommended by historical district commissions, which are listed in the National Register of Historic Places or are characteristic of the Russian-American period before October 18, 1867, the early territorial period before 1930, or early Native heritage, reflecting the indigenous characteristics of Native culture in Alaska. Upon recommendation of the governing body of a general law or home rule municipality and the Historic Sites Advisory Committee, the Department of Natural Resources may by regulation formulate additional criteria for the establishment of historical districts not inconsistent with this subsection.

(c) The establishment of a historical district under this section shall be consistent with any applicable comprehensive plan for the municipality.

SCOMM

#23:47

## CHAPTER 71. GENERAL PROVISIONS

Sec. 29.71.010. (Sec. 29.73.030.) ADVERSE POSSESSION. A home rule or general law municipality may not be divested of title to real property by adverse possession.

Sec. 29.71.020. (Sec. 29.73.040.) TAXATION OF MUNICIPALITIES. No state law or regulation may assess or tax, or be construed to assess or tax, home rule or general law cities or boroughs of the state, unless the law or regulation expressly provides that the cities or boroughs are to be assessed or taxed by the particular law or regulation.

Sec. 29.71.030. (Sec. 29.78.010.) DEFINITIONS. In this title, unless otherwise provided, or the context otherwise requires,

(1) "borough" means a general law first, second or third class organized borough;

(2) "city" means a general law first or second class city;

(3) "conditional use" means exception, special exception, special use, or special permit designated in the zoning ordinance;

(4) "consolidation" means dissolution of two or more municipalities and their incorporation as a new municipality;

(5) "majority" means a simple majority;

(6) "merger" means dissolution of a municipality and its absorption by another municipality;

(7) "municipal election" includes but is not limited to elections to choose city councilmen, borough assemblymen, school board members and utility board members;

(8) "municipality" means a general law municipal corporation and political subdivision, which is a first or second class borough or city, or a third class borough, incorporated under the laws of the state;

(9) "owner", "record owner", or "owner of record" means owner of record or purchaser of record;

(10) "personal property" means tangible property other than real property, such as merchandise and stock in trade, machinery and equipment, furniture and fixtures, motor vehicles and vehicles, boats and vessels and aircraft;

(11) "property" means real and personal property;

(12) "published" means appearing at least once in a newspaper of general circulation distributed within the municipality or, if there is no newspaper of general circulation distributed within the municipality, posting in three public places for at least five days;

(13) "real property" means land and improvements and all possessory rights and privileges appurtenant to the property, and includes personal property affixed to the land or improvements;

(14) "regular election" means the municipal election held on the first Tuesday of October annually, or on an election date or at an interval of years provided by ordinance;

(15) "street" includes streets, avenues, boulevards, roads, lanes, alleys, and other ways;

(16) "subdivision" means the division of a tract or parcel of land into two or more lots, sites, or other divisions for the purpose, whether immediate or future, of sale or building development, includes resubdivision, and, when appropriate to the context, relates to the process of subdividing or to the land or area subdivided;

(17) "voter" means a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution.

(18) "areawide power" means a power of an organized borough exercised throughout the borough;

(19) "nonareawide power" means a power of an organized borough exercised by the borough only in the area outside of cities.

SCOMM

#23:48

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

ok

Sec. 37.30.100. PROHIBITED BIDDING ON BONDS. Repeal.

EXPLANATION: It is felt that this section should be repealed because it unduly restricts the selling of bonds. It creates a hardship on the smaller communities who may have only one financial advisor available. The municipality is protected by SEC disclosure requirements and by the fact that a "person" can't buy bonds without permission of the municipality. Also (b) created a cloud on bonds, since there is always a possiblility that they are void if the wrong person provided marketing assistance.

Poll Notes

ALTERNATE 1.

AS 37.30.100 is repealed.

SEC. 29.58.317. PROHIBITED BIDDING ON BONDS. (a) No person who provides financial programming or marketing assistance to a political subdivision of the state, whether home rule or otherwise, in connection with the issuance or sale of general obligation bonds, revenue bonds or bond anticipation notes of the political subdivision may bid on the bonds or notes if offered at public sale, or negotiate for their purpose if sold at private sale.

(b) The sale of general obligation, revenue bonds or bond anticipation notes of a political subdivision to a person prohibited from bidding on, or negotiating for the sale of bonds or notes under (a) of this section is against public policy and the sale is void.

(c) In this section "person" means an individual, firm, agent, factor, intermediary, partnership, corporation, association, bond house, stockbroker or bond broker.

ALTERNATE 2.

AS 37.30.100 is repealed.

SCOMM

#23:49

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.36.170. SECOND CLASS BOROUGH POWERS OUTSIDE CITIES.

(8) tax, spend, and regulate for the purpose of promoting industrial development.

The rest of the section is the same.

EXPLANATION: This is added as a specific power which need not be assumed under AS 29.36.180. A first class borough may exercise this power under AS 29.36.160, the general grant of power to first class boroughs.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.36.270. SERVICE AREAS. (a) (First two sentences the same). Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the voters residing within the service area and voting on the question at a regular or special election, unless all owners of real property within the service area consent in writing to the exercise of the power.

No other changes to this section.

EXPLANATION: Change in (a) to avoid the necessity of an election if there is no opposition by property owners who will be affected by the service area.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.39.060. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may in whole or part, provide for planning, platting and land use regulation within their boundaries, as provided by AS 29.42.010-29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may in whole or part provide for planning, platting and land use regulation, as provided by AS 29.42.010-29.42.150 for boroughs.

EXPLANATION; Clarifies that a city may only plan for the area within its boundary. Adds the provision that second class cities may plan "in whole or part" as provided for boroughs, so that it is clear that they are not forced into an all or nothing situation.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

EXPLANATION: It is felt that these provisions are unnecessary and would be properly placed in the criminal code. (NOTE: These were in the criminal code as AS 11.60.250, 11.60.260, and 11.60.270 and moved to Title 29 effective January 1, 1980.)

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) ADD:

(7) property held by an Indian, Eskimo or Aleut or by a community of Indians, Eskimos or Aleuts for which title is subject to a restriction against alienation; or property held by the United States in trust for the benefit of an Indian, Eskimo or Aleut or a community of Indians, Eskimos or Aleuts; or other property defined in section 4 of the Alaska Statehood Act (72 Stat 339) or Article 12 section 12 of the Alaska Constitution.

The rest of this section is the same.

Sec. 29.48.090. EXEMPTION.

(d) An exemption from a special assessment shall be granted to property held by an Indian, Eskimo or Aleut or by a community of Indians, Eskimos or Aleuts for which title is subject to a restriction against alienation; or property held by the United States in trust for the benefit of an Indian, Eskimo or Aleut or a community of Indians, Eskimos or Aleuts; or other property defined in section 4 of the Alaska Statehood Act, (72 Stat 339) or Article 12 section 12 of the Alaska Constitution.

The rest of this section is the same.

EXPLANATION: Change proposed by Mike Walleri of Tanana Chiefs Corporation to avoid taxation of land which is not taxable under state and federal law.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed a fine of $1,000 or imprisonment for 90 days, or both. By ordinance mandatory nonsuspendable imprisonment not to exceed five days may be imposed for violation of an ordinance. However, the punishment authorized under this section may be imposed only of copies of the ordinance are made available for distribution to the public at cost.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

EXPLANATION: In (a) the fine and the term of imprisonment have been increased to match the penalty imposed under the criminal code for a class B misdemeanor. (d) and (c) have been added to provide municipalities with additional remedies for the violation of ordinances, matching recommended remedies for enforcement of land use regulations.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 37.30.100. PROHIBITED BIDDING ON BONDS. Repeal.

EXPLANATION: It is felt that this section should be repealed becuase it unduly restricts the selling of bonds. It creates a hardship on the smaller communities who may have only one financial advisor available. The municipality is protected by SEC disclosure requirements and by the fact that a "person" can't buy bonds without permission of the municipality. Also (b) created a cloud on bonds, since there is always a possiblility that they are void if the wrong person provided marketing assistance.

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a)

(7) property held by an Indian, Eskimo or Aleut or by a community of Indians, Eskimos or Aleuts for which title is subject to a restriction against alienation;or property held by the United States in trust for the benefit of an Indian, Eskim or Aleut or a community of Indians, Eskimos or Aleuts; or other property defined in section 4 of the Alaska Statehood Act, (72 Stat 339) or Article 12 Section 12 of the Alaska Constitution.

(The rest of this section is the same.)

Sec. 29.48.090. EXEMPTION.

(d) An exemption from a special assessment shall be granted to (M, type all of (7) above)

(The rest of this section is the same.)

EXPLANATION: Change proposed by Mike Walleri to avoid taxation of land which is not taxable under state and federal law.

Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal

Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

EXPLANATION: It is felt that these provisions are unnecessary and would be more properly placed in the criminal code. (Note: These were in the crimina code as AS 11.60.250, .260, .270 and moved to Title 29 effective January 1, 1980.)

Sec. 29.39.060. **PLANNING AND LAND USE REGULATION.** (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may in whole or part, provide for planning, platting and land use regulation within their boundaries, as provided by AS 29.42.010-29.42.245 for boroughs.

(b) Home rule andfirst class citie-s within thrid class boroughs shall, and second class cities within thrid class boroughs may in whole or part, provide for planning, platting and land use regulation, as provided by AS 29.42.010-29.42.150 for boroughs.

EXPLANATION: Clarifies that a city may only plan for the area within its boundary. Adds the provision that third class cities may plan "in whole or part" as provided for boroughs, so that it is clear that they are not forced into an all or nothing situation.

Sec. 29.36.270 SERVICE AREAS. (a) (First two sentences the same.) EXCEPT AS PROVIDED IN (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the voters residing within the service area and voting on the question at a regular or special election, unless all owners of real property within the service area consent in writing to the exercise of the power.

(No other changes in this section.)

EXPLANATION: Change in (a) to avoid the necessity of an election if there is no opposition by property owners who will be affected by the service area.

Sec. 29.36.170. SECOND CLASS BOROUGH POWERS OUTSIDE CITIES.

(8) tax, spend, and regulate for the purpose of promoting industrial development.

(The rest of the section is the same.)

EXPLANATION: This is added as a specific power which need not be assumed under AS 29.36.180. A first class borough may exercise this power under AS 29.36.160, the general grant of power to first class boroughs.

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed a fine of and mandatory imprisonment not to exceed five days
$1,000 or imprisonment for 90 days, or both,/ However, the punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost.

(b)

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed a fine of $1,000 or imprisonment for 90 days, or both. By ordinance, nonsuspendable mandatory imprisonment not to exceed five days may by imposed ~~by ordinance~~ for violation of an ordinance. However, the punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy.

~~(c)~~ (c) Every day upon which a violation of an ordinance continues shall constitute a separate violation.

EXPLANATION: In (a) the fine ~~has been increased and~~ the term of imprisonment have been increased to match the penalty imposed under the criminal code for a class B misdemeanor. (d) and (c) have been added to provide municipalities with addtional remedies for the violation of ordinances, matching recommended remedies for enforcement of land use regulations.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.39.060. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may in whole or part, provide for planning, platting and land use regulation within their boundaries, as provided by AS 29.42.010-29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may in whole or part provide for planning, platting and land use regulation, as provided by AS 29.42.010-29.42.150 for boroughs.

EXPLANATION; Clarifies that a city may only plan for the area within its boundary. Adds the provision that ~~third~~ 2nd class cities may plan "in whole or part" as provided for boroughs, so that it is clear that they are not forced into an all or nothing situation.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

51.250 From: John Manager

1. Sec. 29.58.295 should be left in without change.

51.300

2. Sec. 29.58.310 should be amended to read:

~~51.310~~

Sec. 29.58.310. INTEREST RATE. The interest rate payable on a bond or note shall be determined by the governing body ~~assembly or council~~ and is not subject to the usury rate limitations of A.S. 45.45.010. ~~[NO MUNICIPAL BOND OR NOTE MAY BEAR AN INTEREST RATE EXCEEDING THE CONTRACT USURY RATE OR INTEREST PROVIDED BY LAW.]~~

OK

51.320

3. Sec. 29.58.300 should be amended to read:

OK →

Sec. 29.58.300. ~~[PUBLIC]~~ SALE. Bonds and notes issued under this chapter may be sold by the municipality in the manner and at the price it determines at either public or private sale. ~~[THE MUNICIPALITY SHALL SELL ALL BONDS AT A PUBLIC OR PRIVATE SALE AS PROVIDED BY ORDINANCE; NO BONDS MAY BE SOLD AT LESS THAN PAR VALUE.]~~

29.51.050, 29.51.150

OK → Also repeal A.S. 29.58.060, 29.58.140 and ~~29.58.290~~. Not

4. A new Section A.S. ~~29.58.305~~ to read as follows:

51.325

Sec. 29.58.305. FORMS AND TERMS. The ~~assembly or council~~ governing body may by ordinance or resolution fix the date,

TO: Melissa Fouse

From: John Messenger

51.250

1. Sec. 29.58.205 should be left in without change.

29.51.050
29.51.150

Also repeal A.S. 29.58.060, 29.58.140 and ~~29.58.180~~. use

.050 .150

29.51.200
29.51.270

Repeal the following provisions--A.S. ~~29.58.220~~, 29.58.170.

29.51.270, 2951.200

5. A.S. 29.~~58.200~~ 51.240 is amended to read:

.240 OK

Sec. 29.58.200. REVENUE BONDS. (a) A municipality ~~of the State~~ may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenues of the public enterprise or corporation. [A MUNICIPALITY MAY ACQUIRE, CONSTRUCT, IMPROVE AND EQUIP CAPITAL IMPROVEMENTS TO BE OPERATED UPON A REVENUE-PRODUCING BASIS, AND BONDS FOR THESE PURPOSES ARE PAYABLE SOLELY FROM UNPLEDGED REVENUE OF THE PUBLIC FACILITIES FOR WHICH THE BONDS ARE ISSUED.]

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

[(c) A MUNICIPALITY MAY ALSO ISSUE REVENUE BONDS FOR ANY LAWFUL PURPOSE. THE BONDS ARE PAYABLE FROM ANY AMOUNTS PLEDGED BY THE MUNICIPALITY EXCEPT TAXES AND DO NOT CONSTITUTE GENERAL OBLIGATIONS OF THE MUNICIPALITY.]

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

**Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.**

EXPLANATION: The following provision is made inapplicable to the use of proceeds from revenue bonds:

Sec. 37.10.085. FINANCIAL AID TO CORPORATIONS BY STATE OR POLITICAL SUBDIVISION. Neither the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

It is felt by bond counsels that this section currently forbids a municipality to use proceeds of revenue bond sales for loans and other expenditures designed to encourage industrial development.

denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and ~~all~~ other ~~details of the~~ bonds or notes. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

Repeal the following provisions--A.S. ~~29.58.220~~, 29.58.170.

Sec. 5. A.S. ~~29.58.200~~ is amended to read:

Sec. 29.58.200. REVENUE BONDS. (a) A municipality ~~of the State~~ may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenues of the public enterprise or corporation. [A MUNICIPALITY MAY ACQUIRE, CONSTRUCT, IMPROVE AND EQUIP CAPITAL IMPROVEMENTS TO BE OPERATED UPON A REVENUE-PRODUCING BASIS, AND BONDS FOR THESE PURPOSES ARE PAYABLE SOLELY FROM UNPLEDGED REVENUE OF THE PUBLIC FACILITIES FOR WHICH THE BONDS ARE ISSUED.]

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

~~Sec. 29.51.370. PUBLIC SALE. Repeal.~~

use John's latest version

EXPLANATION: This section is repealed as redundant since other provisions deal with the sale of bonds.

Sec. 29.45.240.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g or other federal law, or a disaster declared by the governor under AS 26.23.010-110.

EXPLANATION: Makes provision for special treatment of property affected by a disaster applicable if the governor, as well as the president, declares a disaster.

OK

Sec. 29.45.250. TAX LEVY AND RATE. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of a general ordinance. The rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by ordinance or resolution.

(b) No change.

EXPLANATION: Allows rate of levy, date of equalization, date of delinquency to be fixed by ordinance as well as resolution.

Sec. 29.45.260. RATES OF PENALTY AND INTEREST. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 20 percent may be added to all delinquent taxes, and interest at the rate of 15 percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments penalty and interest on an unpaid installment accrues from the date the installment becomes due.

(b) No change.

(c) Repeal.

EXPLANATION: The penalty and interest rates are raised, so that people will not deliberately avoid paying taxes due to the high cost of borrowing from other sources. Penalty and interest on an unpaid installment accrues only from the date the installment is due. (c) is repealed as redundant. Since (a) provides for interest and penalty on all types of taxes, there is no need for special treatment of property taxes.

OK

Sec. 29.45.300. TAX LIABILITY. (a) No change.

(b) Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

EXPLANATION: The change makes it clear that a lien exists on personal as well as real property.

OK

Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice given by posting or publication. The seizure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty, interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. If the property is sold for more money than is needed to satisfy the tax, upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

EXPLANATION: Allows the return of excess money received over the amount needed for the tax when property is sold to satisfy a tax lien.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) No change. OK

(b) If the tax on property described in AS 29.45.080 or on a taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

EXPLANTION: The word "taxable" is substituted for "leasehold" so that any interest in tax exempt property which can be taxed can be enforced.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.45.400. REDEMPTION PERIOD. (a) No change.

(b) Repeal.

EXPLANATON: (b) is eliminated so that a person holding a lien on only part of a lot or parcel may no longer redeem just that part. This avoids the problem of splitting lots or parcels into what might be illegal subdivisions.

Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough releases the judgment obtained under AS 29.45.380. The clerk or his designee shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk or his designee shall collect the recording fee at the time of redemption and shall file the certificate with the record as part of the judgment roll.

EXPLANATION: Changed so that all claims of the borough are not released, i.e., improvement assessments. Redemption releases only the judgement obtained for delinquent taxes.

Sec. 29.45.440. EXPIRATION. (a) At least 30 days before the expiration of the redemption period the clerk or his designee shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration or the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately in expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgement of foreclosure has been taken and, if the assessed value of the property is more than $100,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) No change.

EXPLANATION: Based on recommendation of AAAO; raises assessed value of property which triggers duty of clerk to advise holders of security of judgement of foreclosure. Burden placed on lienholder to protect his interest.

Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) No change.

(b) Conveyance gives the borough or the city clear title except for prior recorded tax liens of the United States and the state.

(c) No change.

(d) No deed is invalid for irregularities, omissions or defects in the proceedings under this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person having an interest in the property is forever barred.

EXPLANATION: (b) changes to clear title except for tax liens. (d) changed to include the interests in property of persons other than the owner within the limitation period. This clears the title.

Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES.

(a) No change.

(b) No change.

(c) The clerk or his designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the last record owner of the property as his name appears on the assessment rolls of the municipality.

(d) No change.

EXPLANATION: Language of (a) inserted into last line of (c) for consistency. No substantive change.

OK

Sec. 29.45.570. SALES AND USE TAX. (a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) No change.

(c) No change.

(d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

EXPLANATION: (a) changed to make it clear that tax can be levied on sales and rents, not just one or the other. (d) interest rate raised from eight to 15 percent. (e) added to allow liens for the collection of sales and use taxes.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION (a) A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question at a regular or special election.

(b) no change.

EXPLANATION: Simplifies the section and eliminates the provision that propositions may be brought only once a year.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The assembly or council may assess against the property of a governmental unit and private real property benefited all or a portion of the cost of <u>acquiring, installing,</u> or constructing [OR IMPROVING] capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an <u>improvement</u> [ASSESSMENT] refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the assembly or council of the owners of one-half in value of the property to be benefited or

(2) the assembly or council.

EXPLANATION: This is primarily a technical revision although the language is broadened to make it clear that all costs of capital improvements may be paid for by assessments.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.020. PROCEDURE. (a) The assembly or council may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements [SPECIAL ASSESSMENT PROCEDURE FOR LOCAL IMPROVEMENTS], including and subject to the following:

(1) a [THE] procedure for filing petitions;

(2) no change;

(3) no change'

(4) a resolution or ordinance of the assembly or council determining to proceed or not to proceed with the proposed local improvement;

(5) no change;

(6) published notice of each public hearing required by this section and mailing notice to each [LEGAL OWNER OF] record owner of real property within the special assessment district;

(7) a resolution or ordinance confirming the special assessment roll for the local improvement;

(8) no change;

(b) To the extent that [IF] the assembly or council does not prescribe a procedure for special assessments as permitted by this section, the assembly or council shall comply with the special assessment procedures set out in AS 29.48.030-100.

EXPLANATION: This is primarily a technical revision except that those items required to be done by resolution under existing law may be done by ordinance.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.48.030. Creation of District. [DECISION AND NOTICE]. (a) When an improvement proposal has been filed with the municipal clerk and presented to the assembly or council, the assembly or council shall find by resolution or ordinance whether (1) the improvement requested [REQUEST] is necessary and should be made, and (2) if by petition, the request has sufficient and proper petitioners. The findings of the assembly or council are conclusive.

(b) If the assembly or council approves with the necessary findings [PASSES A RESOLUTION APPROVING] an improvement proposal, it shall develop a proposed improvement plan including the estimate of total cost and amount of the improvement cost to be assessed against each property benefited. This plan is to be filed with the municipal clerk.

(c) The assembly or council shall set a time for public hearing on the improvement plan and the period for filing objections to the plan. The assembly or council shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

EXPLANATION: (b) changed to require an estimate of the amount to be assessed to each property rather than an estimate of the percentage of the total cost. (c) requires a period for filing of objections and notice of the period.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.040. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate [BE MADE AGAINST] "unknown owner".

EXPLANATION: Technical clean-up. No substantive change.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of 60 days [NOT LESS THAN 30 NOR MORE THAN 60 DAYS] after publication of notice [ON A DATE SPECIFIED BY THE ASSEMBLY OR COUNCIL]. The assembly or council may by resolution or ordinance approve the plan and order [PROCEED WITH] the improvement subject to the limitation of (b) of this section [IF THE OWNERS OF ONE-HALF IN VALUE OF THE PROPERTY TO BE BENEFITED DO NOT OBJECT IN WRITING].

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 percent. A revised plan shall be approved and adopted as an original plan in accordance with AS 29.48.030.

EXPLANATION: Eliminates option of allowing objections for only 30 days in favor of a 60 day period. Requires objections by property owners under (b) to be in writing.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

OK

Sec. 29.48.060. ASSESSMENT ROLL. (a) At any time after project approval, the assembly or council shall assess the authorized percentage of the cost against property within the district [TRACTS] in proportion to benefit received. [ASSESSMENTS MAY NOT EXCEED ACTUAL COSTS.]

(b) The special assessment roll shall contain [CONTAINS] property descriptions, names of record owners [OF RECORD] and assessment amounts.

(c) No change.

EXPLANATION: Technical clean-up only. The last line of (a) is deleted as redundant.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.48.070. HEARING AND SETTLEMENT. After the public hearing, the assembly or council shall correct errors and any inequalities in the roll. If an assessment is increased, a new hearing shall be set and notice mailed, except that a new hearing and notice is not required if all record owners of property subject to the increased assessment consent in writing to the increase. Objections to the increased assessment shall be limited to record owners of property on which the assessment was increased. When the roll is corrected, it shall be confirmed by resolution or ordinance of the assembly or council. [THE CLERK SHALL SO CERTIFY].

EXPLANATION: Provides an opportunity for a new hearing if assessments are increased. Requires the governing body to confirm a new assessment roll.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.48.080. PAYMENT. (a) The assembly or council shall fix times of payment, penalty on delinquent payments and the rate of interest on the unpaid balance of the assessment [INSTALLMENTS AND DELINQUENCY OF ASSESSMENTS. PAYMENT MAY NOT BE REQUIRED SOONER THAN 60 DAYS AFTER ASSESSMENT]. Payment may be in one sum or by installments. [BUT A SUM OR INSTALLMENT MAY NOT EXCEED 25 PERCENT OF THE ASSESSED VALUE OF THE PROPERTY AFFECTED.] If payment is to be in one sum, payment may not be required sooner than 60 days after mailing of the assessment statement. The entire assessment may be prepaid without interest or penalty within 30 days after mailing of the assessment statement; and thereafter the assessment may be prepaid in whole or in part with interest to the payment date. [PENALTY AND INTEREST ARE THE SAME AS FOR REAL PROPERTY TAXES.]

(b) Within 30 days after fixing the time of payment, the municipal clerk shall mail a statement to the owner of record of each property assessed. The statement designates the property, the assessment amount, method of payment, rate of interest on the unpaid balance of the assessment, the time of delinquency, and penalties on delinquent payments.

(c) No change.

(d) No change.

EXPLANATION: Removed the limitation that a payment not exceed 25 percent of the value of property. Allows a period of 30 days for payment without interest.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.48.090. EXEMPTION. (a) No change.

(b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

(1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed [CERTIFIED] and the time of payment fixed by the assembly or council. Within one year of the date the assessment roll is confirmed [CERTIFIED] the assembly or council for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

The rest of the section is unchanged.

EXPLANATION: Change in (b)(1) to conform to the change in AS 29.48.070 providing that the assessment roll be confirmed by the governing body.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment district is created, there may be included in the assessments

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs of all engineering and surveying to be done in connection with creating the district or improvement;

(3) the cost of mailing and publishing of notices;

(4) interest on interim financing;

(5) the cost of legal services and other expenses incurred in the formation of the special assessment district;

(6) The cost of completing the improvement and financing the improvement, including the issuance of any bonds.

(b) The total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

EXPLANATION: This s a new section clarifying which costs may be paid for through assessments.

OK-

Sec. 29.48.115. INTERIM FINANCING. (a) The assembly or council may provide by resolution or ordinance for the issuance of notes in payment of the costs of any local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance and shall be redeemed either in cash or bonds for the improvement project.

(b) All notes issued against assessments shall be claims against the assessments which are prior and superior to a right, lien or claim of a surety upon the bond given to the municipality to secure the performance of its contract for a local improvement project or to secure the payment of persons who have performed work or furnished materials under the contract.

(c) The municipal treasurer may accept notes against special assessments upon conditions prescribed by the assembly or council in payment of

(1) assessments against which the notes were issued in order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of the assessments; and

(3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

EXPLANATION: This new section has been added at the suggestion of bond counsel because no authorization now exists for interim financing.

Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) No change.

(b) No change.

(c) Before the assembly or council may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund. [INTEREST ON THE GUARANTEE FUNDS SHALL BE A COST OF THE IMPROVEMENT DISTRICT.]

EXPLANATION: It is felt that the last line of (c) makes no sense. Interest ought to be a credit to the district, if anything.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

EXPLANATION: The following provision is made inapplicable to the use of proceeds from revenue bonds:

Sec. 37.10.085. FINANCIAL AID TO CORPORATIONS BY STATE OR POLITICAL SUBDIVISION. Neither the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

It is felt by bond counsels that this section currently forbids a municipality to use proceeds of revenue bond sales for loans and other expenditures designed to encourage industrial development.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation refunding bonds or revenue refunding bonds may, at the discretion of the assembly or council, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

EXPLANATION: It is felt by bond counsels that the flexibility of allowing a refunding bond to be exchanged or sold at other than par value ought to be provided. It is felt that the policy of notifying the public of the value of bonds should not become an hinderance to obtaining the best deals through discounting bonds. It has become difficult to market revenue bonds at par value according to bond counsels.

Keep

Sec. 29.51.370. PUBLIC SALE. Repeal.

EXPLANATION: This section is repealed as redundant since other provisions deal with the sale of bonds.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

**Sec. 29.51.390. BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS.** OK

**Repeal.**

EXPLANATION: This section is repealed as unnecessary since the governing body has control through approving or disapproving the issuance of bonds. Arguably, contracting is an executive function.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.51.420. BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION. Repeal.

OK

Sec. 29.51.430. BOND GUARANTEE FUND. Repeal

EXPLANATION: These sections have never been used and appear to serve no useful purpose. They are repealed at the request of the State Assessor.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

EXPLANATION: This is a new section. The Alaska Constitution prohibits the establishment of service areas when the function can be performed by a city or another service area. No guidelines have been established, leaving the legality of some service areas in doubt. This provides for the continuation of a debt should a service area subsequently be declared invalid, creating a de facto service area for purposes of the debt.

51.050 From: John Messenger

1. Sec. 29.58.205 should be left in without change.

2. Sec. 29.58.310 should be amended to read:

51.380

Sec. ~~29.58.310.~~ INTEREST RATE. The interest rate payable on a bond or note shall be determined by the assembly or council and is not subject to the usury rate limitations of A.S. 45.45.010. ~~[NO MUNICIPAL BOND OR NOTE MAY BEAR AN INTEREST RATE EXCEEDING THE CONTRACT USURY RATE OR INTEREST PROVIDED BY LAW.]~~

3. Sec. 29.58.300 should be amended to read:

51.370

Sec. ~~29.58.300.~~ [PUBLIC] SALE. Bonds and notes issued under this chapter may be sold by the municipality in the manner and at the price it determines at either public or private sale. ~~[THE MUNICIPALITY SHALL SELL ALL BONDS AT A PUBLIC OR PRIVATE SALE AS PROVIDED BY ORDINANCE, NO BONDS MAY BE SOLD AT LESS THAN PAR VALUE.]~~

Also repeal A.S. ~~29.58.060~~ 51.050, ~~29.58.140~~ 51.150 and 29.58.280 51.340. See DRAFTED CHGS

4. A new Section A.S. 29.58.305 to read as follows:

↓ 51.

Sec. 29.58.305. FORMS AND TERMS. The assembly or council may by ordinance or resolution fix the date,

denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and all other details of the bonds or notes. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

Repeal the following provisions--A.S. 29.58.220, 29.58.170.

5. A.S. ~~29.58.200~~ 51.240 is amended to read: OK

Sec. 29.58.200. REVENUE BONDS. (a) A municipality of the State may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenues of the public enterprise or corporation. [A MUNICIPALITY MAY ACQUIRE, CONSTRUCT, IMPROVE AND EQUIP CAPITAL IMPROVEMENTS TO BE OPERATED UPON A REVENUE-PRODUCING BASIS, AND BONDS FOR THESE PURPOSES ARE PAYABLE SOLELY FROM UNPLEDGED REVENUE OF THE PUBLIC FACILITIES FOR WHICH THE BONDS ARE ISSUED.]

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

[(c) A MUNICIPALITY MAY ALSO ISSUE REVENUE BONDS FOR ANY LAWFUL PURPOSE. THE BONDS ARE PAYABLE FROM ANY AMOUNTS PLEDGED BY THE MUNICIPALITY EXCEPT TAXES AND DO NOT CONSTITUTE GENERAL OBLIGATIONS OF THE MUNICIPALITY.]

6. A new section ~~29.58.290~~ 51.350 as follows: ok

Sec. 29.58.290. OTHER MUNICIPAL FINANCING. (a) A municipality may authorize by ordinance or resolution the issuance of revenue bonds to finance any public purpose project or program, which bonds shall be secured and payable solely from the revenue and property of such project or program.

(b) Bonds issued under this section are not a debt or liability of the municipality and do not create or

constitute an indebtedness, liability or obligation of the municipality nor do they constitute a pledge of faith, credit or taxing power of the municipality. Each bond must contain on its face a statement to the effect that the principal and interest on the bond are payable solely from the revenues and property of the project or program being financed and that the municipality is not obligated to pay the principal of or the interest on the bonds except for those sources of the project or program and that neither the faith and credit nor the taxing power of the municipality is pledged to the payment of such principal of or interest on the bond.

(d) A municipality may in connection with the issuance of bonds under this section

(1) loan the proceeds of the bonds;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the project or program being financed;

(3) make and enter into any and all covenants and agreements which the municipality may determine to be necessary or desirable;

(4) provide for any other matter which in any way effect the security or protection of the bonds.

(e) In this section the word "bonds" includes bonds, notes or other evidence of indebtedness. In this section, the words "project" or "program" shall include without limitation commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism and medical projects and programs.

## ARTICLE 2. MUNICIPAL LEGISLATIVE BODIES

Sec. 29.24.050. GENERAL LEGISLATIVE POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

EXPLANATION: The second sentence is added. Rather than dealing with assemblies in one article and councils in another, this article will deal with both legislative bodies. No substantive change.

Sec. 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

EXPLANATION: This section contains material now found in AS 29.23.200(a). The material currently in (b) has been moved to the section on qualifications. No substantive change.

Sec. 29.24.160. DEPARTMENTS. Repeal

ok

EXPLANATION: The material contained in this section is placed in an article dealing with municipal departments and employees.

Sec. 29.24.206. QUALIFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter of a borough or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor in that city.

(b) Residency requirements for the office of mayor not exceeding three years may be prescribed by ordinance.

OK

EXPLANATION: This section contains material now appearing in AS 29.23.130(b) and 29.23.250. No substantive change.

Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same powers and duties as those of the manager.

(b) The mayor may take part in the discussion of all matters before the assembly or council.

(c) The mayor may not vote on any matter before the assembly or council, except that the mayor of a first class city may vote in the case of a tie and the mayor of a second class city may vote on all matters as a council member.

EXPLANATION: This section contains material currrently found in AS 29.23.130(a), AS 29.23.260, and AS 29.23.160. No substantive change.

OK

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980**

**Sec. 29.24.240. VETO.** (a) Except as provided in subsections (c) and (d), the mayor may veto any ordinance, resolution, motion, or other action of the legislative body and may strike or reduce appropriation items.

(b) A veto must be exercised before the next regular meeting of the legislative body and must be accompanied by a written explanation of the reasons for that action. A veto may be overridden by vote of two-thirds of the authorized membership of the legislative body within 21 days following exercise of the veto or at the next regular meeting, whichever is later.

(c) The veto does not extend to

(1) appropriation items in a school budget ordinance;

(2) actions of the Board of Equalization or the Board of Adjustment;

(3) adoption or repeal of the manager form of government.

(d) The mayor of a ~~first~~ SECOND class city has no veto power.

EXPLANATION: Contains material currently found in AS 29.23.170, 29.23.260, and 29.23.270. Adds a time period within which a veto must be overridden.

Sec. 29.24.140. QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the council. A member of the assembly who ceases to be a qualified borough voter immediately forfeits his office. A member of the council who ceases to be a qualified city voter forfeits his office. immediately

When? LARSON (b) A legislative body may by ordinance establish a durational residency requirement for its members not to exceed three years.

(c) An assembly or council member who represents an area less than that of the total borough or city and who becomes a resident of another area within the municipality may continue to serve until the next regular election unless provided otherwise by ordinance.

(d) A municipality may by ordinance establish district residency requirements for members of its legislative body.

Parr moves

EXPLANATION: The qualification for members of the council or assembly are combined since they are identical. Subsection (c) has been altered to allow a municipality the flexibility of providing otherwise by ordinance. Subsection (d) has been added to allow a municipality to impose additional district residency requirements.

See vacancies section

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three year terms and until their successors have qualified* unless different terms are prescribed by charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a legislative body is changed by charter or ordinance the term of an official holding office at the time the change becomes effective is not affected.

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

EXPLANATION: The term of both assembly and council members is combined into one section. Under existing law different terms not exceeding four years may be prescribed. The four year maximum has been eliminated for greater flexibility. The section is no longer mandatory for home rule municipalities.

Page: ~~Add "council" to existing~~

* add - wording "not to exceed 4yrs"

motion seconded & carried

Sec. 29.24.150. PROCEDURES OF LEGISLATIVE BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) A municipal legislative body shall hold at least one regular meeting every month, unless otherwise provided by ordinance. [A special meeting may be held at the call of the presiding officer or at least one-third of the members provided a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members. ~~[~~A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice.] Waiver of notice can be made before or after the special meeting is held. A waiver shall be made a part of the journal for the meeting.

(c) A majority of the total membership of a legislative body authorized by law shall constitute a quorum. A member disqualified by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(d) Actions of a legislative body are ~~adopted~~ by a majority of ~~members authorized to vote on the question.~~ All members present shall vote on every question unless they are required to abstain from voting on a question by law. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it is necessary only to so state.

(e) A legislative body shall maintain a journal of its official proceedings which shall be a public record.

(f) A legislative body may, consistent with law or charter, determine by ordinance its own rules of procedure and order of business.

Sec. 29.24.150.

EXPLANATION: Combines the procedures to be followed by both assemblies and councils. Allows a special meeting to be held if a majority of members receive actual notice whereas existing law allows for a meeting only if all members receive notice and if an emergency exists. Reference to the fact that meetings are public is deleted because that requirement is contained in AS 29.24.020. A requirement that the journal maintained by the legislative body be public was added in (e). The material concerned with the expulsion of members for committing a corrupt practice was moved to AS 29.23.070.

Sec. 29.24.175. FILLING A VACANCY. If a vacancy occurs in a legislative body, the remaining members shall within ~~30~~ * days, UOPDO, appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to serve the balance of the term. If less than * 30 days remain in a term, a vacancy shall not be filled.

(b) Notwithstanding subsection (a), if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall within seven days appoint a number of qualified persons to constitute a quorum.

EXPLANATION: Contains material currently found in AS 29.~~23.080~~ 24.170 and 29.23.220. Provides that no appointment shall be made where less than 30 days remain in a term. Subsection (b) was added to insure that a legislative body will be able to continue to function if the number of vacancies which occur destroys the possiblity of achieving a quorum.

* ~~KOHLER MOTION - TO 60 DAYS - WD.~~
~~LARSON 2ND~~

Larson motion: UOPDO added
carries.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

## ARTICLE 3. MUNICIPAL EXECUTIVE

OK

Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a municipality is vested in a mayor elected by the voters or by the legislative body as provided in this article.

(b) The mayor shall act as ceremonial head of government, execute official documents upon authorization of the legislative body, and is responsible for additional duties and powers prescribed by ~~ordinance~~. this ~~article~~ chapter. ← Walker amendment.

AS

Larson motion*

OK

~~In a muni mgr fm of govt mayor shall be presiding officer~~ which has adopted

Beens

see pg 41

EXPLANATION: Under current law the executive and administrator are dealt with in one article. It is proposed that one article deal with executive functions and a separate article deal with administrative functions. Therefore, this section eliminates the material dealing with administrative functions.

Sec. 29.24.250. VACANCY IN THE ~~OFFICE~~ OF MAYOR. (a) ~~The~~ assembly or council shall provide by ordinance the manner in ~~which~~ a vacancy occurs in the office of mayor. ~~Unless otherwise provided by ordinance the~~ legislative body ~~may~~ shall, upon two-thirds concurring vote, declare the office of mayor vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the assembly or council, is absent for 90 days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) ~~if a member of the assembly or council,~~ misses three consecutive regular meetings unless excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 as a corrupt practice.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occuring six months before a regular election shall be filled by the legislative body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the legislative body is chosen, he shall resign his seat on the assembly or council. If a vacancy occurs more than six months before a regular election, the legislative body shall call a special election to fill the unexpired term.

(c) In a second class city, the office of mayor is filled by and from the council.

(8) physically reside

EXPLANATION: This section is enlarged to deal with a vacancy occuring in the office of city as well as borough mayor. Allows the legislative body to establish the manner in which a vacancy occurs in the office of mayor and supplies situations which may result in vacancy if the body does not provide an alternative.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 10 OCTOBER 1980

Sec. 29.24.170. VACANCIES. The legislative body ~~shall~~ MAY CARRIES provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor. Unless otherwise provided by ordinance the legislative body ~~may~~ shall declare an elective office vacant when the person elected

OTHER THAN THE OFFICE OF MAYOR

MOTION KOHLER/COOK "shall" CARRIES

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the assembly or council, is absent for 90 days; CARRIES.

from muni

consecutive

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office; LARSON moves: 2/3 vote determination/carries

Walker: phy motion

(5) if a member of the assembly or council, misses three consecutive regular meetings unless excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted ~~of a felony or~~ Berns sugg misdemeanor described in AS 15.56 as a corrupt practice and two-thirds of the members concur in expelling him.

Branson MOTION: uniform phrase "governing body" & defined as referring to both. CARRIES

governing body refers to both (always)
Assy = Assy
council = council

? to TAM who decides when 90 days starts?

EXPLANATION: Allows the legislative body to provide the manner in which a vacancy occurs for all elected offices except for the office of mayor. If the body does not provide by ordinance situations which result in the vacancy of an office, the seven listed situations will result in a vacancy.

Add: (8) Parr motion — Solomon 2nd.
Larson ~~[illegible]~~ to add language re: moving fm district w limit to time gone.
not physically residing in municipality
2/3 vote ~~no intent to return~~ declares seat vacant.

Berns Walker & Parr - subcommittee "shall & may" felonies categories

Walker motion: *

CARRIES

Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a second class city is elected by and from the council.

(b) A mayor shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor commences on the first Monday following certification of his election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately.

(c) Leg. body may not ~~by ord.~~ limit the number of terms of the office of mayor

PARK MOTION

EXPLANATION: This new section contains material currently found in AS 29.23.130(c) and 29.23.250. No substantive changes.

May only be limited by ord ratified by majority of voters.

Subcommittee

LARSON-RECONSIDER
Kohler - 2

LARSON: MOTION - CARRIED.

(c) Leg body may not ~~by ord.~~ limit # of terms a mayor may serve.

add to 29.24.205(b) Term of mayor of a 2nd class city shall be 1 yr unless a diff term not to exceed the unexpired term of the member's current term.

(d) The mayor of 2nd cc shall serve until exp. of current term unless a shorter period of not less

than one year is provided by ordinance

Upon the expiration of the mayor's term, the council

LARSON ~~Amendment~~ - carries

d. A person elected for mayor will serve a 1yr term starting 1st reg mtg, at 1st reg mtg following certification, unless mov 1yr term by ord.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sent to Tech

Sec. 29.45.610. POWER OF LEVY. (a) A city within a borough which levies and collects a sales or use tax for areawide functions may levy a sales or use tax upon all sources taxed by the borough in the manner provided for a borough and may provide for a lien to secure payment of the tax as provided for a borough.

(b) A city within a borough which does not levy and collect a sales or use tax for areawide functions may levy and collect a sales or use tax in the manner provided for a borough and may provide for a lien to secure payment of the tax as provided for a borough.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Repeal.

EXPLANATION: Material contained in AS 29.45.620 has been combined into AS 29.45.610. The section has been altered to insure that a city may create a lien to secure payment of a sales and use tax as is recommended in AS 29.45.570 for boroughs.

A city may collect a sales or use tax in the manner provided for a borough.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) ADD: NOT ACCEPTED

(7) property held by an Indian, Eskimo or Aleut or by a community of Indians, Eskimos or Aleuts for which title is subject to a restriction against alienation; or property held by the United States in trust for the benefit of an Indian, Eskimo or Aleut or a community of Indians, Eskimos or Aleuts; or other property defined in section 4 of the Alaska Statehood Act (72 Stat 339) or Article 12 section 12 of the Alaska Constitution.

The rest of this section is the same.

Sec. 29.48.090. EXEMPTION.

(d) An exemption from a special assessment shall be granted to property held by an Indian, Eskimo or Aleut or by a community of Indians, Eskimos or Aleuts for which title is subject to a restriction against alienation; or property held by the United States in trust for the benefit of an Indian, Eskimo or Aleut or a community of Indians, Eskimos or Aleuts; or other property defined in section 4 of the Alaska Statehood Act, (72 Stat 339) or Article 12 section 12 of the Alaska Constitution.

The rest of this section is the same.

EXPLANATION: Change proposed by Mike Walleri of Tanana Chiefs Corporation to avoid taxation of land which is not taxable under state and federal law.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition for second class city incorporation may request that a property tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails.

EXPLANATION: This is a new section similar to the provision in 29.45.630 allowing an incorporation petition to be tied to imposition of a sales tax.

Walker
29.45.510.) carries
add:

OK

(c) The assembly may correct manifest clerical errors. at any time.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.27.060. PENALTIES. (a) For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed a fine of $1,000 or imprisonment for 90 days, or both. By ordinance mandatory nonsuspendable imprisonment not to exceed five days may be imposed for violation of an ordinance. (However, the punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost, )

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c).

EXPLANATION: In (a) the fine and the term of imprisonment have been increased to match the penalty imposed under the criminal code for a class B misdemeanor. (d) and (c) have been added to provide municipalities with additional remedies for the violation of ordinances, matching recommended remedies for enforcement of land use regulations.

1. BRANSON: CARRIES
2ND
not to exceed the penalty prescribed by class B Misdemeanor

2. COOK: CARRIES
2ND
OR it not to exceed as determined by the assembly or council.
charge

BERNS

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.36.170. SECOND CLASS BOROUGH POWERS OUTSIDE CITIES.

(8) tax, spend, and regulate for the purpose of promoting ~~industrial~~ development.
1. ECONOMIC

The rest of the section is the same.

1. LARSON MOTION: CARRIES
2ND

EXPLANATION: This is added as a specific power which need not be assumed under AS 29.36.180. A first class borough may exercise this power under AS 29.36.160, the general grant of power to first class boroughs.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.36.270. SERVICE AREAS. (a) (First two sentences the same). Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the voters residing within the service area and voting on the question at a regular or special election, ~~unless~~ all owners of real property within the service area consent in writing to the exercise of the power.

No other changes to this section.

EXPLANATION: Change in (a) to avoid the necessity of an election if there is no opposition by property owners who will be affected by the service area.

Bernsamendment: 2ro carries
1. OR if no ~~one~~ qualified voter resides in the area,

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

OK

Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the assembly[1] or other municipal residents. The assembly shall by ordinance establish the qualifications for membership.

(b) The board is governed in its proceedings by rules adopted by ordinance which are consistent with general rules of administrative procedure. The board may alter an assessment of a lot or parcel only pursuant to an appeal filed as to the particular lot or parcel.

(c) Nothwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law ~~may~~ shall be appealed directly to the superior court.

EXPLANATION: Removes the requirement that the board consist of a number over that required for a quorum of the assembly in favor of requiring not less than three members. Requires that an assessment be altered only as a result of an appeal filed as to the lot in question. Allows a determination of the taxability of property (for example, land held by Indians or in trust for Indians may not be taxable at all under federal law) to be appealed to the superior court.

1. Walker amend: add, ~~private ind~~ individuals, or a combination thereof. municipal residents, carries

9K

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a noncity basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the area outside cities or of a service area is to be pledged, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and the full faith and credit of the area is pledged for the payment of the debt.

(d) no change.

1. Walker motion 2nd CARRIES

1. 1 only voting on the indebtedness

EXPLANATION: Minor technical clean-up in (a) and (b). Language at the end of (c) added to make it clear that a service area general obligation bond can be issued.

See TEXT 1606

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 37.30.100. PROHIBITED BIDDING ON BONDS. Repeal.

EXPLANATION: It is felt that this seccion should be repealed becuase it unduly restricts the selling of bonds. It creates a hardship on the smaller communities who may have only one financial advisor available. The municipality is protected by SEC disclosure requirements and by the fact that a "person" can't buy bonds without permission of the municipality. Also (b) created a cloud on bonds, since there is always a possiblility that they are void if the wrong person provided marketing assistance.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.36.170. SECOND CLASS BOROUGH POWERS OUTSIDE CITIES.

(8) tax, spend, and regulate for the purpose of promoting industrial development.

The rest of the section is the same.

EXPLANATION: This is added as a specific power which need not be assumed under AS 29.36.180. A first class borough may exercise this power under AS 29.36.160, the general grant of power to first class boroughs.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.36.270. SERVICE AREAS. (a) (First two sentences the same). Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the voters residing within the service area and voting on the question at a regular or special election, unless all owners of real property within the service area consent in writing to the exercise of the power.

No other changes to this section.

EXPLANATION: Change in (a) to avoid the necessity of an election if there is no opposition by property owners who will be affected by the service area.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.39.060. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside first and second class boroughs shall, and second class cities outside first and second class boroughs may in whole or part, provide for planning, platting and land use regulation within their boundaries, as provided by AS 29.42.010-29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may in whole or part provide for planning, platting and land use regulation, as provided by AS 29.42.010-29.42.150 for boroughs.

EXPLANATION; Clarifies that a city may only plan for the area within its boundary. Adds the provision that second class cities may plan "in whole or part" as provided for boroughs, so that it is clear that they are not forced into an all or nothing situation.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

EXPLANATION: It is felt that these provisions are unnecessary and would be properly placed in the criminal code. (NOTE: These were in the criminal code as AS 11.60.250, 11.60.260, and 11.60.270 and moved to Title 29 effective January 1, 1980.)

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) ADD:

(7) property held by an Indian, Eskimo or Aleut or by a community of Indians, Eskimos or Aleuts for which title is subject to a restriction against alienation; or property held by the United States in trust for the benefit of an Indian, Eskimo or Aleut or a community of Indians, Eskimos or Aleuts; or other property defined in section 4 of the Alaska Statehood Act (72 Stat 339) or Article 12 section 12 of the Alaska Constitution.

The rest of this section is the same.

Sec. 29.48.090. EXEMPTION.

(d) An exemption from a special assessment shall be granted to property held by an Indian, Eskimo or Aleut or by a community of Indians, Eskimos or Aleuts for which title is subject to a restriction against alienation; or property held by the United States in trust for the benefit of an Indian, Eskimo or Aleut or a community of Indians, Eskimos or Aleuts; or other property defined in section 4 of the Alaska Statehood Act, (72 Stat 339) or Article 12 section 12 of the Alaska Constitution.

The rest of this section is the same.

EXPLANATION: Change proposed by Mike Walleri of Tanana Chiefs Corporation to avoid taxation of land which is not taxable under state and federal law.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the assembly or council may prescribe punishment not to exceed a fine of $1,000 or imprisonment for 90 days, or both. By ordinance mandatory nonsuspendable imprisonment not to exceed five days may be imposed for violation of an ordinance. However, the punishment authorized under this section may be imposed only of copies of the ordinance are made available for distribution to the public at cost.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

EXPLANATION: In (a) the fine and the term of imprisonment have been increased to match the penalty imposed under the criminal code for a class B misdemeanor. (d) and (c) have been added to provide municipalities with additional remedies for the violation of ordinances, matching recommended remedies for enforcement of land use regulations.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 37.30.100. PROHIBITED BIDDING ON BONDS. Repeal.

EXPLANATION: It is felt that this section should be repealed becuase it unduly restricts the selling of bonds. It creates a hardship on the smaller communities who may have only one financial advisor available. The municipality is protected by SEC disclosure requirements and by the fact that a "person" can't buy bonds without permission of the municipality. Also (b) created a cloud on bonds, since there is always a possiblility that they are void if the wrong person provided marketing assistance.

Sec. 29.24.160. DEPARTMENTS. Repeal.

Sec. 29.24.515. DEPARTMENTS. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

EXPLANATION: This new section is virtually identical to AS 29.24.160 except that stylistic changes apply this section to both cities and boroughs.

Sec. 29.24.200 (e) Repeal.

Sec. 29.24.640. INTERGOVERNMENT APPOINTMENTS. A borough adopting a manager plan may, by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in this chapter. Nothing in this subsection affects the authority of the assembly or council to provide for other dual officeholding if the dual offices held are compatible, or otherwise to appoint officers and employees in accordance with law.

EXPLANATION: This section is derived intact from AS 29.24.200(e).

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.24.210. POWERS AND DUTIES OF A BOROUGH ADMINISTRATOR. Repeal.

Sec. 29.24.390. POWERS AND DUTIES OF A CITY MANAGER. Repeal.

Sec 29.24.630. POWERS AND DUTIES OF A MANAGER. As chief administrative officer the manager shall

(1) appoint municipal employees and administrative officers, except as provided otherwise in this title and AS 14.14.065; he may hire necessary administrative assistants and may authorize an administrative officer to appoint, suspend, or remove subordinates;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program adopted;

(4) make monthly financial reports and other reports on municipal finances and operations required by the governing body;

(5) exercise care and custody over all real and personal property of the municipality except as provided otherwise in AS 29.36.040; and

(6) perform other duties required by law or by action of the governing body.

See Tam's NOTES

EXPLANATION: This new section is derived from AS 29.24.210 and 29.24.390 dealing with the duties of the borough administrator and with the duties of the city manager. Provisions relating to appointment and discipline of municipal employees have been consoldiated into paragraph (1). Paragraph (5) is derived from AS 29.23.140 allowing the manager to exercise care and custody over municipal property. A similar provision does not appear now with reference to the city manager and it is felt that this duty ought to apply. The language of AS 29.23.140(c)(10) relating to construction, maintenance, and operation of roads and public works is felt to be adequately covered by paragraph (3) directing the manager to execute the budget and capital improvement program.

Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. (a) The assembly or council of a municipality may, by ordinance, establish advisory, administrative, technical, or quasi-judicial boards and commissions.

(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the assembly or council.

EXPLANATION: This is a new section authorizing the assembly or council to establish boards and commissions.

Sec. 29.24.450. APPOINTMENT. The assembly or council shall appoint a manager by a majority vote of its membership. He is chosen solely on the basis of his executive and administrative qualifications and receives the compensation set by the assembly or council. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the assembly or council may at any time appoint one of its members or other elected municipal official as manager.

EXPLANATION: The word "officials" in the last line is changed to "official" so that it is clear that a committee of officials may not serve as manager.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.24.480. APPOINTMENT OF OFFICERS. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative officer. Unless otherwise provided by ordinance, officers described in this section serve at the peasure of their appointing authority and, if appointed by the chief administrative officer, must be confirmed by the governing body.

EXPLANATION: This section has been technically redrafted. The only substantive change is that the confirmation of officers appointed by the administrator is not required if an ordinance is adopted directing otherwise. This section determines a method of appointment if none is provided by ordinance.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.24.510. MUNICIPAL TREASURER. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the assembly or council directs.

OK

EXPLANATION: Reference to 14.14.060 is added since that section demands that the custodian of *a* centralized treasury containing school money be the borough administrator.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.24.570. ELECTION. Upon receipt of the petition or upon its own motion, the assembly or council shall provide by ordinance or resolution for a vote on the question at the next regular or special election.

EXPLANATION: Last line of existing section deleted due to possible confusion over notice requirements for elections contained in other sections which conflict.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.24.620. REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. Within 60 days after repeal, the assembly or council shall enact provisions for the reorganization of the municipal executive and administrative functions.

OK

EXPLANATION: To allow for notice, 60 days is added. Otherwise this section may not comply with notice requirements for ordinances.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.24.670. SALARIES OF ELECTED OFFICERS. The assembly or council shall by ordinance provide a method of determining the salaries of elected officers. The salary of the mayor may not be reduced during his term of office unless during his term a manager plan is adopted. An elected officer may not receive any other compensation for service to the municipality unless otherwise provided by ordinance. Per diem payments or reimbursements for expenses are not compensation under this section.

EXPLANATON: This change allows a local government the flexibility of establishing a salary commission or other method of determining salaries. Allows the mayor's salary to be reduced to reflect the change in his duties if a manager form of government is adopted. Grants flexibility to a municipality to allow an officer to receive other compensation for service to the municipality. This is important in small communities where the mayor, for example, may be the only electrician in town.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.33.030. EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

EXPLANATION: The limitation imposed on a second class city is eliminated broadening its power to exercise eminent domain.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

OK

Sec. 29.33.190. CENTRALIZED PURCHASING. Repeal.

EXPLANATION: Not needed. A municipality has this power without this provision.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.33.210. BUDGET AND CAPITAL PROGRAM. (a) No change.

(b) Repeal.

(c) No change.

(d) Repeal.

EXPLANATION: (a) and (d) are repealed as misleading. Bonds may only be used to finance capital projects.

See text

See section 27.010 regarding ordinances

OK
see Hans

Sec. 29.33.220. EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes levied and collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to a unified municipality.

EXPLANATION: Technical drafting clean-up. The last sentence added to make it clear that areawide/nonareawide distinctions do not apply to unified municipalites.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

@ NO CHANGE.

Sec. 29.42.020. PLANNING COMMISSION. (b) In addition to responsibilities prescribed by ordinance, the planning commission shall OK

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

EXPLANATION: This section is a shortened version of the existing AS 29.42.020. A major change is the elimination of detailed and unnecessary specifications of the commission's duties in favor of a general statement requiring the commission to prepare and recommend measures necessary to implement the comprehensive plan. The public meetings and public records requirement is eliminated since these requirements would attach in any case. The requirement for a public hearing is eliminated because it is felt that the public is adequately protected; a plan must be adopted by ordinance and is therefore subject to notice and hearing provisions.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

Sec. 29.42.030 COMPREHENSIVE PLAN. (a) No change. DJE

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary. OK

EXPLANATION: Subsection (b) is redrafted to eliminate the mandatory two year review requirement and substitute a more flexible review requirement.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

EXPLANATION: A simplified procedure is now provided in the prior section.

Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the board of adjustment, hearing officer or other body. A proceeding under this section has preference over all other civil actions and proceedings.

EXPLANATION: This proposed language makes several important changes in procedures governing administrative appeals to the superior court. The "automatic stay" requirement of is eliminated, allowing parties to follow more customary appellate rules governing injunctions pending appeal; the language makes land use appeals administrative appeals under the Appellate Rules, and eliminates procedural requirements already governed by the Rules of Court.

Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

EXPLANATION: This new section contains cross references to other statutes applicable to subdivisions and platting.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

Sec. 29.42.090. PROCEDURE. (a) The platting board shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the board fails to act, the plat is considered approved and a certificate of approval shall be issued by the board on demand. The applicant for plat approval may consent to the extension of the period for action by the board. The board shall state on its record and in writing to the applicant its reason for disapproval of a plat.

OK

(b) The platting board shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

EXPLANATION: The proposed change eliminates submission of preliminary plats for state disposals uder AS 38.05 or 38.08, because the proposed changes in Sec. 29.42.010 requires full state compliance with local ~~capital improvement~~ subdivision requirements.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal.

OK

EXPLANATION: A short plat provision is added as AS 29.42.115, making the waiver provision no longer necessary.

Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Notwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not: OK

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

EXPLANATION: New section allowing short plat filing under expedited procedures adopted by the assembly so that small subdivisions can be accomplished without unduly complex procedural requirements.

Sec. 29.42.120. PENALTIES. Repeal.

EXPLANATION: Provisions now contained in this section have been moved to a more inclusive section dealing with remedies - AS 29.42.160.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting board upon petition of the state, the municipality, a public utility, or the owners of a majority of the land affected by the alteration or replat. No platted street may be vacated, except upon petition of the state, municipality, or a public utility, or owners of the majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting board. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

OK

EXPLANATION: Similar to current language except for a change allowing the state, the municipality or a public utility to initiate a replat petition, as well as property owners. Petitions to vacate streets may be initiated by the state and a public utility, as well as the municipality or property owners.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.150. DELEGATIONS. Repeal.

OK

EXPLANATION: Since the assembly is able to establish powers and duties of the planning commission and platting board, this section is redundant.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.24.420. SCHOOL BOARDS. Each borough and city school district has a school board. #1 Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large, unless a different METHOD of election carries has been approved by the voters in a reg. elect.

The election of board members shall be the same as for assembly members unless changed by ORD RAT. by voters.

EXPLANATION; The provision that school zones may be established as provided by Sec. 100 is deleted. AS 29.23.100 was repealed in 1972.

#1 The # of members shall be ~~determined~~ provided for by ord, sub to vote app.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

EXPLANATION: It is felt that these provisions are unnecessary and would be properly placed in the criminal code. (NOTE: These were in the criminal code as AS 11.60.250, 11.60.260, and 11.60.270 and moved to Title 29 effective January 1, 1980.)

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that a private leasehold, contract, or other interest in the property shall be taxable to the extent of the interest;

(2) household furniture of the head of a family or household;

(4) property of a nonbusiness organization or its auxiliary composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable;

1. (b) (3) lots or portions of lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(f) No exemption may be granted under (e) of this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 or a date provided by ordinance which is not later than March 31, of the assessment year for which the exemption is sought, ...
...If a claimant whose failure to file by January 15, or a date provided by ordinance which is not later than March 31...

EXPLANATION: Based on Alaska Association of Asessing Officers (AAAO) recommendations:

1. (a)(2): deletes $500 limit on exemption of household furniture.

2. (b)(3): narrows the language so that only portions of lots necessary to corvenient use are exempt.

1. DiMMICK moves to delete: ALL of (b)(3)
2ND

OK

3. (c): clarifies that "exclusively for classroom space" limitations on rental income under (c) only applies to rental use by an "educational group" and does not preclude the exemption when the income is derived from use by nonprofit religious, charitable, or hospital groups.

4. (f): clarifies that filing of a claim for exemption is a requirement for only the senior citizen exemption under (e), and not for the other exemptions addressed in the section. Adds flexibility so that a local government may establish a date later than January 15 for filing for a senior citizen exemption.

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.160. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or with an ordinance adopted under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chapter is guilty of a misdemeanor and may be punished by a fine not to exceed $1,000.

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority.[1] [In addition to injunctive and compensatory relief, [a civil penalty not to exceed $1,000 may be imposed for each violation.] An action to enjoin a violation may be brought notwithstanding the availability of any other remedy.[2]

~~4~~ (4)[1] [(c) Every day upon which an unlawful act or condition continues shall constitute a separate violation.] After Parr: 5. Entry of judgment finding a violation ~~exists~~ has occured

[1] Parr motion: delete > fail as 2nd

EXPLANATION: This new section is derived in part from AS 29.42.120 and contains new provisions which strengthen remedies available to municipalities seeking to enforce subdivision regulations. It prohibits persons from offering to sell unsubdivided land in violation of local subdivision regulations, authorizes injunctive relief to restrain violations of subdivision regulations, allows imposition of civil penalties, and makes daily occurances of unlawful acts separate violations.

2. Berns Amend: Add Sup. ct. injunctive relief/proof - injunctio CARRIES upon app inj relief, finding ——— 4). delete (C).

Cook/2nd

3 Add: After the violator has ~~[illegible]~~ 92 been notified.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

NOT ACCEPT

Sec. 29.33.010. GENERAL POWERS. Section unchanged to:

(7) to levy taxes and special assessments, and impose liens for their enforcement;

(9) to acquire, manage, control, use and dispose of real and personal property, irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a ~~second class~~ * borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under AS 29.36.270(f).

Berns amend delete:

~~Adds:~~

(13) issue franchises and permits * *3 ~~for the use of municipal property~~;

All other paragraphs the same.

*1 delete
Parr motion: carries

EXPLANATION: (7) allows for imposition of liens; (9) deletes material referring to purposes for which property may be acquired, managed, or disposed of; (13) is new.

add:
Walker amend: *2 including exclusive franchises & permits.

delete:
Berns amend *3 delete: for the use of mun. prop.

Parr motion: do not accept this change.
2ND. DIMMICK
amend: strike (13).
see pg 93 for alternate sugg.
} CARRIES

~~Larson amend: to the extent the [illegible]~~

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.33.020. EXTRATERRITORIAL JURISDICTION. Tam amendment. (a) A municipality may provide parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, ~~small boat harbors and marinas~~ *, and airports outside its boundaries, subject to AS 29.36.010, and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) No change.

EXPLANATION: Adds "small boat harbors and marinas" and provides that jurisdiction in which a facility is located may regulate it.

carries
Dimmick Motion *. ~~ADD~~: substitute: ~~[illegible]~~
gen powers sec language:
harbors, wharves & other marine facilities,
~~TECHGRP~~
ADD TRANSportation services, & utilities services

Parr add: carries
solid & septic waste disposal

Dimmick motion: carries
1 To the extent that a munic. ~~[illegible]~~
see Tam ] may ex pwrs nec to
provide ~~sk~~ or fac.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.33.070. FACILITIES AND PROGRAMS. (a) Subject to other provisions of law, a municipality may exercise the powers necessary to provide the following:

The same to:

(22) Repeal.

Add:

(24) carry out any public purpose.
provide any other facility or service necessary

The rest of this section is the same.
Berns motion: carries 4-0 —

EXPLANATION: (22) is more properly a regulatory power. Covered under AS 29.33.090(a)(11); (24) is added so that a municipality is not "limited" by the laundry list.

See services/systems consistent wording

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.33.200. MUNICIPAL PROPERTIES. (a) Repeal.

(b) Repeal.

(c) Repeal.

(d) The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality. [In[2] a competitive process for the acquisision and disposal of land and interests in land by the municipality is not provided by ordinance,] [each[3] land transaction by the municipality shall be approved by ordinance.]

(e) Repeal.

(f) Repeal.

3. Each disposal of land OR interest in land shall be by ordinance.

EXPLANATION: Since other laws, both federal and state, which provide land to municipalities contain conflicting requirements for use and disposal it is felt that this section created undue complexities as it now reads. It is eliminated in favor of a simple requirement that a procedure be established by ordinance.

BERNS: subs. ~~last~~ sentence:
Disp of land & int by other than comp. process shall be by ordinance.

[2] BRANSON moves to delete.
2ND:

Hold

DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980

Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(1.) (2) construction, fire and safety codes governing placement, erection and occupancy of structures;

(3) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(4) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

EXPLANATION: Present law requires implementation of the comprehensive plan through traditional zoning applicable to geographically defined districts, and allows so-called "contract zoning." Although the present Sec. 29.42.040 (b) contains a rather traditional enumeration of the purposes of zoning, the "including but not limited to" preface to that subsection renders the detailed laundry list legally meaningless. The suggested language of AS 29.42.040 preserves the requirement that all land use regulations comply with a comprehensive plan and recites the more important categories of land use regulations available to the borough. Passage of AS 29.42.040 would enable second class boroughs to enact building and fire codes. Material on variances has been moved to the section from AS 29.42.050.

Motion by Parr: NOT TO ACCEPT.
No second.
1. Bernst Elim: (2) carries
2ND
TECH GRP Review
80

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.33.110. FRANCHISES AND PERMITS. Repeal.

NOT ACCEPTED See 33.110

EXPLANATION: The right to issue franchises and permits has been added to the general powers section, AS 29.33.010 (13). It is not felt that it is necessary to circumscribe this power.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Dimmick motion: carries.

RETAIN:

Sec. 29.33.120. PUBLIC UTILITIES RATES. Repeal. 42.05 CR

Sec. 29.33.130. HEARING FOR REGULATION OF UTILTIES. Repeal.

Sec. 29.33.140. RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. Repeal.

Sec. 29.33.150. FURTHER PROCEEDINGS. Repeal.

Sec. 29.33.160. APPLICATION. Repeal.

EXPLANATION: The regulation of municipally owned utilties is allowed under the new draft of AS 29.33.090 as (~~10~~ 9). It is felt that it is not necessary to include elaborate details concerning that regulation.

Staff Recc: Add

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

DY

Sec. 29.39.060. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities *1 ~~outside first and second class~~ boroughs shall, and second class cities outside *1 ~~first and second class~~ boroughs may *2 ~~in whole or part,~~ provide for planning, platting and land use regulation within their boundaries, as provided by AS 29.42.010-29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may *2 ~~in whole or part~~ provide for planning, platting and land use regulation, as provided by AS 29.42.010-29.42.150 for boroughs.

EXPLANATION; Clarifies that a city may only plan for the area within its boundary. Adds the provision that second class cities may plan "in whole or part" as provided for boroughs, so that it is clear that they are not forced into an all or nothing situation.

*1 Dimmick MOTION 2ND: CARRIES
Berns deletion: see above

*2 Policy issue: carries
Dimmick MOTION: delete "whole or part"
Cook 2ND

Policy Issue for later!

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvments;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting ~~authority~~ BOARD necessary for other public uses.

(b) The assembly by ordinance shall establish a platting board to administer subdivision regulations adopted by the borough and perform other duties. The platting board may consist of members of the planning commission or of other municipal bodies, boards and commissions.

EXPLANATION: This proposed change makes the following modifications to existing law: it requires adoption of subdivision regulations by ordinance; allows the platting authority to require dedications; allows the assembly to determine the composition of the platting board; and eliminates the provisions which allow the state of Alaska to ignore capital improvement requirements of local subdivision regulations.

Parr motion: NOT ACCEPT chg WITH REGARD TO state land DISPOSAL CONFORMANCE.

Walker motion: make consistent w Title 40

Title 38 requires state comply w unless exempted (change deletes exception).

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.680. PROHIBITIONS. (a) Repeal.

(b) Repeal.

(c) No change. - see text. W Lee Sharp.

(d) No change. (delete last line)

EXPLANATION: (a) and (b) are deleted because other state and federal laws mandate nondiscrimination and those provisions may not be identical to (a), which could create confusion. For example, (a) does not cover age, handicaps, or marital status. (a) might also creat constitutional problems if interpreted to forbid affirmative action programs.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

Sec. 29.24.010. CONFLICT OF INTEREST. Each home rule and general law municipality shall adopt a conflicts-of-interest ordinance which, ~~other~~ in the E&L mun provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest.

EXPLANATION: The second sentence is deleted as redundant.

provides that a member of legislative body shall declare before the body and ask to be excused by ~~the majority or~~ the presiding officer, ~~the ruling may be appealed~~ shall be final unless overturned by majority

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.24.690. PERSONNEL SYSTEM. Repeal

Sec. 29.24.530. PERSONNEL SYSTEM. (a) Except as provided by (b) of this section, all appointments and promotions of municipal employees are made on the basis of merit. The assembly or council may provide for a personnel system and classified service.

(b) By ordinance the governing body may designate* positions which are wholly or partially exempt from the classified service filled by persons who serve at the pleasure of their appointing authority and whose terms of employment are determined by their appointing authority.

EXPLANATION: Subsection (a) is essentially the same as the existing provisions of AS 29.24.690 except that officers are no longer required to be appointed on the basis of merit. Subsection (b) is new; this subsection allows the governing body to designate certain positions as executive positions and exempt persons occupying those positions from the classified service. This addition would allow municipalities to enact so called "executive plans" governing the wages, hours, and other terms and conditions of employment of high level executive employees.

~~Administrative~~ Managerial or confidential ~~policy~~ implementors carries

*

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.33.090. REGULATORY POWERS. (a) No change.

(1) No change

(2) No change

(3) licensing, impounding and disposition of animals;

(4) alcoholic beverages as provided by AS 04.15.070;

(5) recreational devices as provided by AS 05.20.100;

(6) condemnation and abatement of public nuisances and hazards;

(7) water pollution control;

(8) air pollution control as provided in AS 46.03.140-46.03.240;

9 (~~10~~) municipally owned utilities to the extent not prohibited by 42.05; Walker memo: carries to the extent not otherwise prohibited

10 (~~11~~) any activity affecting the general health, safety, well-being and welfare of its inhabitants.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090-29.36.130 for areawide exercise or in the manner required under AS 29.36.160-29.36.200 for exercise in the borough area outside cities or are conferred by Sec. 020 of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(3), (6), (7), (8) and (~~9~~) of this section, exercise of the powers areawide or, as to (a)(3), (6) and (~~9~~), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on the acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

7

EXPLANATION: Laundry list shortened to include only those items containing cross-references and those specifically treated under (b). (10) is new. (8) dealing with air pollution control is added to (b) so that the power must be exercised on an areawide basis.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter [to [the] council of] a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

1. Walker Recc./CARRIES
MOTION
delete

EXPLANATION: This section is substantially similar to the existing AS 29.42.010. A reference in subsection (a) to "zoning" has been changed to the more flexible term "land use regulation". Subsection (b) has been redrafted to clarify the issue of whether a city's consent is required before delegated powers are revoked by the assembly.

MINORITY RECOMMENDATION:

(c) Notwithstanding the provisions of (b) of this section the functions of planning, platting, and land use regulation within a first class or home rule city located more than 25 miles from the boundary of the borough seat may be assumed and exercised exclusively by that city upon ratification by the qualified voters residing in the city of an ordinance of the city council proposing exercise of those powers by the city.

EXPLANATION: Would allow a first class or home rule city located a distance from the borough seat to take over planning without the consent of the borough.

**DRAFTED CHANGES RECOMMENDED BY TECHNICAL COMMITTEE - 06 DECEMBER 1980**

**Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS.** (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a ~~borough~~ municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to [a court] board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, or for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

EXPLANATION: This section consolidates provisions of existing Sec. 29.42.050. and Sec. 29.42.060. The specific enumeration of the kinds of decisions from which appeals may be taken is eliminated; in its place is a more general requirement allowing appeals from administrative decisions of borough employees or boards made in enforcing or administering land use regulations. New language allows appointment of hearing officers, eliminates redundant public record and meeting requirements, and allows the assembly to define proper parties, evidentary rules, and standards of review rather than following more restrictive rules of the present AS 29.42.060.

~~DELETE: A COURT~~

Sec. 29.45.010. GENERAL PROPERTY TAX. A general law or home rule borough other than a unified municipality, may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functi ns limited to the area outside cities. A unified municipality may levy areawide and nonareawide property taxes. A tax if levied on real property, personal property, or both must be assessed, levied and collected as provided in this chapter.

EXPLANATION: This section has been clarified as the the fact that a unified municipality may levy both areawide and nonareawide taxes. Limiting the use of areawide taxes to areawide functions and nonareawide taxes to nonareawide functions makes little sense. It is made clear that taxes may be levied on personal and real property or either.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

OK

Sec. 29.45.020. TAXPAYER NOTICE. (a) If a municipality levies and collects real and personal property taxes, or either, the governing body shall provide the following notice:...

EXPLANATION: The language "real and personal property taxes, or either", was added to conform to 29.45.010.

OK

Sec. 29.45.050. OPTIONAL EXEMPTIONS AND EXCLUSIONS. (a) No change.

(b) A municipality may by ordinance

(1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage.

(2) classify and exempt from taxation

(A) ... [THE HOUSEHOLD FURNITURE OVER $500 IN VALUE AND THE EFFECTS OF THE HEAD OF A FAMILY OR A HOUSEHOLDER]... (the rest of the subparagraph is left intact.)

EXPLANATION: Eliminates in (b)(1) the $5 and $15 limitations, since with these limits, collecting a tax on boats does not pay administrative costs. Modifies and expands existing (a)(2)(A) relating to optional exemption of household furniture and effects, based on recommendations of AAAO, since assessors currently do not include household furnishings and personal effects of family members.

ok

Sec. 29.45.100. TAX LIMITATIONS. (a) No change.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from al' sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of the property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States bureau of the census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of the property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

EXPLANATION: Change requested by AAAO raising $1000 to $1500. No recommendation by the Technical Group.

OK

Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) No change.

(b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the purposes of the investigation. The assessor may seek a court order to compel entry and production of records.

EXPLANATION: It was felt that the assessor ought to be able to seek production of records, as well as to compel entry, whether refused entry or not.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

Sec. 29.45.150. PENALTY. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation is guilty of a class B misdemeanor.

EXPLANATION: This section was changed to classify the misdemeanor to conform with the criminal code. A class B misdemeanor carries a possible fine of $1,000 and term of imprisonment of 90 days, somewhat more severe than existing law.

**DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE**
**06 December 1980**

ok

Sec. 29.45.220. HEARING. (a) No change.

(b) No change.

(c) The only grounds for adjustment is proof of unequal, excessive, improper, or under valuation based on facts which are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(d) No change.

(e) Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

(f) The appellant or the assessor may appeal the board's determination to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

EXPLANATION: Change in (c) makes it clear that an assessment can be raised as the result of an appeal. Change in (e) to allow for supplementary assessments after June 1. Change in (f) so that appeals to the superior court will be heard on the record rather than de novo, as is now the case.

DRAFTED CHANGES RECOMMENDED BY THE TECHNICAL COMMITTEE
06 December 1980

rejected

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) ADD:

(7) property held by an Indian, Eskimo or Aleut or by a community of Indians, Eskimos or Aleuts for which title is subject to a restriction against alienation; or property held by the United States in trust for the benefit of an Indian, Eskimo or Aleut or a community of Indians, Eskimos or Aleuts; or other property defined in section 4 of the Alaska Statehood Act (72 Stat 339) or Article 12 section 12 of the Alaska Constitution.

The rest of this section is the same.

Sec. 29.48.090. EXEMPTION.

(d) An exemption from a special assessment shall be granted to property held by an Indian, Eskimo or Aleut or by a community of Indians, Eskimos or Aleuts for which title is subject to a restriction against alienation; or property held by the United States in trust for the benefit of an Indian, Eskimo or Aleut or a community of Indians, Eskimos or Aleuts; or other property defined in section 4 of the Alaska Statehood Act, (72 Stat 339) or Article 12 section 12 of the Alaska Constitution.

The rest of this section is the same.

EXPLANATION: Change proposed by Mike Walleri of Tanana Chiefs Corporation to avoid taxation of land which is not taxable under state and federal law.

145

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

SCOMM

#23:50

# AGENDA

## TITLE 29 REVISION COMMISSION
## Policy Group Meeting

January 17th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

   a. Presentation by Larry Kimball, Director, Division of Community Planning, Department of Community and Regional Affairs: "Planning for Small Communities."

3. Old Business:

   a. Approval of Minutes.
   b. Report by subcommittee chairman on AS 29.09.180. (Organizational Grants).
   c. Report by subcommittee chairman on AS 29.30.040 (Voter Qualifications).
   d. Presentation of proposed drafts by the Technical Committee.
   e. Other Old Business.

4. New Business:

   a. Presentation of proposed items for consideration by members of the Policy Advisory Group.
   b. Presentaion of proposed items for consideration by Ex-Officio Members.
   c. Presentation of proposed items for consideration by the Technical Revision Committee.
   d. Other new business.

January 18th:

1. Introduction of guests and members of the public attending.

2. Presentations by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business.

4. New Business.

GET HOBERWOTH TAPES

(1)

Perdiem ✓
For Dimmick

Called to order
Roll call

Cook - no oversight

Larry Kimball:
"Planning for Small Comm.

346

Land use problems -

180 plans. when finished
COASTAL ZONE MGMT - same division -
trying to keep ahead.

t.
Line 27.

Organizational Grants

McCarter presentation of C&RA Bill #3

cities ) money on 3 yr sliding
29.45.010 Boroughs ) scale

Real & pers
prop tax - Kohler to
Same rate

Finish Tech Committee drafts

Take up Teds Powers section
1.

Committee: 29.33.110 TB.050

Kohler
Parr ) definitions of franchises,
Berns ) leases, permits
Sharp

Dimmick .610 - language

Cook - home rule relationship

Service Areas - Dimmick concern
see lang.

Chair Passed out Issues paper
to look for discussion Sun.

Parr - minority reports
Larson asked for clarification
Chair submit to Rules
w minority reports affixed.
Issue for Sunday for discussion
if objection
Individual responsibility
to make available

Minutes approved.

2nd day ~~Revisions~~

Chair- Palmer to √ into audit & coord w
Tim Troll. St. Marys city mgr

Chair will investigate wording & policy
issue of including unified municipalities
in mandatory powers sections.
Land use - specific problem.

Chair to oversee Issue of power to accept grant money
Do munis have?

Chair wording 33.160 (c) more artful.
" drafting 29.33.130 (c) " "

29.33.080 Has been affected by legislation changing
Title 42. Needs to be changed to conform.

Recall - no new language.

CHAP 45. Differing rates for real or pers. prop?

.100 Issue of two structures of pers. & real prop. reassessed. Optional taxation. real or pers.

.010 Optional exemption of pers prop as opposed to differing structures. Who assesses & if exempted?

Definitions of real & pers. prop.

7 CERA says no.

Motion carries: Staff to draft provision clarifying that real & pers prop must be taxed at same rate.

3rd cl. boro. to HR. no lang. drafted since eliminated 3rd cl. boros.

Motion carries: STAFF TO DROFT LANGUAGE to allow 3rd cl. boro. to go directly to HR.

Language in Title defining 3rd cl. boro so they can define themselves. while exercising grandfather RIGHTS.?

DIRECTION:

Dinnick Motion 2ND FAILS: Rescind action to elim 3rd cl. boro.

CERA will make perm. file of current law for 3rd. cl. boros

Branson wants to see finished bill.
Comments to C&RA re:

√ when filed. → Minority statements to Tam to be presented with bill.

Tam volunteered to track through committees)

Dimmick · Garbage & solid waste. wants to submit recc. to staff. – NO, to C&RA.

MOTION: Larson: Majority report. vs. minority report.
2nd ~~Thinks minority report to be submitted~~
carries on individual basis. Report w min rept. w app. to staff.

Cook sugg: per
Pg 74. 30.060 (c). Add. "& auth results to be
carries. certified."

~~30.100 Add "the gov body may put question on sep. ballot."~~

~~29.24.700 (3) Add: "if taxes are assessed or levied".~~

Issues: 45.260
2nd carries
√ Walker. sec(b) inconsistent w a & covered move to delete, 2nd. w approp. ref. to pers prop ass. forms. direct staff to retain

carries
Larson motion: staff & chair to decide and clarify inconsistencies in final draft.

ISSUES: TO BE FURTHER CONSIDERED IN LEGISLATIVE PROCESS:

~~CEQA Handbook~~
CHAIR WILL BRING LIST
ADOPTED REVISED TITLE 29.

ADJOURNED — 3:35

Prepared by: Theodore D. Berns
Title 29 Technical Committee
January 2, 1981

## CHAPTER 33. MUNICIPAL POWERS AND DUTIES

(CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

Larson motion: 2ND Article 1. GENERAL POWERS Approved

Sec. 29.33.010 (Sec. 29.48.010.) GENERAL POWERS. ALL Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

(7) to levy taxes and special assessments and to impose liens for the enforcement thereof;

(8) to enforce ordinances and to prescribe penalties for violations;

(9) to acquire, manage, control, use and dispose of real and personal property, and interests in such property whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under [AS 29.63.090(f)];

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

added (13) to regulate the operation and use of its public rights of way, public facilities and services.

Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL JURISDICTION. (a) A municipality may, to the extent otherwise authorized or permitted by law, provide parks, roads (including ice roads), trails, playgrounds, solid and septic waste disposal, wharves, harbors and other marine facilities, emergency medical services, cemeteries, airports, transportation systems and utility services outside its boundaries, and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030 (Sec. 29.73.020 ) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

Sec. 29.33.040. (Sec. 29.48.270.) EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside cities in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS_____.

(c) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

Sec. 29.33.050. FRANCHISES AND PERMITS. (a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges and may grant permits for use of streets and other public places.

(b) No exclusive franchise is valid until it has been ratified by a majority of the qualified voters voting on the question at a regular or special municipal election.

Sec. 29.33.060. (Sec. 29.48.060.) PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a utility to the extent that the utility is not regulated under AS 42.05, provided that interest must be paid on any deposit required by the utility. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return in invested capital.

Sec. 29.33.070. MUNICIPAL PROPERTY.

The assembly or council shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land of the municipality. ~~Each disposal of land or an interest in land shall be by ordinance unless the assembly or council finds by resolution that the land or interest in land is without substantial value to the municipality.~~

Sec. 29.33.080. (Sec. 29.48.190.) BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

OK NC

(b) The assembly or council may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

Sec. 29.33.090. (Sec. 29.48.210.) EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes and levied and collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to unified municipalities, OR HOME RULE) failed

SB NOT there

NC OK

WALKER MOTION

Sec. 29.33.100. (Sec. 29.48.220.) POST AUDIT. The assembly or council shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the assembly or council shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of

NC

the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

Article 2. MANDATORY AREAWIDE POWERS

Sec. 29.33.110. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this article on an areawide basis, both inside and outside cities within their boundaries.

(b) No city may exercise an areawide power once that power is being exercised by a borough.

Sec. 29.33.120. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

IF Reservation is in a school District, there would be no REAA involved

Carries Parr Motion

Sec. 29.33.130. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess and collect property, sales and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city ~~and~~ shall be collected by a borough ~~are~~ AND returned in full to the levying city. - ~~[illegible] list? per Borrow letter~~

MAY.

MOTION: APPLY TO HR & GL Municipalities.

Sec. 29.33.140. LAND USE REGULATION.

First and second class boroughs shall provide for planning, platting & land use regulation in accordance with AS 29.42._____.

Article 3. ADDITIONAL CITY AND BOROUGH POWERS

Sec. 29.33.150. FIRST CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through .140, a first class borough in the areas outside cities, may exercise any power not otherwise prohibited by law.

more separation in format of areawide + non-areawide powers

KOHLER MOTION CARRIES

(b) A first class borough may, by ordinance, exercise the following ADDITIONAL powers on an areawide basis:

1. Providing transportation systems
2. Water pollution control
3. Air pollution control as provided in AS 46.03.140-.240
4. Licensing of day care facilities
5. Regulation & DISPOSITION of animals

Walker motion 2nd. carries

(c) In addition to powers conferred by (b) of this section, a first class borough may, on an areawide basis, exercise any other power not otherwise prohibited by law provided that such power has been transferred by a city and approved by the borough

assembly or has been acquired pursuant to sec. .190 of this chapter.

Sec. 29.33.160. SECOND CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through .140, a second class borough, in the area outside cities, may, by ordinance, exercise the following powers:

1. Providing transportation systems
2. Regulation of fireworks
3. Regulation of animals
4. Regulation of drivers and motor vehicles, including snow vehicles and off highway vehicles, to the extent allowed under AS 28.01.010.
5. Provision of garbage and solid waste collection and disposal
6. Air pollution control as provided in AS 46.03.140-.240
7. Water pollution control
8. Participation in federal or state loan programs for housing rehabilitation and improvement for energy conservation.
9. Economic development programs and activities.

(b) A second class borough may, by ordinance, exercise the following powers on an areawide basis:

1. Providing transportation systems
2. Regulation of animals

carries

The non-competitive grant of the exclusive right to use a public street or right of way for more than 5 years to a utility not certificated by the APUC or ATC shall be valid only if approved by a majority of the voters voting on the question at a regular or special election.

a transportation

Pam motion

Sharp lang.

Larson motion: 2nd Add: carries

(6.) The power to receive & expend grants for public purposes.

3. Air pollution control as provided in AS 46.03.140-.240

4. Water pollution control

5. Licensing of day care facilities

(c) In addition to powers conferred by (b) of this section, a second class borough may, on an areawide basis or in the area outside cities, exercise any other power and may provide other services or facilities not otherwise prohibited by law on an areawide basis provided that such power has been transferred by a city and approved by the borough assembly for exercise within the city or has been acquired by election under Sec. .190 of this chapter, or in the area outside cities, provided it has been acquired by election under Sec. .190.

Lunch ↓

Sec. 29.33.170. CITIES WITHIN ORGANIZED BOROUGHS. (a) In addition to the power conferred under Sec. .010, a first or second class city within an organized borough may exercise any power not otherwise prohibited by law. In accordance with Sec. .110, a city may not exercise a power once that power is being exercised by a borough.

Sec. 29.33.180. CITIES OUTSIDE ORGANIZED BOROUGHS. (a) Cities outside an organized borough may exercise any power not otherwise prohibited by law.

Home Rule

(b) Cities outside an organized borough may assess, levy and collect a general property tax and a sales or use tax. A property, sales or use tax if levied must be assessed, levied and collected as provided by Chapter 45 of this title for boroughs.

Cities may, by ordinance, establish, alter and abolish differential tax zones for property taxes for services not provided in the entire city or provided at a different level than provided generally within the city.

(c) Home rule and first class cities outside an organized borough ~~shall~~ constitute city school districts and shall establish, operate and maintain a system of public schools as provided by AS 29.36.040 for boroughs.

(d) Home rule and first class cities outside an organized borough shall, and second class cities outside an organized borough may, provide for land use regulation as provided by AS 29.42.010-.245 for boroughs.

Sec. 29.33.190. ACQUISITION OF ADDITIONAL POWERS. (a) A borough acquires additional powers by holding an election on the question as provided by this section. For acquisition of areawide powers, the election shall be held areawide. For acquisition of powers in the area outside cities the election shall be held in the area outside cities only.

(b) An election under this section may be initiated by a petition signed by a number of voters equal to 15% of the number of votes cast at the preceeding regular election in the area in which the election is to be held or by the assembly. A petition under this section shall be filed with the borough clerk who shall certify to the assembly whether the petition contains sufficient signatures. Upon certification, the assembly shall, at the next regular meeting, order an election on the question to be held

within 60 days of the order. If more than one power, service or facility is proposed, each shall appear separately on the ballot.

(c) In the case of acquisition of additional areawide borough powers, the borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications. One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the

bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This subsection applies to home rule and general law cities.

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

Sec. 29.33.200. (Sec. 29.48.310.) GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.210. (Sec. 29.48.320.) EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.220. (Sec. 29.48.330.) ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

Is there a ~~present~~ problem w present "liberal construction" language?

Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all the legislative powers not prohibited by law or charter.

Sec. 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of four classes:

(1) first class boroughs;

(2) second class boroughs;

(3) repeal

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. Section unchanged to:

(g) A second class borough may reclassify as a first class borough in the manner provided by AS 29.36.110 - 29.36.130 for the addition of powers by boroughs, except that the petition or proposal requests reclassification instead of requesting addition of powers.

(h) repeal.

(i) repeal.

(j) repeal.

Sec. 29.06.050. TRANSITION. (a) A third class borough existing on the effective date of this act shall continue as a third class borough under the conditions established by law prior to the effective date of this act until it becomes reclassified in accordance with this section.

(b) A third class borough may reclassify as a first or second class borough in the manner provided by AS 29.36.110 - 29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers. If reclassification is approved, a school board shall be elected in conformity with AS 14.12 at the next regular election if it occurs within 90 days of the date of the

reclassification election, or at a special election within 90 days of the date of the reclassification election. Expiration dates of terms of members elected at a special election must coincide with the date of the regular election. Until a board is elected and qualified, the assembly continues to serve as the board.

EXPLANATION; Third class boroughs are eliminated. A transition section provides that the existing third class borough retain its status until it is reclassified. The option of allowing the assembly to continue to serve as school board of a borough which is reclassifed from third to first or second class currently contained in AS 29.06.030(i) has been eliminated, so that if the third class borough changes its classification it must elect a school board. (NOTE: This was prepared as a request of the Policy Group to eliminate third class boroughs. If it is approved upon reconsideration, additional technical drafting changes will be required to eliminate references to third class boroughs in other sections.)

Sec. 29.09.180. ORGANIZATIONAL GRANTS. (a) For the purpose of defraying the cost of transition to a municipal form of government and in order to provide for initial government operations, each municipality incorporated after January 1, 1981, or for a second class city reclassified after January 1, 1981, is entitled to an organizational grant of $150,000, except that a municipality which is merged, consolidated, or unified under AS 29.12. is not entitled to an organizational grant.

EXPLANATION: This section is being resubmitted as the recommendation of the Technical Group after considering legislation on the matter proposed by Community and Regional Affairs.

McCarter presentation
Bill #3.

NOT ACCEPTED

Mulcahy motion to approve CERA wording
2ND - carries

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all the powers

(1) not prohibited it by law or charter;

(2) granted to home rule boroughs.

EXPLANATION: Existing language in (2) is confusing in that the reference to cities may imply a limitation of some sort on the powers of a unified municipality. This is a clearer statement of existing law.

Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law municipality shall adopt a conflicts of interest ordinance which other provisions of this chapter notwithstanding, includes provision that an officer or employee shall disqualify himself from participating in any official action in which he has a substantial financial interest.

EXPLANATION: The second sentence is deleted as redundant. After considering the alternative proposed by the Policy Group, the Technical Group reasserts its original recommendation. It is felt that a person should not vote on a matter in which he has a substantial financial interest and that disclosure of the interest is not adequate protection for the public.

NOT ADOPTED

Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor and member of the school board. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor or member of the school board, vacant when the person elected.

(The rest of the section was previously approved by the Policy Group).

EXPLANATION: The Technical Group upon reconsideration recommends that the governing body not be allowed to declare the office of a school board member vacant. Current law allows the members to determine vacancy on the school board.

Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. The governing body may, by ordinance, establish advisory or quasi-judicial boards and commissions.

EXPLANATION: Upon reconsideration, the Technical Committee would like to limit specific authority to set up boards to exclude administrative boards. In addition, subsection (b) is deleted from the draft which was originally approved by the Policy Group because it is felt that appointment power is adequately included under general separation of powers principles and ought not to be further restricted in an inflexible statute applying to every type of board.

NOT ADOPTED

Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. A member of the governing body may not be appointed manager of the municipality sooner than one year after leaving office except by a vote of three-forths of the authorized membership of the governing body.

EXPLANATION: Upon reconsideration, it is felt that the prohibition against serving as manager ought not to apply to officials other than members of the legislative body. This change would allow the governing body to appoint a municipal official to the office of manager without the one year or super majority restriction.

Motion: Branson
2nd - carried

Sec. 29.24.680. PROHIBITIONS. Repeal.

EXPLANATION: (a) and (b) have been approved for repeal by the Policy Group. Upon reconsideration it is felt that the rest of the section should also be repealed. (c) and (d) were adopted for a specific Juneau problem which no longer exists according to Mr. Lee Sharp.

Line 21
Pg 67
LARSON MOTION

Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCE. (a)
(12) repeal.

The rest of the section is unchanged.

EXPLANATION: It is felt that (12) should be repealed as redundant because the provision is contained in AS 36.25. (Note: changes to (2), (5), (7), and (8) were previously approved by the Policy Group and the Technical Committee makes no further recommendation with regard to those paragraphs.)

Larson motion to accept repeal
2nd withdrawn

[illegible]
[illegible]

Recc. WITHDRAWN

Sec. 29.27.050. CODES OF REGULATION. The governing body may in a single ordinance adopt or amend by reference provisions of a standard published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopted ordinance need be printed after adoption. The governing body shall provide for the adopted code to be made available to the public at no more than cost.

EXPLANATION: The Policy Group previously approved changes made to the last line of this section - "The governing body shall provide for the adopted code to be sold or made available at no charge to the public." It is felt that this would be more flexible in that a municipality would also have the option of collecting a fee which represents only a part of the cost.

Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance the governing body may prescribed penalties not to exceed those imposed for a class B misdemeanor and may require mandatory, nonsuspendable imprisonment not to exceed five days.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or a threatened violation, the superior court shall grant the injunction. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The penalties authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at no more than cost.

EXPLANATION: Technical drafting changes with no substantive impact on the section as previously approved by the Policy Group in (a) and (b). Subsection (c) has been changed from the language previously approved so that a municipality has the option of charging less than full cost.

Sec. 29.30.030. ELECTION DATES. (a) ~~The governing body~~ A ~~municipality~~ shall give at least 20 days notice of a regular or special election.

(b) The date of a regular election is the first Tuesday of each October unless a different date or interval of years is provided by ordinance.

EXPLANATION: Technical changes. The notice requirement is applied to the regular election as well as the special election.

(a) A The municipality

Sharp lang:

At least 20 days notice shall be given

Dimmick MOTION 2ND ) carries

OK

OK

Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occuring no sooner than 45 days after certification of the petition.

Other subsections as previously approved.

EXPLANATION: The Technical Committee wishes to reassert its first recommendation that no special election be required in the initiative process. In rejecting this suggestion, the Policy Group appears to have felt that the initiative process should be treated the same as the recall and referendum processes, both of which require a special election if a regular election is not held within a given time period. The Technical committee feels that the initative process, seeking to establish new law, is not as much of an emergency situation as the recall of an official or the repeal of an unpopular law, and therefore that the expense and inconvenience of holding a special election on an initiative ought not to be placed on municipalities.

Larson motion
2ND.

Sec. 29.30.300. ELECTION NOTICE. At least 20 days notice of an election to recall an official shall be given notwithstanding an ordinance or charter provision to the contrary.

EXPLANATION: It is felt that since a recall must be done at a regular or special election, procedural requirements dealing with election apply so most of this section is eliminated as redundant. The notice provision is necessary to bind home rule municipalities.

Brainson motion
2nd

OK

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body his office becomes vacant and is filled in accordance with AS 29.24.175.

(b) Nothwithstanding subsection (a), if all members of the governing body are recalled, the governor shall appoint three qualified persons to the governing body. The appointees shall appoint additional members to fill remaining vacancies in accordance with AS 29.24.175.

(c) If all officials are recalled from a school board the governor shall appoint three qualified persons to the school board. The appointees shall appoint additional members to fill remaining vacancies.

(d) A person appointed under (a) - (c) of this section shall serve until a successor is elected and takes office.

(e) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held not more than 60 days from the date the recall election is certified, except that if a regular election occurs within 75 days after certification the successor shall be chosen at that election.

(f) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: Redrafted at the request of the Policy Group. This would provide that vacancies in a governing body resulting from recall would be filled as any other vacancy, unless all members of the body are recalled, in which case the governor shall appoint members so that local government can continue to function. If all members of a school board are recalled, the governor would have the same power of appointment to that board.

OK

Sec. 29.42.150. DELEGATIONS. The assembly may by ordinance authorize the planning commission and the platting authority to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the planning commission or platting authority, to other boards or commissions or to a hearing officer designated by the planning commission or platting authority.

EXPLANATION: The Technical Committee originally recommended repeal of this section. Upon reconsideration, it is recommended that it be retained in a slightly redrafted form to insure that there is no question that hearing officers may be used by the planning commission and platting authority to hear individual cases.

Sec. 29.45.610. POWER OF LEVY. (a) A city within a borough which levies and collects areawide sales or use taxes may levy sales or use taxes on all sources taxed by the borough in the manner provided for boroughs, except that the assembly may by ordinance authorize a city to levy and collect sales or use taxes on other sources.

(b) A city within a borough which does not levy and collect areawide sales or use taxes may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Repeal.

EXPLANATION: Subsection (a) is altered to allow a city to levy taxes on other sources if authorized by a borough. It is felt that borough authorization should be required since the borough does the collecting and would experience added administrative difficulties if the city and borough tax differ. Subsection (b) contains the material formerly in AS 29.45.620.

Deferred for Dimmick wording.

Sec. 29.33.200. MUNICIPAL PROPERTIES. (Section as previously approved by the Policy Group with the following new subsection:)

(g) Dedication of streets, rights of way, easements or other areas for public use shall not be construed to require the municipality to maintain, improve or provide for municipal services in the area dedicated and the dedication shall not impose any liability on the municipality for the condition of the area dedicated.

EXPLANATION: Since the municipality may be the recipient of land deeded over by a private person without the muncipality's approval, it is felt that the municipality should not be liable for the condition of property just as the result of dedication. This would not affect the liability of a municipality for the condition of land which it undertakes to improve or maintain.

Carries

CHANGE RECOMMENDED BY TECHNICAL COMMITTEE - Jan. 6, 7, 1981

1ST 2 sentences of sub. A

Sec. 29.36.270. SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. The borough may include a city within a service area if the city council agrees by ordinance or if approval is granted by a majority of voters residing within the city and by a majority of voters residing within the boundaries of the proposed service area, but outside of the city.

(The rest of the section is the same).

EXPLANATION: Makes it clear that a city may be included within a service area if the council or voters agree.

ART X, const.?
diff between language & application

# DRAFT NO. 3

## FOR DISCUSSION ONLY

CHAPTER 03. THE UNORGANIZED BOROUGH.

Sec. 29.03.010. ESTABLISHMENT. Areas of the state which are not within the boundaries of an organized borough constitute a single unorganized borough.

Sec. 29.03.020. SERVICE AREAS. Allowing for maximum local participation, the legislature may establish, alter, or abolish service areas within the unorganized borough to provide special services, which may include but are not limited to schools, utilities, land use regulations and fire protection. A new service area may not be established if the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city.

CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES.

****Sec. 29.06.010. HOME RULE. A home rule municipality is a municipal corporation and political subdivision. It is a city of the first class or an organized borough which has adopted a home rule charter, or it is a municipality unified in accordance with AS 29.12.190 - 29.12.350. A home rule municipality has all legislative powers not prohibited by law or charter.

Sec. 29.06.020. GENERAL LAW. A general law municipality is a municipal corporation and political subdivision and is an unchartered borough or city. It has legislative powers conferred by law.

Sec 29.06.030. CLASSES OF GENERAL LAW. General law municipalities are of five classes:

(1) first class boroughs;

(2) second class boroughs;

(3) third class boroughs;

(4) first class cities;

(5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. (a) A second class city may be reclassified as a first class city by holding an election on the question as provided in this subsection, if the Department of Community and Regional Affairs determines from the best figures available that the population of the city has reached 400 permanent residents.

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

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

(2) the council may propose reclassification.

(c) The council shall hold at least one public hearing within the

city on the question. The council shall then evaluate the ability of the city to assume first class status and make its findings public.

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

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

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

(g) A second class borough may reclassify as a first class or third class borough, and a third class borough may reclassify as a first class or second class borough, in the manner provided by AS 29.36.110 -29.36.130 for the addition of powers by boroughs, except the petition or proposal requests reclassification instead of requesting addition of powers.

(h) At the time of voting on reclassification of a second class borough to third class status, borough voters in conformity with AS 29.36. shall elect an assembly to serve as the combined assembly and school board of the third class borough if reclassification is approved.

(i) At the time of voting on reclassification of a third class borough to second class or first class status, borough voters shall vote also on the question whether the borough shall upon reclassification retain a combined assembly and school board or a separate assembly and board as otherwise provided for first and second class boroughs. If the majority of votes cast on the question favors retention of the combined assembly and board, the assembly serving at the time of the relassification election

continues to serve as the assembly and board upon voter approval of reclassification and until terms of assemblymen expire as provided before reclassification. If a separate board and assembly are approved at the reclassification election, a school board shall be elected in conformity with AS 14.12 at the next regular municipal election, if it occurs within 90 days of the date of the reclassification election, or otherwise at a special election within that time called by the assembly with expiration dates of terms of members elected at the special election to coincide with the date of the regular municipal election. Until a board is elected and qualified, the assembly continues to serve as the board.

(j) The effective date of reclassification of a borough for which reclassification is approved under (h) of this section is the first day of the borough's fiscal year which begins at least six months after the date on which the reclassification proposition has been approved by the voters.

****Sec. 29.06.050. TRANSITION. Repeal.

CHAPTER 09. INCORPORATION.

ARTICLE 1. REQUIREMENTS.

Sec. 29.09.010. INCORPORATION OF CITIES. (a) A community which meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community which meets all the standards established in (a) of this section except (a)(1) may incorporate as a second class city.

Sec. 29.09.020. LIMITATIONS ON INCORPORATION OF CITIES. (a) A community within the unorganized borough may not incorporate as a city if the services may be provided by annexation to an existing city.

(b) A community within an organized borough may not incorporate as a city if the services could be provided on an areawide or nonareawide basis by the borough in which it is located or by annexation to an existing city.

Sec. 29.09.030. ORGANIZED BOROUGHS. An area may incorporate as an organized borough if it conforms to the following standards:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support organized borough government;

(2) the boundaries of the proposed borough conform generally to natural geography and include all areas necessary for full development of local services;

(3) the economy of the area includes the human and financial resources capable of providing local services; evaluation of an area's economy includes land use, property valuations, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated local government.

ARTICLE 2. PROCEDURES.

Sec. 29.09.060. PETITION. Municipal incorporation is proposed by filing a petition with the Department of Community and Regional Affairs. The petition shall include the following information about the proposed municipality:

(1) class;

(2) name;

(3) boundaries;

*(4) [Effective January 1, 1981] composition and apportionment of the assembly or council;

(5) for a first class borough, a designation of areawide powers to be exercised;

(6) for a second class borough, a designation of areawide and nonareawide powers to be exercised;

(7) maps, documents, and other information required by the Department of Community and Regional Affairs;

(8) for first class city incorporation, the signatures and resident address of 50 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(9) for second class city incorporation, the signature and resident address of 25 permanent resident voters or of 15 percent of the permanent resident voters within the proposed municipality, whichever is greater, based on the number who voted in the area in the last general election;

(10) for borough incorporation, the signature and resident address of 15 percent of the permanent resident voters in each first class city and 15 percent of voters in the area outside first class cities based on the number who voted in the respective areas in the last general election;

(11) for a city, a designation of the powers proposed by the petitioners to be exercised;

(12) a proposed operating budget for the municipality projecting sources of income and items of expenditure through the first full fiscal year of operation.

Sec. 29.09.070. REVIEW. The Department of Community and Regional Affairs shall review petitions for content and signatures and shall return deficient petitions for correction and completion.

Sec. 29.09.080. INVESTIGATION. (a) If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

(b) The department may combine petitions for incorporation from the same general area.

(c) The department shall hold at least one public hearing in the area proposed for incorporation.

Sec. 29.09.090. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the incorporation.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be incorporated for the purpose of receiving testimony and evidence on the proposal.

Sec. 29.09.100. DECISION ON BOROUGH INCORPORATION. (a) If the Local Boundary Commission determines that a proposed municipality fails to meet the standards for incorporation, it shall reject the petition. If the commission determines that the proposed municipality meets the standards, it shall accept the petition. If the commission determines that the proposed boundaries can be altered to meet the standards, it may alter the boundaries and accept the petition.

(b) A commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.09.110. INCORPORATION ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of an incorporation petition. Within 30 days after notification, the lieutenant governor shall order an election in the proposed municipality to determine whether the voters desire incorporation and, if so, to elect the initial officers in the same election. If incorporation is rejected, no officers are elected. The election is held not less than 30 nor more than 90 days after the date of the election order. The election order must specify the dates during which nomination petitions for election of initial officers may be filed.

(b) An Alaska voter who has been a resident of the area within the proposed municipality for 30 days before the date of the election order may vote.

(c) Areawide borough powers included in the incorporation petition are considered to be part of the incorporation question. In an election for the incorporation of a second class borough, each power to be exercised outside cities only is placed separately on the ballot. Adoption of a nonareawide power requires a majority of the votes cast on the question, and the vote is limited to the voters residing outside cities.

(d) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under this section.

Sec.29.09.120. ELECTION OF INITIAL OFFICERS (a) Repealed by Sec. 4 ch. 23 SLA 1976.

(b) Nominations for initial officers are made by petition. The petition is in the form prescribed by the lieutenant governor and includes the name and address of the nominee and a statement of the nominee that he is qualified under the provisions of this title for the office that he seeks. A person may file for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a home rule or first class city. Petitions to nominate officers of a second class city must include the signature and resident address of 10 voters in the area of the proposed city. Petitions to nominate elected municipal officers must include the signature and resident address of 50 voters in the area of the proposed municipality, or that area of the proposed municipality from which the officers are to be elected under the composition and apportionment set out in the accepted incorporation petition.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 - 15.60). The state shall pay all election costs under (a) - (c) of this section.

(d) The initial elected municipal officials take office on the first Monday following certification of their election.

(e) The initial elected borough assembly and city council members shall determine by lot the length of their terms of office so that a proportionate number of terms expire each year, resulting in staggered terms of office for members subsequently elected.

Sec. 29.09.130. INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS. Service areas in a newly incorporated borough or city shall be integrated into the borough or city within two years after the date of incorporation. On integration the borough or city succeeds to all the rights, powers, duties, assets and liabilities of the service areas. After integration, the borough assembly or city council may exercise within a former service area all of the rights and powers exercised by the service area at the time of integration, and may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a borough or city as successor to the service area. Upon integration no less than all property in the service area at the time of integration remains subject to taxation to pay the principal of and interest on the bonds. The provisions of this section apply to all organized boroughs whether incorporated or organized before or after September 10, 1972.

Sec. 29.09.140. TRANSITION. (a) The powers and functions exercised by home rule or general law cities and service areas which are succeeded to by a newly incorporated borough or city are exercised by them until the new borough or city assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new borough or city.

(b) The borough or city shall give written notice of its assumption of the powers, duties and other items enumerated in Secs. 130-140 of this chapter, to the city, and service area concerned before the assumption. Borough or city officials shall consult with the officials of the city and service area concerned, and arrange an orderly transfer.

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

Sec. 29.09.150. CHALLENGE OF LEGALITY. No person may challenge the formation of a municipality except within six months of the date of its incorporation.

ARTICLE 03. TRANSITIONAL ASSISTANCE.

Sec. 29.09.180. ORGANIZATION GRANTS. (a) For the purpose of defraying the cost of transition to borough or city government and in order to provide for development and interim governmental operations, each borough and city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, other than a unified municipality incorporated under the provisions of (AS 29.85), or a municipality otherwise incorporated by consolidation, is entitled to an organization grant equal to $10 for every voter who voted in the borough or city incorporation election. However, each incorporated borough and each first class city incorporated or established by reclassification outside an organized borough is entitled to at least $25,000.

(b) Within 30 days after the date of incorporation of a borough or city after September 10, 1972, the Department of Community and Regional Affairs shall determine the number of voters in the borough or city who voted in the incorporation election.

(c) Within 30 days after the completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough or city the total amount of money to which the borough or city is entitled.

CHAPTER 12. ALTERATION OF MUNICIPALITIES.

ARTICLE 1. CHANGE OF NAME.

Sec. 29.12.010. CHANGE OF MUNICIPAL NAME. (a) The governing body of a home rule or general law municipality may change the official municipal name by adopting an ordinance for the purpose and filing the ordinance with the office of the lieutenant governor. Upon receipt of a legally adopted ordinance ratified by the qualified voters voting on the question at a regular or special election, the lieutenant governor shall issue an appropriate order to the municipality changing its existing name. The name change shall become effective on a date fixed in the order and occurring within 45 days of receipt of the ordinance. A copy of the order shall be transmitted to the Department of Community and Regional Affairs.

(b) If an ordinance adopted under (a) of this section which results in an order changing the municipal name is subsequently repealed, the lieutenant governor shall issue a further order reinstating the former municipal name within 45 days of the date of the order, unless a different municipal name is adopted by ordinance transmitted to the lieutenant governor for implementation as provided in (a) of this section.

(c) When a municipal name change takes effect by means of an order issued under (a) or (b) of this section, civil or criminal suits, applications, petitions, hearings and other proceedings to which the municipality is a party and pending at or brought after the date the name change takes effect shall proceed in the name of the municipality as changed by the order.

ARTICLE 2. ANNEXATION AND EXCLUSION.

Sec. 29.12.040. LOCAL BOUNDARY COMMISSION. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presen-

tation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.19.260, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time.

Sec. 29.12.050. ANNEXATION OF MILITARY RESERVATIONS. A military reservation may be annexed to a city or borough in the same manner as prescribed for any other territory under Sec. 040 of this chapter. If a city within an organized borough annexes a military reservation under this section, the territory encompassing the military reservation automatically is annexed to the borough of which the city is a part.

ARTICLE 3. MERGER AND CONSOLDIATION.

Sec. 29.12.080. METHODS OF MERGER AND CONSOLIDATION. Two methods may be used to initiate merger or consolidation of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission, or

(2) the local option method specified in Secs. 090-160 of this chapter .

Sec. 29.12.090. PETITION. (a) Residents of two or more municipalities may file a merger or consolidation petition with the Department of Community and Regional Affairs. The petition must be signed by a number of municipal voters of each municipality equal to at least 25 percent of the number of votes cast in its last regular election.

(b) The petition includes

(1) the name and class of each municipality;

(2) the name and class of the proposed municipality;

(3) the proposed composition and apportionment of the assembly or council;

(4) maps, documents, and other information which show that the proposed municipality meets the standards for municipal incorporation .

Sec. 29.12.100. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.110. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.120. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendations regarding the merger or consolidation.

(b) The Local Boundary Commission shall hold at least one public hearing in each of the municipalities included in the merger or consolidation petition, unless officials of the municipalities agree to a single hearing.

Sec. 29.12.130. DECISION. If the Local Boundary Commission determines that the proposed municipality fails to meet the standards for incorporation it shall reject the petition. If the commission determines that the proposed municipality meets these standards, it shall accept the petition. If the commission determines that the proposed boundaries or the composition and apportionment of the assembly or council can be altered to meet the standards, it may change the proposal and accept the petition. The decision may be appealed under the Administrative Procedure Act (AS 44.62).

Sec. 29.12.140. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a merger or consolidation petition. Within 30 days after notification, the lieutenant governor shall order an election within the area to be included in the new municipality to determine whether the voters desire merger or consolidation. The election is held not less than 30 nor more than 90 days after the election order.

(b) A voter who is a resident of the area to be included within the proposed municipality may vote.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05 -15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If merger or consolidation is approved, he shall, within 10 days, set a date for election of officers of the new municipality under AS 29.09.120. The election date is not less than 60 nor more than 90 days after the election order. This date is the effective date for the merger or consolidation.

Sec. 29.12.150. ASSETS AND LIABILITIES. (a) When two or more municipalities merge, one municipality succeeds to the rights, powers, duties, assets and liabilities of the others.

(b) When two or more municipalities consolidate, the newly incorporated municipality succeeds to the rights, powers, duties, assets and liabilities of the consolidated municipalities.

Sec. 29.12.160. ORDINANCES. The ordinances, resolutions, rules, regulations, procedures and orders of the former municipalities remain in force within their respective territories until superseded by the action of the successor municipality.

ARTICLE 4. UNIFICATION OF LOCAL GOVERNMENTS.

Sec. 29.12.190. UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED. An organized borough and all cities within the borough may unite to form a single unit of home rule local government by complying with this chapter.

Sec. 29.12.200. UNIFICATION TO BE PROPOSED BY PETITION. (a) Formation of a charter commission to propose a unification charter shall be proposed by resolution of the assembly or by petition. An assembly resolution for the purpose may be adopted not more often than once every 12 months.

(b) The borough assembly, a city council, or a person living within the area of proposed unification may initiate the petition.

Sec. 29.12.210. PETITION REQUIREMENTS. (a) The petition shall read: "PETITION FOR ELECTION OF CHARTER COMMISSION TO PROPOSE UNIFICATION CHARTER We, the undersigned, qualified voters of the Borough do hereby petition that the following proposition be placed before the voters as provided by law: 'Shall a charter commission be formed (and charter commission members be elected as elsewhere provided on this ballot) to prepare, adopt and submit to the voters for their approval or rejection a proposed charter uniting the Borough and all cities within it as a single unit of home rule government having the powers, duties and functions of a unified government as authorized by law? Yes [] No []'

| Signature | Address | Inside First Class or Home Rule City | Outside First Class or Home Rule City |
|---|---|---|---|

(b) The petition shall be signed by at least

(1) that number of qualified voters of the borough living outside all first class and home rule cities in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election; and

(2) that number of qualified voters residing in each first class and home rule city located in the borough equal to 25 percent of the qualified voters who voted in the last regular borough election in each city.

Sec. 29.12.220. REVIEW OF PETITION. Upon receipt of a petition, the borough assembly shall review the petition within 15 days after its receipt to determine whether it complies with Sec. 200 of this chapter. If the petition does not meet the designated requirements, it shall be immediately returned to the person who initiated the petition with a statement indicating which requirements have not been satisfied.

Sec. 29.12.230 CALL FOR CHARTER COMMISSION NOMINATIONS. Once it is determined by the borough assembly that a petition meets the requirements of Sec. 200 of this chapter, or the assembly by its resolution proposes an election on formation of a charter commission to propose a unification charter, the assembly shall issue a call for the nomination of charter commission candidates, specifying the filing deadline and outlining the procedure described for making nominations under Sec. 240 of this chapter.

Sec. 29.12.240. NOMINATION OF CHARTER COMMISSION CANDIDATES. (a) Charter commission candidates shall be nominated by petition signed by at least 50 qualified voters of the area from which the candidate seeks election or by a number of qualified voters from that area equal to at least 10 percent of the number of votes cast from that area in the last regular borough election, whichever is less.

(b) Nomination petitions shall be filed with the borough clerk on or before the date fixed by the borough assembly, which date shall not be less than 30 days after notice of the call for nominations has been given through the borough.

Sec. 29.12.250. QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES. A person is eligible to be nominated as a candidate for the charter commission if he has been a qualified voter of the area from which he seeks election for at least one year immediately preceding the date his nomination petition is filed with the borough clerk.

****Sec. 29.12.260. COMPOSITION OF CHARTER COMMISSION. (a) The charter commission shall consist of 11 voters, three of whom shall be residents elected at large from the area of the borough and eight of whom, proportionate to the population as determined by the Department of Community and Regional Affairs, shall be

(1) residents of and elected from the area outside a home rule or first class city in the borough; or,

(2) residents of and elected from a home rule or first class city in the borough.

(b) If at least one nomination of a qualified charter commission candidate for each available seat is not filed in accordance with AS 29.12.240 the resolution or petition for unification is void and no election on the question shall be held.

Sec. 29.12.270. ELECTION. (a) After receipt of a valid petition or adoption of an assembly resolution for the purpose, the borough assembly shall submit to the voters the question of whether that borough and all cities within it shall unite to form a single unit of home rule government. The vote shall be held at the next regular borough election scheduled at least 90 days after receipt of the valid petition or adoption of the resolution

(b) The ballot on the question of unification shall be worded exactly as in Sec. 210(a) of this chapter.

(c) The election of charter commission members shall take place at the same time as the election on the question of unification.

(d) All costs incurred in conducting an election under this chapter shall be paid by the borough.

Sec. 29.12.280. REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION. (a) The votes on unification shall be tabulated in two separate classifications. One classification shall consist of all votes cast in the first class and home rule cities of the borough. The other classification shall consist of all votes cast in the remaining areas of the borough. In order for unification to be approved, it is necessary that a majority of the votes in each classification favor unification.

(b) If unification is approved, those charter commission candidates who received the highest number of votes from their respective areas shall serve as members of the commission.

Sec. 29.12.290. CHARTER COMMISSION ORGANIZATION AND PROCEDURE. (a) The charter commission authorized by this chapter shall hold its first meeting within 30 days of the date of certification of its election. The commission shall elect from among its members a chairman and a deputy chairman.

(b) A majority of the total membership of the charter commission constitutes a quorum. No decision of the commission is valid or binding unless approved by that number of members necessary to constitute a quorum.

(c) The charter commission may elect other officers from among its membership, adopt rules governing its procedures and hire and discharge commission employees. Rules adopted must conform with the provisions of this chapter.

(d) Meetings of the charter commission shall be open to the public at all times. A journal of commission proceedings shall be kept and shall be available for public inspection at the borough office.

(e) Except as provided in AS 29.12.340(e), vacancies on the charter commission shall be filled by a majority vote of the commission . The person appointed to fill a vacancy must be a qualified voter of the same area as the person whom he succeeds and must have been a qualified voter of that area for at least one year immediately preceding the date of his appointment.

(f) The borough assembly may grant a per diem allowance to the commission members and may reimburse the members for travel expenses incurred in carrying out the duties prescribed by this chapter.

(g) Costs, fees, and other expenses incurred by the charter commission are a debt of the borough and shall be paid upon proper verification.

Sec. 29.12.300. CHARTER PREPARATION. (a) A charter commission established under this chapter shall prepare, adopt and submit a proposed home rule charter for the area to be unified to the voters for approval or rejection at a regular or special borough election called by the borough assembly held within 60 days of the date of publication and posting of the proposed charter as required in AS 29.12.380. The charter shall include among its provisions:

(1) provisions for adjustment of existing bonded indebtedness and other obligations in a manner which will reserve a fair and equitable burden of taxation for debt service, subject to AS 29.12.360;

(2) provisions for

(A) the establishment of service areas; and

(B) the establishment of districts or sections for the election of members of the legislative body of the unified municipality, if election of members of the legislative body is not areawide, and procedures by which to reapportion the election districts or sections;

(C) reapportionment of the sections, if established;

(3) provision for nonpartisan government and provision for the selection, organization, authority and responsibilities of the governing body and its executive and administrator;

(4) the transfer or other disposition of property and other rights, claims, assets and franchises of the local government to be unified under the charter;

(5) provision for exercise of the rights of initiative and referendum as required by AS 29.15.050;

(6) a method of amending the charter;

(7) the date on which the charter, if approved at the charter election required by AS 29.12.340, is effective;

(8) designation of the new municipality's official name, subject to the provisions of (b) of this section;

(9) other charter provisions which the charter commission elects to include and which may be included in a home rule charter under this chapter and the state constitution.

(b) The area to be unified shall be known as a borough or a city or by some other designation consistent with existing law.

Sec. 29.12.310. PUBLIC HEARINGS. Both before and after drafting the proposed charter, the charter commission shall hold a public hearing in each area of the borough represented on the borough assembly. Other public hearings may be held by the charter commission whenever and wherever it believes necessary and appropriate.

Sec. 29.12.320. FILING OF PROPOSED CHARTER. Upon the adoption of a proposed home rule charter by the charter commission, the charter shall be signed by at least a majority of the total membership of the commission and shall be filed with the borough clerk. A copy with signatures affixed shall also be filed with the clerk of each city within the borough.

Sec. 29.12.330. PUBLICATION AND POSTING OF PROPOSED CHARTER. Within 10 days after filing the proposed charter, the borough clerk shall have it published once in at least one newspaper having general circulation distributed within the borough, if there is a newspaper having general circulation distributed within the borough. In addition, the clerk shall have a copy of the proposed charter posted in at least three public places within each city of the borough and each area outside cities. Copies of the proposed charter shall be made available by the borough assembly to the public at both the office of the borough clerk and the office of the clerk of each city within the borough. The clerk shall publish notice by radio and television of the publication, posting, and availability of the proposed charter in a manner intended to apprise the entire borough population of the existence of the proposed charter.

Sec. 29.12.340. ELECTION ON CHARTER. (a) The proposed charter adopted by the charter commission shall be submitted to the voters for ratification or rejection at the borough election specified in AS 29.12.300. The borough clerk shall prepare the ballots for use in the election and shall give published notice of and otherwise conduct the election in the manner in which regular municipal elections are conducted. In addition, the clerk shall publish notice of the election by radio and television in a manner intended to apprise the entire borough population of the election.

(b) A person who is a qualified voter of the borough may vote in the election on the proposed charter.

(c) If a majority of the votes cast in the area of the borough outside all first class and home rule cities and a majority of the votes cast in the remaining area of the borough, composed of all first class and home rule cities, are cast in favor of the proposed charter, the charter is ratified. If the charter is ratified, two copies of the charter shall be filed with each of the following authorities:

(1) lieutenant governor;

(2) commissioner of the Department of Community and Regional Affairs;

(3) district recorder for the area of the borough;

(4) clerk of the borough;

(5) clerk of each city in the borough.

(d) If a proposed charter is rejected, the charter commission shall prepare, adopt and submit a proposed charter to the voters at a general or special borough election called by the borough and held within one year of the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of unification shall be treated as if it had never been proposed or approved.

(e) If after the rejection of the first proposed charter, more than one-half of the charter commission members resign from the commission , the borough assembly shall appoint new members to fill the vacancies in accordance with AS 29.12.160(e).

Sec. 29.12.350. EFFECT OF THE CHARTER AFTER RATIFICATION. Upon ratification, the charter of a unified municipality organized under AS 29.12.190 - 390 operates to dissolve all local governments within the area of unification in accordance with the charter.

Sec. 29.12.360. ASSETS AND LIABILITIES. A municipality created by unification shall succeed to all the assets and liabilities of the local governments it unified. A bonded indebtedness or other debt incurred before unification shall remain the tax obligation of the area which contracted the debt, except that the tax obligation may be spread over a larger area by ordinance if the governing body determines that the asset for which the bonded indebtedness or other debt was incurred was used for the benefit of the larger area before unification, or is so used after unification. However, preunification bonded indebtedness or other debt for sewage col-

lection systems, water distribution systems, and streets, even if determined to be used for the benefit of a larger area than that which incurred the debt, shall remain the tax obligation of the area which incurred the debt.

Sec. 29.12.370. ORDINANCES. Within two years after ratification of the charter, the governing body of the unified municipality shall revise, repeal, or reaffirm all borough and city ordinances, resolutions and orders in force within the borough at the time of unification. Each ordinance, resolution, regulation, or order in force at the time of unification shall remain in force until superseded by action of the new governing body.

Sec. 29.12.380. RIGHT TO STATE AND FEDERAL FUNDS PRESERVED. All provision of law authorizing contributions of any kind, in money or otherwise, from the state or federal government to boroughs and cities shall remain in full force and effect with respect to a unified municipality organized under AS 29.12.190 - 29.12.390.

Sec. 29.12.390. POWERS OF A UNIFIED MUNICIPALITY. A municipality organized under AS 29.12.190 - 29.12.390 shall have all powers

(1) not prohibited it by law or charter;

(2) granted to organized boroughs and first class cities.

ARTICLE 5. DISSOLUTION.

Sec. 29.12.420. METHODS OF DISSOLUTION. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

(1) petition to the Local Boundary Commission under regulations adopted by the commission; or

(2) the local option method specified in AS 29.12.430 - 29.12.500

(b) A home rule or general law borough is dissolved when its entire territory is included within a home rule or first class city or cities. A city is dissolved when all its powers become areawide borough powers.

(c) The Department of Community and Regional Affairs shall investigate a municipality which it considers to be inactive and shall report to the

Local Boundary Commission on the status of the municipality. The commission may submit its recommendation to the legislature that the municipality be dissolved in the manner provided for submission of boundary changes in Sec. 12, art. X of the state constitution.

Sec. 29.12.430. PETITION. (a) Municipal residents may file a dissolution petition with the Department of Community and Regional Affairs in the form prescribed by the department. The petition must be signed by a number of municipal voters equal to at least 25 percent of the number of votes cast in the last regular municipal election.

(b) The petition includes

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution.

Sec. 29.12.440. STANDARDS. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

(1) it is free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by ch. 09 of this title, or it ceases to use each and every one of its mandatory powers.

(b) A home rule or general law city in a borough may petition for dissolution if the borough consents to assume the city's rights, powers, duties, assets and liabilities. The consent must be ratified by a majority of borough voters voting on the question.

Sec. 29.12.450. REVIEW. The Department of Community and Regional Affairs shall review a petition for content and signatures and shall return a deficient petition for correction or completion.

Sec. 29.12.460. INVESTIGATION. If the petition contains the required information and signatures, the Department of Community and Regional Affairs shall investigate the proposal.

Sec. 29.12.470. REPORT AND HEARING. (a) The Department of Community and Regional Affairs shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution.

(b) The Local Boundary Commission shall hold at least one public hearing in the area proposed to be dissolved.

Sec. 29.12.480. DECISION. If the Local Boundary Commission determines that the municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

Sec. 29.12.490. ELECTION. (a) The Local Boundary Commission shall immediately notify the lieutenant governor of its acceptance of a dissolution petition. Within 30 days after notification, the lieutenant governor shall order an election within the municipality to determine whether the voters desire dissolution. The election is at least 30 and not more than 90 days after the election order.

(b) A person who is a qualified voter of the municipality may vote in the dissolution election.

(c) The lieutenant governor shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15.05-15.60). The state shall pay all election costs.

(d) The lieutenant governor shall certify the election results. If dissolution is approved, he shall declare that the municipality is dissolved effective on the date of certification.

Sec. 29.12.500. SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities as provided in AS 29.09.130-29.09.140.

CHAPTER 15. HOME RULE MUNICIPALITIES.

ARTICLE 1. CHARTERS.

* Sec. 29.15.010. MUNICIPAL CHARTER ADOPTION. A first or second class municipality may adopt a charter for its own government. A home rule municipality may amend its charter or adopt a new one. A charter is framed by a charter commission of seven members chosen by the municipal voters at a regular or special election. A candidate for the commission shall be a qualified voter of the municipality and a resident of the municipality for three years immediately preceding the election. A charter commission election is called by filing a petition with the borough assembly or the city council, or by resolution of the borough assembly or city council. The petition shall be signed by a number of municipal voters equal to 15 percent of the votes cast in the last regular election of the municipality.

Sec 29.15.020. NOMINATION. (a) Charter commission candidates are nominated by petitions signed by 50 voters or the number of qualified municipal voters equal to 10 percent of the number of votes cast in the last regular election, whichever is less.

**** (b) A nomination petition shall be filed with the borough or city clerk on or before a date to be fixed by the borough assembly or council. If at least seven nominations for qualified charter commission candidates are not filed, the petition or resolution calling for a charter commission is void and no election on the question shall be held.

Sec. 29.15.030. ELECTION. At the charter commission election the voters shall consider the question "Shall a charter commission be elected to frame a proposed new charter?" and shall select the members of the commission. If the question is approved, the seven candidates receiving the highest number of votes shall immediately organize as a charter commission.

Sec. 29.15.040. PREPARATION OF CHARTER. The charter commission shall, within one year, prepare a municipal charter. The proposed charter shall be

signed by a majority of the charter commissioners and filed in the office of the municipal clerk. Within 15 days, the borough assembly or city council shall have the charter published once in a newspaper of general circulation if distributed within the municipality. The clerk shall post copies of the proposed charter in at least three public places and make copies available at the office of the clerk. The commission shall give published notice of and hold at least one public hearing on the proposed charter before the signing and filing of the charter.

Sec. 29.15.050 INITIATIVE AND REFERENDUM. ****(a) A municipal charter shall provide procedures for initiative and referendum.

(b) A charter may not require an initiative or referendum petition to have a number of signatures greater than 25 percent of the total votes cast at the last regular municipal election.

(c) A charter may not permit the initiative and referendum to be used for a purpose prohibited by Sec. 7, art. XI of the state constitution.

Sec. 29.15.060. CHARTER ELECTION. The charter shall be submitted to the municipal voters at a regular or special election held not less than 30 days nor more than 90 days from the publication of the charter.

Sec. 29.15.070. CHARTER ADOPTION. (a) If a majority of those voting on the question favor the proposed charter, it becomes the organic law of the municipality. Thereafter, the court shall take judicial notice of the charter. The municipality shall file the indicated number of copies of the charter with the

(1) lieutenant governor - two copies;

(2) Department of Community and Regional Affairs - two copies;

(3) district recorder - one copy;

(4) municipal clerk - one copy.

(b) If a proposed charter is rejected, the charter commission shall prepare another proposed charter to be submitted to the voters at a regular or special election to be held within one year after the date of the first charter election. If the second proposed charter is also rejected, the charter commission shall be dissolved and the question of adoption of a charter shall be treated as if it had never been proposed or approved.

* Sec. 29.15.080. CHARTER AMENDMENT. A municipal charter may be amended as provided in the charter except that no amendment shall be effective unless ratified by the voters.

ARTICLE 2. HOME RULE LIMITATIONS.

Sec. 29.15.110. LIMITATION OF HOME RULE POWERS. Only the following provisions of this title apply to home rule municipalities as prohibitions on acting otherwise as provided. They supersede existing and prohibit future home rule enactments which provide otherwise:

(1) AS 29.09.140 Borough Transition

(2) AS 29.12.010 Municipal Name Change

(3) AS 29.12.040 Annexation and Exclusion

(4) AS 29.12.080 - 29.12.160 Merger and Consolidation

(5) AS 29.12.420 - 29.12.500 Dissolution

(6) AS 29.15.080 Charter Amendment

(7) AS 29.24.010 Conflict of Interest

(8) AS 29.24.020 Meetings Public

* (9) (Effective January 1, 1981) AS 29.24.060; 29.24.080 - 29.24.140 Borough assembly composition and Apportionment; Borough Assembly Members

(10) AS 29.24.150(c) Expulsion of Borough Assemblymen

(11) AS 29.24.200(f) Removal of Borough Mayor from Office

(12) AS 29.24.290(b) Expulsion of City Councilman from Office

**** (13) AS 29.24.340(a) Repeal

(14) AS 29.24.350 Removal of Mayor from Office

(15) AS 29.24.680 Prohibitions Respecting Appointment and Removal of Personnel

(16) AS 29.24.700 Municipal Reports

(17) AS 29.27.010(a)(12) Municipal Exemption on Contractor Bond Requirements

(18) AS 29.27.060 Codification

(19) AS 29.30.010, 29.30.030(b) - 29.30.040 Municipal Elections

(20) AS 29.30.060(f) Expulsion, Removal from Office

(21) AS 29.30.210 - 29.30.330 Recall

(22) AS 29.33.020 Extraterritorial Jurisdiction

(23) AS 29.33.030 Eminent Domain

(24) AS 29.33.080 Garbage and Solid Waste Services

(25) AS 29.33.090(b) Effect of Areawide Exercise of Borough Power

(26) AS 29.33.090(c) Borough Building Code Jurisdiction within Cities

(27) AS 29.33.100 - 29.33.160 Utilities

**** (28) AS 29.33.220 Repeal

(29) AS 29.33.230 Post Audit

(30) AS 29.36.010(b) Areawide Borough Powers

(31) AS 29.36.040, AS 29.36.230(d), AS 14.12.020(a) Responsibility for education on Military Reservations

(32) AS 29.36.130(c) Acquisition of Additional Areawide Powers

(33) AS 29.39.020 - 29.39.060 Powers of Cities Outside Boroughs

(34) AS 29.42.040(d) Zoning of State Land for Homesite Entry

(35) AS 29.42.080(b) Applicability of Local Platting Regulations to State Land in a Municipality

(36) AS 29.45.010 - 29.45.530 Borough and City Property Taxes

(37) AS 29.45.020 Taxpayer Notice

(38) AS 29.45.580(d) Interest on Sales Tax

(39) AS 29.48.090 Exemption from Special Assessment

(40) AS 29.51.420 - 29.51.430 Bonded Debt for School Construction

(41) AS 29.51.210(b) Security for Bonds

(42) AS 29.51.390 Bond attorneys, Bond and Financial Consultants

(43) AS 29.62. Municipal Tax Resource Equalizatior

(44) AS 29.62. State Aid for Miscellaneous Municipal Services

(45) AS 29.71.010 Adverse Possession

(46) AS 29.71.020 Taxation of Municipalities

## CHAPTER 18. DEVELOPMENT CITIES

**** Repeal.

CHAPTER 21. CAPITAL CITY.

Sec. 29.21.010. INCORPORATION. There is created and incorporated a city of the state as the capital city of Alaska which is a city of the first class. The capital city has all the powers of a first class city.

Sec. 29.21.020. BOUNDARIES. The boundaries of the capital city shall include all of that area of land designated by the voters of Alaska as the new capital site of the state.

Sec. 29.21.030. CITY COUNCIL. (a) Until council members elected by the residents of the capital city take office as provided in AS 29.21.060 the council of the capital city shall have five members, four of whom shall be appointed by the governor and shall serve at the pleasure of the governor. The development corporation shall designate one person to serve as a member of the council. The council members appointed by the governor or designated by the development corporation shall serve an initial term which expires on the Monday following the first Tuesday in October of the calendar year following the calendar year of initial appointment or designation. Council members may be reappointed by the governor or redesignated by the development corporation. Except as provided in AS 29.21.160 the successors of the initial appointees and designee shall serve for a term of two years commencing on the date the initial appointments and designation expire. Each appointee and designee shall hold office for the term of his appointment and until his successor has been appointed or designated and has qualified.

(b) Council members appointed by the governor or designated by the development corporation need not be residents of the capital city.

(c) The council shall elect a chairman from among its membership. The chairman presides at council meetings, determines the agenda for council meetings, and carries out the other duties specified by ordinance.

Sec. 29.21.040. FILLING A VACANCY. If a vacancy occurs among the members appointed by the governor, the governor shall designate the replacement who shall serve for the unexpired portion of the term.

Sec. 29.21.050. APPOINTMENT OF CITY OFFICIALS. Until a mayor is elected in accordance with AS 29.21.060, the council shall appoint a city manager for the capital city to serve at the pleasure of the council. The city manager may not be a council member.

Sec. 29.21.060. TRANSITION. (a) When the capital city attains a population of 400 permanent residents, as certified by the lieutenant governor based on the best information available, the lieutenant governor shall notify the council of this determination. The lieutenant governor shall specify an election date which shall be the first Tuesday of October following the notification, except that if it is less than six months from the date of the certification to the first Tuesday of October then the election date shall be the first Tuesday of October of the year following. The elected members shall take office on the Monday following the election.

(b) After the lieutenant governor has specified the election date, the council shall make arrangements for an election at which five council members and a mayor shall be elected in the manner prescribed by ordinance and law. The expenses of the election shall be borne by the state. The council of the capital city shall have six members. The governor shall designate one council member holding office on the date of the election to remain a member of the council for a single three-year term commencing on the date the elected council members take office. The successors to the appointed council members shall be elected by the residents, except that if the appointed council member leaves office during the three years, the governor may appoint a successor. The terms of all other appointed or designated council members expire when the elected council members take office. The term of elected council members is as provided in AS 29.24.280 except that three of the members are elected for an initial term of one year.

*Sec. 29.21.070. PLANNING AND LAND USE REGULATION AUTHORITY. The general development plan and specifi development plans constitute the land use plan for the capital city area. When a parcel of land has been developed in accordance with the applicable specific development plan, that parcel becomes subject to all planning, zoning, subdivision, building code or other similar ordinances of the Matanuska-Susitna Borough.

Sec. 29.21.080. TRANSFER OF UTILITIES TO THE CAPITAL CITY. The development corporation, in cooperation with the capital city, shall arrange for and agree to an orderly schedule for transferring to the capital city ownership of, and financial and operational responsibility for utilities and any other facilities which the development corporation considers to be integral parts of the capital city infrastructure. Before January 1, 1985, the development corporation and the council of the capital city shall jointly retain independent consultants to study and determine an orderly schedule for transfer of these utilities and facilities to the capital city. The study shall consider the capabilities of the capital city and its existing and anticipated residents to finance the cost of these utilities and other facilities and their operating expenses. The consultants shall propose a recommended schedule for and terms of transfer which are commensurate with the capital city's existing and anticipated population, tax base and any other factors relating to its capability to finance and operate these facilities as they consider appropriate. The development corporation shall, after considering the consultants' report, propose a schedule of and terms and conditions of the transfer to the capital city, which shall, upon review and approval by the council, be included in an agreement between the development corporation and the capital city. If the development corporation and the capital city are unable to agree within six months after the development corporation submits its proposal, the development corporation shall submit the proposal to the Legislative Budget and Audit Committee

which shall consider the proposal, and if the committee considers it appropriate to do so, shall recommend to the legislature legislation it considers desirable for the disposition of the utilities and other facilities. If the legislature does not enact legislation regarding the disposition within one year after the proposal is submitted to the Legislative Budget and Audit Committee, the development corporation may at any time thereafter sell or dispose of the utilities and facilities or any of them to a private person or entity or government body, or continue to operate them.

Sec. 29.21.090. DEFINITIONS. In AS 29.21.010 - 29.21.090, unless the context requires otherwise,

(1) "capital city area" means the area described in AS 29.21.020

(2) "capital city " means the municipality incorporated by this chapter;

(3) "development corporation" means the Alaska Capital City Development Corporation;

(4) "general development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to the general development plan;

(5) "specific development plan" has the same meaning as provided in AS 44.07.360 and includes amendments to each specific development plan.

Sec. 29.21.100. SHORT TITLE. AS 29.21.010 - 100 of this chapter may be cited as the Capital City Incorporation Act.

CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES.

ARTICLE 1. CONFLICTS OF INTEREST, PUBLIC MEETINGS.

****Sec. 29.24.010. CONFLICTS OF INTEREST. Each home rule and general law municipality shall adopt a conflicts of interest ordinance which provides that a member of the governing body shall declare a substantial financial interest he has in an official action and ask to be excused from a vote on the matter. The presiding officer shall rule on the question. His decision may be overidden by the majority vote of the governing body.

Sec. 29.24.020. MEETINGS PUBLIC. Meetings of all municipal bodies shall be public as provided in AS 44.62.310. The assembly and council shall provide reasonable opportunity for the public to be heard at regular and special meetings. This section applies to home rule and general law municipalities.

ARTICLE 2. GOVERNING BODIES.

****Sec. 29.24.050. (Sec. 29.23.010.) GENERAL POWER. The legislative power of a borough is vested in the assembly. The legislative power of a city is vested in the council.

Sec. 29.24.060. ASSEMBLY COMPOSITION AND APPORTIONMENT. [Effective January 1, 1981].

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

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

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

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

Sec.29.24.070. COMPOSITION AND FORM OF REPRESENTATION. (a) The borough assembly shall provide for its composition and for the form of its representation.

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

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

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

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

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

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

(c) A form of borough assembly representation which includes election of borough assembly members under (b)(2) or (b)(3) of this section shall be submitted to the voters of the borough with a plan of apportionment as required by AS 29.24.080.

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390;

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

Sec. 29.24.080. ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT. (a) Not later than two months after the official report of a federal decennial census, the borough assembly shall determine and declare by resolution whether the existing apportionment of the borough assembly meets the standards of AS 29.24.060. If the borough assembly submits to the voters a form of representation which includes election of borough assembly members under AS 29.24.070(b)(2) or (b)(3) the assembly shall submit with the proposition of a proposed plan of apportionment which corresponds to the form of representation proposed. The assembly shall describe the plan of apportionment in the ballot proposition, and may present the plan in any manner which it believes accurately describes the apportionment which is proposed under the form of representation. If the borough assembly determines that its existing apportionment mee s the standards of AS 29.24.060 the assembly may include the existing apportionment as a proposed plan of apportionment of assembly seats which corresponds to a form of representation which is proposed.

(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060.

(d) The borough assembly shall, within 30 days of certification of the results of the election held on a proposed form of representation under this section, adopt an ordinance providing for its composition and the form of assembly representation, and, if applicable, the apportionment of assembly seats which corresponds to the proposed form of representation which received the most votes at the election.

(e) This section does not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390

(2) to a home rule borough if the borough charter contains procedures for changing assembly composition and form of representation.

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(b) The borough assembly shall provide, by ordinance, for a change in an existing apportionment of the borough assembly whenever it determines that the apportionment does not meet the standards of AS 29.24.060.

At the same time, the borough assembly may, by ordinance, change the composition of the assembly.

(c) If a petition signed by not less than 50 registerd voters who are residents of the borough request the borough assembly to determine whether the existing apportionment meets the standards for apportionment in AS 29.24.060, and the petition contains evidence that the existing apportionment does not meet those standards, the assembly may make the determination requested. The borough assembly shall make a determination required by this subsection within two months of receipt of a petition which meets the requirements of this subsection.

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

(e) Within six months of a determination by the borough assembly under (b) or (c) of this section that the current apportionment does not meet the standards of AS 29.24.060 the borough assembly shall adopt an ordinance providing for reapportionment, and submit the ordinance to the voters. If, at the end of the six-month time period, an ordinance providing for reapportionment has not been approved by the voters, the commissioner of the Department of Community and Regional Affairs shall provide for the reapportionment in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.090. APPORTIONMENT APPEALS. (a) A reapportionment ordinance approved by the voters, or a decision of the borough assembly that the standards of AS 29.24.060 do not require a change in apportionment, may be appealed to the commissioner of the Department of Community and Regional Affairs. Fifty registered voters who are residents of the borough may submit a petition to the commissioner of community and regional affairs

requesting the commissioner to determine whether the proposed reapportionment ordinance approved by the voters meets the standards of AS 29.24.060 or whether a decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is correct. If the petition asks the commissioner of community and regional affairs to review an ordinance approved by the voters under AS 29.24.080(e), the petition shall be delivered to the commissioner not later than 20 days after certification of the election. If the petition asks the commissioner of community and regional affairs to review a decision of the borough assembly under AS 29.24.080(c), the petition shall be delivered to the commissioner within 20 days of the decision of the borough assembly.

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

(c) If the commissioner of community and regional affairs determines that the proposed reapportionment ordinance approved by the voters does not meet the standards of AS 29.24.060, or if he determines that the decision of the borough assembly that the standards of AS 29.24.060 do not require a change of apportionment is not correct, the commissioner shall, by order, direct the borough assembly to prepare a reapportionment ordinance which meets the standards of AS 29.24.060 and submit the ordinance to the voters.

(d) When the borough assembly has been directed by the commissioner of community and regional affairs to prepare a reapportionment ordinance under (c) of this section, the borough assembly shall, within two months of its receipt of the commissioner's order, adopt an ordinance providing for reapportionment. The borough assembly shall submit an

crdinance adopted under this subsection to the voters at a regular election or special election held within 60 days of the date of adoption of the reapportionment ordinance.

(e) If at the end of the time period provided under (d) of this seciton an ordinance providing for reapportionment has not been approved by the voters, the commissioner of community and regional affairs shall provide for the reapportionment of the borough assembly in accordance with the standards of AS 29.24.060 by preparing an order of reapportionment and delivering the order to the borough mayor.

Sec. 29.24.100. JUDICIAL REVIEW AND RELIEF. (a) The commissioner of community and regional affairs may request the superior court to enforce a reapportionment order issued under AS 29.24.090(e).

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

(1) a plan of reapportionment approved by the voters under AS 29.24.080(a);

(2) a determination by the borough assembly under AS 29.24.080 that the standards of AS 29.24.060 do not require a change in apportionment;

(3) a reapportionment ordinance approved by the voters under AS 29.24.080(d);

(4) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(c);

(5) a reapportionment ordinance approved by the voters under AS 29.24.090(d); and

(6) a reapportionment order of the commissioner of community and regional affairs made under AS 29.24.090(e);

Sec. 29.24.110 EFFECTIVE DATE OF APPORTIONMENT. (a) A change in assembly apportionment or composition under AS 29.23.080 or AS 29.24.090 is effective beginning with the first regular election for members of the assembly which is held more than 60 days after the later of:

(1) approval of a reapportionment ordinance by the voters under AS 29.24.080(a), AS 29.24.080(e), or AS 29.24.090(d); or

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(d).

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

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

(2) the delivery to the mayor of a reapportionment order of the commissioner of community and regional affairs under AS 29.24.090(e).

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

Sec. 29.24.120. APPLICABLITY OF APPORTIONMENT PROVISIONS. The provisions of AS 29.24.080-29.24.110 do not apply

(1) to a unified municipality incorporated under AS 29.12.190 - 29.12.390;

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

****Sec 29.24.125. CITY COUNCIL COMPOSITION. Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The

council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

****Sec. 29.24.130. REGULAR TERM OF OFFICE. Repeal.

****Sec. 29.24.140 QUALIFICATIONS. (a) A borough voter is eligible to be a member of the assembly and a city voter is eligible to be a member of the coun[illegible] A member of the assembly who ceases to be a qualified voter immediately forfeits his office. A member of the council who ceases to be a qualfied city voter immediately forfeits his office.

(b) A governing body may by ordinance establish a durational residency requirement for its members not to exceed three years.

(c) An assembly or council member who represents an area less than that of the total borough or city and who becomes a resident of another area within the municipality may continue to serve until the next regular election unless provided otherwise by ordinance.

(d) A municipality may by ordinance establish district residency requirements for members of its governing body.

****Sec. 29.24.145. TERM OF OFFICE. (a) Assembly and council members are elected for three-year terms and until their successors have qualified unless different terms not exceeding four years are prescribed by charter or ordinance.

(b) Except when otherwise required by a change in composition or apportionment, if the term of a member of a governing body is changed by charter or ordinance the term of an official holding office at the time the change becomes effective is not affected.

(c) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by charter or ordinance.

****Sec. 29.24.150. PROCEDURES OF GOVERNING BODIES. (a) The assembly shall elect from among its members a presiding officer and a deputy presiding

officer to serve at the pleasure of the members, except that in a borough which has adopted the manager form of government under AS 29.24.550, the mayor serves as presiding officer. In a city the mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(b) A municipal governing body shall hold at least one regular meeting every month, unless otherwise provided by ordinance. A special meeting may be held at the call of the presiding officer or at least one-third of the members provided a majority of the members are given at least 24 hours oral or written notice and reasonable efforts are made to notify all members. A special meeting may be conducted with less than 24 hours notice if all members are present or if absent members have waived in writing the required notice. Waiver of notice can be made before or after the special meeting is held. A waiver shall be made a part of the journal for the meeting.

(c) A majority of the total membership of a governing body authorized by law shall constitute a quorum. A member disqualifed by law from voting on a question may be considered present for purposes of constituting a quorum. In the absence of a quorum, any number of members may recess or adjourn the meeting to a later date.

(d) Actions of a governing body are adopted by a majority of the total membership of the body. All members present shall vote on every question unless they are required to abstain from voting on a question by law. The final vote on every ordinance, resolution or substantive motion shall be recorded "yes" or "no", except that if the vote is unanimous it is necessary only to so state.

(e) A governing body shall maintain a journal of its official proceedings which shall be a public record.

(f) A governing body may, consistent with law or charter, determine by ordinance its own rules of procedure and order of business.

****Sec. 29.24.160. DEPARTMENTS. Repeal.

****Sec. 29.24.170. VACANCIES. The governing body may provide by ordinance the manner in which a vacancy occurs in any elected office except the office of mayor. Unless otherwise provided by ordinance the governing body shall declare an elective office, other than the office of mayor, vacant when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent from the municipality for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office as determined by two-thirds vote of the governing body;

(5) if a member of the governing body, misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office; or

(7) is convicted of a felony or misdemeanor described in AS 15.56 and two-thirds of the members of the governing body concur in expelling him;

(8) no longer physically resides in the municipality and the governing body by two-thirds vote declares the seat vacant.

****Sec. 29.24.175. FILLING A VACANCY. (a) If a vacancy occurs in a governing body, the remaining members shall within 30 days, unless a different period is provided by ordinance, appoint a qualified person to fill the vacancy. The person shall serve until the next regular election, at which time a successor shall be elected to service the balance of the term. If less than 30 days remain in a term, a vacancy shall not be filled.

(b) Notwithstanding subsection (a), if the membership is reduced to fewer than the number required to constitute a quorum, the remaining members shall within seven days appoint a number of qualified persons to constitute a quorum.

ARTICLE 3. BOROUGH EXECUTIVE AND ADMINISTRATOR.

****Sec. 29.24.200. EXECUTIVE POWER. (a) The executive power within a municipality is vested in a mayor elected by the voters or by the governing body as provided in this article.

(b) The mayor shall act as ceremonial head of government, execute official documents upon authorization of the governing body, and is responsible for additional duties and powers prescribed by this chapter.

****Sec. 29.24.205. ELECTION AND TERM OF MAYOR. (a) The mayor of a borough or first class city is elected at large. The mayor of a borough or first class city shall serve a term of three years unless by ordinance a different term not to exceed four years is provided, except that the current term of an incumbent mayor may not be altered. The regular term of a mayor of a borough or first class city begins on the first Monday following certification of his election.

(b) The mayor of a second class city is elected by and from the council and serves until a successor is elected and has qualified. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately. The mayor of a second class city shall serve a one-year term unless a longer term is provided by ordinance, except that the mayor of a second class city may serve only while he is a member of the council regardless of the term established for the office of mayor.

(c) The governing body may not limit the number of terms a mayor may serve.

****Sec. 29.24.206. QUALFICATIONS FOR THE OFFICE OF MAYOR. (a) A voter of a borough or first class city is eligible to hold the office of mayor. A member of a city council for a second class city is eligible to hold the office of mayor in that city.

(b) Residency requirements for the office of mayor not exceeding three years may be prescribed by ordinance.

****Sec. 29.24.210. POWERS AND DUTIES OF MAYOR. (a) If a municipality has not adopted the manager form of government, the administrative power is vested in the mayor and the mayor has the same powers and duties as those of the manager.

(b) The mayor may take part in the discussion of all matters before the governing body.

(c) The mayor may not vote on any matter before the governing body, except that the mayor of a first class city may vote in the case of a tie and the mayor of a second class city may vote on all matters as a council member.

Sec. 29.24.220. EXECUTIVE ABSENCE. The borough mayor, subject to assembly approval, shall designate a person to act as mayor during the mayor's temporary absence or disability. If a manager plan has been adopted, the assembly shall designate by resolution a borough administrative officer to act as manager during his absence or disability.

****Sec. 29.24.230. ASSEMBLY PARTICIPATION. Repeal.

****Sec. 29.24.240. VETO. (a) Except as provided in subsections (c) and (d), the mayor may veto any ordinance, resolution, motion, or other action of the governing body and may strike or reduce appropriation items.

(b) A veto must be exercised before the next regular meeting of the governing body and must be accompanied by a written explanation of the reasons for that action. A veto may be overridden by vote of two-thirds of the authorized membership of the governing body within 21 days following exercise of the veto or at the next regular meeting, whichever is later.

(c) The veto does not extend to

(1) appropriation items in a school budget ordinance;

* (2) actions of the governing body sitting as board of equalization or the board of adjustment;

(3) adoption or repeal of the manager form of government.

(d) The mayor of a third class borough and the mayor of a second class city has no veto power.

****Sec. 29.24.250. VACANCY IN THE OFFICE OF MAYOR. (a) The governing body shall, upon two-thirds concurring vote, declare the office of mayor vacant only when the person elected

(1) fails to qualify or take office within 30 days after his election or appointment;

(2) unless excused by the governing body, is physically absent for 90 consecutive days;

(3) resigns and his resignation is accepted;

(4) is physically or mentally unable to perform the duties of his office;

(5) if, as a member of the assembly or council, he misses three consecutive regular meetings and is not excused;

(6) is convicted of a felony or of an offense involving a violation of his oath of office;

(7) is convicted of a felony or misdemeanor described in AS 15.56; or

(8) no longer physically resides in the municipality.

(b) Except as provided in subsection (c), a vacancy in the office of mayor occuring six months before a regular election shall be filled by the governing body. The person appointed shall serve until the next regular election and until a successor is elected and has qualified. If a member of the governing body is chosen, he shall resign his seat on the assembly or

council. If a vacancy occurs more than six months before a regular election, the governing body shall call a special election to fill the unexpired term.

(c) Notwithstanding (b) of this section, in a second class city, the office of mayor is filled by and from the council and retains his seat on the council.

ARTICLE 4. CITY COUNCIL.

****Sec. 29.24.280. COMPOSITION, ELIGIBILITY, ELECTION AND TERM. Repeal.

****Sec. 29.24.290. PROCEDURE. Repeal.

****Sec. 29.24.300. FILLING A VACANCY. Repeal.

ARTICLE 5. CITY EXECUTIVE AND ADMINISTRATOR.

****Sec. 29.24.330. Repeal

****Sec. 29.24.340. Repeal.

****Sec. 29.24.350. Repeal

****Sec. 29.24.360. Repeal.

****Sec. 29.24.370. Repeal.

****Sec. 29.24.380. Repeal.

****Sec. 29.24.390. Repeal.

ARTICLE 6. SCHOOL BOARDS.

****Sec. 29.24.420. SCHOOL BOARDS. (a) Each municipal school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large unless a different method of election has been approved by the voters in a regular election.

(b) Nothwithstanding (a) of this section, assembly members in a third class borough serve as the school board and the mayor is president of the school board.

****Sec. 29.24.430. OTHER BOARDS AND COMMISSIONS. (a) The governing body may, by ordinance, establish advisory, administrative, technical, or quasi-judicial boards and commissions.

(b) Members of boards and commissions, except for members of the board of adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the governing body.

ARTICLE 7. UTILITY BOARDS.

* Sec. 29.24.450. UTILITY BOARDS. (a) The governing body of a municipality operating a public utility may provide by ordinance for a managing board of five members and define the board's powers and duties.

(b) As determined by ordinance, members of the board are appointed by the municipal executive and confirmed by the governing body or are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. The term of a utility board member is two years and until a successor is selected and has qualified. However, the governing body may by ordinance provide for a different term not to exceed four years and not altering the current term of an elected incumbent.

(c) Vacancies in the board are filled by the municipal executive. Executive appointments shall be confirmed by the governing body. A person selected to fill a vacancy on a utility board serves until the expiration of the term and until a successor is elected and has qualified.

(d) Unless otherwise provided by ordinance, the board shall

(1) choose its chairman and secretary;

(2) appoint the manager of the public utility for a term not longer than five years and set his salary;

(3) formulate and enforce the general rules and policies of the utility.

ARTICLE 8. OTHER OFFICERS AND EMPLOYEES.

****Sec. 29.24.480. APPOINTMENT OF OFFICERS. Unless otherwise provided by ordinance, the municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrative official. Unless otherwise provided by ordinance, officials described in this section serve at the pleasure of their appointing authority and, if appointed by the chief administrative official, must be confirmed by the governing body.

Sec. 29.24.490. MUNICIPAL ATTORNEY. The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed.

* Sec. 29.24.500. MUNICIPAL CLERK. (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the governing body and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The governing body may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the faithful performance of his duties as clerk-treasurer.

****Sec. 29.24.510. MUNICIPAL TREASURER. (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. He shall keep an itemized account of money received and disbursed. He shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum which the governing body directs.

****Sec. 29.24.515. DEPARTMENTS. (a) The governing body of a municipality may establish departments and distribute functions among them.

(b) Each department is administered by a department head. With the consent of the governing body, the mayor may serve as head of one or more departments or a single administrator may serve as head of two or more departments.

****Sec. 29.24.520. APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS. Repeal.

****Sec. 29.24.530. PERSONNEL SYSTEM. (a) Except as provided by (b) of this section, all appointments and promotions of municipal employees are made on the basis of merit. The governing body may provide for a personnel system and classified service.

(b) By ordinance the governing body may designate confidential or managerial positions which are wholly or partially exempt from the classified service filled by persons who serve at the pleasure of their appointing authority and whose terms of employment are determined by their appointing authority.

ARTICLE 9. ADOPTION OR REPEAL OF MANAGER PLAN.

Sec. 29.24.550. APPLICATION. A municipality may adopt a manager plan of government.

* Sec. 29.24.560. PETITION. Adoption of a manager plan may be initated either by petition or upon motion of the governing body. A petition for the adoption of a manager plan is submitted to the governing body.

The petition must be signed by a number of municipal voters equal to the following percent of the votes cast at the preceding regular election:

(1) 25 percent when the municipality has fewer than 7,500 persons;

(2) 15 percent when the municipality has 7,500 persons or more.

****Sec. 29.24.570. ELECTION. Upon receipt of the petition or upon its own motion, the governing body shall provide by ordinance or resolution for a vote on the question at the next regular or special election.

* Sec. 29.24.580. ADOPTION. (a) If the manager plan is approved, the governing body shall, within 60 days, adopt the plan by ordinance or resolution.

(b) The governing body shall notify the Department of Community and Regional Affairs of the adoption of the manager plan.

****Sec. 29.24.590. APPOINTMENT. The governing body shall appoint a manager by a majority vote of its membership. He is chosen on the basis of his administrative qualifications and receives the compensation set by the governing body. An elected municipal official may not be appointed manager of the municipality sooner than one year after leaving office, except that, by a vote of three-fourths of its authorized membership, the governing body may at any time appoint one of its members or other elected municipal o fficial as manager.

* Sec. 29.24.600. TERM. Subject to the contract of employment, the manager holds office at the pleasure of the governing body.

****Sec. 29.24.610. APPOINTMENT OF TEMPORARY OR NEW MANAGER. Repeal.

****Sec. 29.24.620. REPEAL. A municipality may repeal the manager plan in the same manner used for its adoption. Within 60 days after repeal, the governing body shall enact provisions for the reorganization of the municipal executive and administrative functions.

****Sec. 29.24.630. POWERS AND DUTIES OF A MANAGER. As chief administrator the manager shall

(1) appoint, suspend, or remove municipal employees and administrative officials, escept as provided otherwise in this title and AS 14.14.065; he may hire necessary administrative assistants and may authorize an administrative official to appoint suspend, or remove subordinates;

(2) supervise the enforcement of municipal law and carry out the directives of the governing body;

(3) prepare and submit an annual budget and capital improvement program for consideration by the governing body and execute the budget and capital improvement program adopted;

(4) make monthly financial reports and other reports on municipal finances and operations as required by the governing body;

(5) exercise care and custody over all real and personal property of the municipality except as provided otherwise in AS 29.36.040;

(6) perform other duties required by law or by action of the governing body; and

(7) serve as personnel officer unless the governing body authorizes him to appoint a personnel officer.

****Sec. 29.24.640. INTERGOVERNMENT APPOINTMENTS. A borough adopting a manager plan, may by agreement with a city, enter into a contract providing for the manager of a city located within the borough to serve also as borough manager. A city adopting a manager plan, may by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in this chapter. Nothing in this section affects the authority of the governing body to provide for other dual officeholding if the dual offices held are compatible, or otherwise to appoint officials and employees in accordance with law.

ARTICLE 10. MISCELLANEOUS PROVISIONS.

*Sec. 29.24.650. OATHS OF OFFICE. Municipal officials, before taking office, shall affirm in writing that they will honestly, faithfully, and impartially perform their duties. The oath is filed with the municipal clerk.

*Sec. 29.24.660. BONDING. The administrator and the other municipal officials or employees which the governing body may designate shall give bond in the amount and with the surety prescribed by the governing body. Premiums on bonds are paid by the municipality.

****Sec. 29.24.670. SALARIES OF ELECTED OFFICIALS. The governing body shall by ordinance provide a method of determining the salaries of elected officials. The salary of the mayor may not be reduced during his term of office unless during his term a manager plan is adopted. An elected official may not receive any other compensation for service to the municipality unless otherwise provided by ordinance. Per diem payments or reimbursements for expenses are not compensation under this section.

****Sec. 29.24.680. PROHIBITIONS. (a) Repeal.

(b) Repeal.

(c) No state employee or school district employee may be denied the right to serve as an elected municipal official because of his employment by the state or a school district [unless specifically prohibited by charter or ordinance of a municipality, adopted at a special or general election. However, no school district employee may serve on a school district board in the school district where he is employed.]

(d) For purposes of this section a school district employee is not a municipal employee.

***Sec. 29.24.690. PERSONNEL SYSTEM. Repeal.

Sec. 29.24.700. REPORTS. (a) Home rule and general law municipalities shall file with the Department of Community and Regional Affairs:

(1) maps and descriptions of all annexed or excluded territory;

(2) a copy of the annual audit or in the case of second class cities an audit or statement of annual income and expenditures;

(3) tax assessment and tax levy figures as requested;

(4) repealed.

(5) a copy of the current annual budget of the municipality;

(6) a summary of the optional property tax exemptions authorized in the municipality, toegther with the municipality's estimate of the revenues lost to it by operation of each of the exemptions.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters in the event of noncompliance until such time as the report requirements are met.

****Sec. 29.24.710. VACANCIES. Repeal.

CHAPTER 27. MUNICIPAL ENACTMENTS.

* Sec. 29.27.010. ACTS REQUIRED TO BE BY ORDINANCES. (a) In addition to other actions which this title requires to be by ordinance, the governing body of a municipality shall use ordinances to

(1) establish, alter or abolish municipal departments;

**** (2) Repeal.

(3) provide for a fine or other penalty, or establish rules or regulations for violation of which a fine or other penalty is imposed;

(4) provide for the levying of taxes;

**** (5) make appropriations except supplemental appropriations or transfer of appropriations;

(6) grant, renew, or extend a franchise;

**** (7) Repeal.

**** (8) adopt, modify or repeal the comprehensive plan, land use and subdivision regilations, building and housing codes, and the official map;

(9) approve the transfer of a power to a borough from a city;

(10) designate the borough seat;

(11) provide for the retention or sale of tax-foreclosed property.

(12) exempt contractors from compliance with general requirements relating to payment and performance bonds in the construction or repair of municipal public works projects within the limitations set out in AS 36.25.025.

(b) This section grants no authority but requires the governing body to use ordinances in exercising certain of its powers.

Sec. 29.27.020. FORM OF ORDINANCES. Repeal.

****Sec. 29.27.030. ORDINANCE PROCEDURE. (a) Ordinances are introduced in writing in the form required by the governing body.

(b) The following procedure governs the enactment of all ordinances except emergency ordinances. An ordinance may be introduced by a member or committee of the governing body or by the municipal executive or chief administrator. An ordinance shall be set for hearing by the affirmative vote of a majority of the votes authorized on the question. A summary of the ordinance is published together with a notice of time and place for public hearing. The hearing follows publication by at least five days. Copies of the ordinance must be available to all persons present or the ordinance must be read in full. The governing body shall hear all interested persons wishing to be heard. After the hearing, the governing body shall consider the ordinance and may adopt it with or without amendment. The governing body shall print and make available copies of adopted ordinances.

(c) Ordinances take effect upon adoption or at a later date specified in the ordinance.

* Sec. 29.27.040. EMERGENCY ORDINANCES. (a) To meet a public emergency the governing body may adopt ordinances effective on adoption. Every emergency ordinance must contain a finding by the assembly or council that an emergency exists and a statement of the facts upon which the finding is based. The ordinance may be adopted, amended and adopted, or rejected at the meeting at which it is introduced. The affirmative vote of all members present, or the affirmative vote of three-fourths of the total membership, whichever is less, is required for adoption. The governing body must print and make available copies of adopted emergency ordinances.

(b) An emergency ordinance may not be used to levy taxes, to grant, renew or extend a franchise, or to regulate the rate charged by a public utility for its services.

(c) Emergency ordinances are effective for 60 days.

****Sec. 29.27.050. CODES OF REGULATION. The governing body may in a single ordinance adopt or amend by reference provisions of a standard

published code of regulations. The regular ordinance procedure applies except that neither the ordinance nor its amendments need be distributed to the public or read in full at the hearings. For a period of 15 days before adoption at least five copies of the code must be made available for public inspection at a time and place set out in the hearing notice. Only the adopting ordinance need be printed after adoption. The governing body shall provide for the adopted code to be sold or available at no charge to the public.

Sec. 29.27.060. CODIFICATION. (a) Each ordinance after adoption shall be codified.

**** (b) Within three years after incorporation of the municipality, the municipal clerk or his designee shall have prepared a general codification of all municipal ordinances of general applicability having the force and effect of law. The municipal code shall be revised and printed at least every five years, unless the code is kept current by regular supplements.

(c) In (a) of this section, "codified" means

(1) the ordinance has been given a serial number or other permanent identifying number and, bearing a notation of the date of adoption and the designation of the adopting authority, it has been entered by the municipal clerk in a properly indexed book maintained for the purposes of organizing and recording the ordinances; or

(2) the ordinance is a provision which establishes a rule of conduct or behavior and which is included, or to be included, in a code of ordinances or other complete system of law enacted and kept current at reasonable intervals.

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

* Sec. 29.27.070. RESOLUTIONS. The govering body shall provide for the maintenance of a permanent file of resolutions that have been adopted.

****Sec. 29.27.080. PENALTIES. (a) For the violation of an ordinance, the governing body may prescribe punishment not to exceed the penalty imposed for a class B misdemeanor. By ordinance mandatory nonsuspendable imprisonment not to exceed five days may be imposed for violation of an ordinance.

(b) The municipality or an aggrieved person may institute a civil action against a person who violates an ordinance. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy upon application for injunctive relief and a finding of a violation or a threatened violation, the injunction shall be granted. Every day upon which a violation of an ordinance continues shall constitute a separate violation.

(c) The punishment authorized under this section may be imposed only if copies of the ordinance are made available for distribution to the public at cost, or at no charge.

CHAPTER 30. ELECTIONS.

ARTICLE 1. REGULAR AND SPECIAL ELECTIONS.

****Sec. 29.30.010. ADMINISTRATION. The borough assembly or city council shall prescribe the rules for conducting a municipal election and shall appoint an election board composed of at least three judges for each precinct. Unless no qualified voter is willing to serve, a judge shall be a voter of the precinct for which he is appointed.

Sec. 29.30.020. NOMINATIONS. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but he may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city.

Sec. 29.30.030. ELECTION DATES. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

* (b) The governing (bdoy) may call a special election upon at least 20 days notice.

Sec. 29.30.040. VOTER QUALIFICATION. A person may vote only if he is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who [is] registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities.

das

at least 30 days before muni. election

*Dinnnick motion carries.

****Sec 29.30.050. MAJORITY ELECTIONS. (a) Unless otherwise provided by ordinance, there shall be a runoff election if no candidate receives over 40 percent of the votes cast for the office of mayor or member of the assembly, council or school board.

(b) A municipality may by ordinance require a majority vote for the election of a municipal official.

(c) Unless otherwise provided by ordinance, a runoff election shall be held within three weeks after the date of certification of the election for which a runoff is required and notice of the runoff election shall be published at least five days prior to the election date.

* Sec. 29.30.060. ELECTION CONTEST AND APPEAL. (a) The governing body may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the governing body by a person qualified to vote in the municipality of his written affidavit specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the governing body shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two percent.

(e) No person may appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted his administrative remedies before the governing body and has commenced, within 10 days after the governing body has finally declared the election results, an action in the

superior court in the judicial district in which the municipality is located. If no such action is commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.24.150(c), of a member of a city council under AS 29.24.290(b) of a borough mayor under AS 29.24.200(f) or of a city mayor under AS 29.24.350 is final and is not subject to judicial review.

ARTICLE 2. INITIATIVE AND REFERENDUM.

Sec. 29.30.090. RESERVATION OF POWERS. The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by Sec. 7, art. XI, of the state constitution.

****Sec. 29.30.095. APPLICATION FOR PETITION. (a) An initiative or referendum is proposed by filing an application with the municipal clerk containing the bill to be initiated or the act to be referred and the address to which all correspondence relating to the application may be sent. An application shall be signed by at least ten municipal voters who will sponsor the petition. Other sponsors may be added at any time prior to filing the petition by submitting their names to the clerk. Within two weeks the clerk shall certify the application if he finds that it is in proper form and, for an initiative petition, that the matter

(1) is not restricted by AS 29.30.090;

(2) includes only a single subject;

(3) relates to a legislative rather than to an administrative matter; and

(4) would be enforceable as a matter of law.

(b) A decision by the clerk on an application for petition shall be subject to judicial review.

Sec. 29.30.100. PETITION. A petition for initiative or referendum is filed with the municipal clerk and an initiative petition must be filed not less than 90 days before the next regular election.

****Sec. 29.30.110. CONTENTS OF PETITION. (a) Within two weeks after certification of an application for petition, a petition shall be prepared by the municipal clerk. Each copy of the petition shall

(1) contain a summary of the bill to be initiated or the act to be referred;

(2) set out fully the ordinance or resolution sought to be initiated or referred;

(3) state the date on which the petition is issued by the clerk;

(4) contain notice that signatures must be secured within 60 days after the date the petition is issued;

(5) contain spaces for each signature, the printed name of each signer, the date each signature is affixed, and the residence and mailing addresses of each signer;

(6) contain a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be;

(7) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) If a petition is composed of more than one page, each page shall contain the summary of the bill to be initiated or the act to be referred.

(c) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.120. REQUIRED SIGNATURES. (a) The necessary signatures on a petition shall be secured within 60 days after the clerk issues the petition. The statement provided under AS 29.30.110(a)(7) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) A petition shall be signed by a number of voters residing within the municipality based on the number of votes cast at the last regular election held on or prior to the date the petition was issued equal to

(1) 25 percent, when a municipality has fewer than 7,500 persons; or

(2) 15 percent, when a municipality has 7,500 persons or more.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.130. SUFFICIENCY OF PETITION. (a) All copies of a petition shall be assembled and filed as a single instrument. Within 10 days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within 10 days after the date on which the petition is rejected.

(c) Within 10 days after a supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

* Sec. 29.30.140. PROTEST. If the municipal clerk certifies the petition is insufficient, a signer of the petition may file a protest with the municipal executive within seven days after the certification and the

municipal executive shall present the protest at the next regular meeting to the governing body which shall hear and decide the protest.

Sec. 29.30.150. NEW PETITION. Failure to secure sufficient signatures does not preclude the filing of a new initiative or referendum petition. However, a new petition may not be filed sooner than six months after a petition is rejected.

****Sec. 29.30.160. PRESENTATION OF INITIATIVE. (a) Unless substantially the same measure is adopted, when a petition seeks an initiative vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days after the certification of a petition, the governing body shall hold a special election within 75 days, but not sooner that 45 days after certification.

(b) If the governing body adopts substantially the same measure, the petition is void and the matter initiated shall not be placed before the voters.

(c) The ordinance or resolution initiated shall be published in full in the notice of the election but may be summarized on the ballot to indicate clearly the proposal submitted.

(d) If a majority vote favors the ordinance or resolution it becomes effective upon certification of the election unless a different effective date is provided in the ordinance or resolution approved by the voters.

****Sec. 29.30.170. PRESENTATION OF REFERENDUM. (a) Unless the ordinance or resolution is repealed, when a petition seeks a referendum vote the clerk shall submit the matter to all of the municipal voters at the next regular or special election occurring no sooner than 45 days after certification of the petition. If no regular or special election occurs within 75 days of

certification of a petition, the governing body shall hold a special election within 75 days, but not sooner than 45 days after certification.

(b) If a petition for referendum is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote. During the period of suspension, the governing body may not enact an ordinance or resolution substantially similar to the suspended measure.

(c) If the governing body repeals the ordinance or resolution before the referendum election, the petition is void and the matter referred shall not be placed before the voters.

(d) If a majority vote favors the repeal of the matter referred, it is repealed. Otherwise, the matter referred remains in effect or, if it has been suspended, becomes effective upon certification of the election.

****Sec. 29.30.180. EFFECT. (a) An ordinance or resolution may not be repealed within one year of its effective date if adopted in an initiative election or adopted after a petition which contains substantially the same measure has been filed. The ordinance or resolution may be amended at any time.

(b) If an ordinance or resolution is repealed in a referendum election or by the governing bdoy after a petition which contains substantially the same measure has been filed, substantially similar legislation may not be enacted by the governing body for a period of one year.

(c) An unsuccessful initiative or referendum precludes the filing of a new petition application for substantially the same measure sooner than six months after the election results are certified.

ARTICLE 3. RECALL.

****Sec. 29.30.210. RECALL. (a) An official who is elected or appointed to an elective municipal office may be recalled by the voters after he has served six months of the term for which elected or appointed.

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

Sec. 29.30.220. GROUNDS. Grounds for recall are misconduct in office, incompetence, or failure to perform prescribed duties.

****Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signatures and residence addresses of at least ten municipal voters who will sponsor the petition;

(2) The address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularily.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

****Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

(1) The name of the official sought to be recalled;

(2) The statement of the grounds for recall as set forth in the application for petition;

(3) the date the petition is issued by the clerk;

(4) notice that signatures must be secured within 60 days after the date the petition is issued;

(5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;

(6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be;

(7) space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

****Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by a number of voters residing within the municipality equal to 35 percent of the number of votes cast at the last regular election for that office held prior to the issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by a number of the voters residing within the district equal to 35 percent of the number of votes cast in the district at the last regular election for that office held prior to the issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

****Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficent, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

****Sec. 29.30.260. NEW RECALL PETITION APPLICATION. A new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

* Sec. 29.30.270. SUBMISSION. If a recall petition is sufficient, the clerk shall immediately submit it to the governing body.

****Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the governing body, the governing body shall submit the recall at that election.

(b) If no regular election occurs within 75 days the governing body shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the governing body.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The governing body may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

****Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES ( ) NO ( )".

****Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

Sec. 29.30.310. MAJORITY REQUIRED. A majority vote on the question is required to recall an officer.

* Sec. 29.30.320. EFFECT. If an incumbent is not recalled at the recall election, an application for a a petition to recall the same incumbent may not be filed sooner than six months after the recall election.

****Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the governing body, the governing body, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the governing body are recalled, the governor shall appoint at least three qualified persons to the governing body. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the governing body are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the governing body may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the governing body, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

CHAPTER 33. POWERS AND DUTIES APPLICABLE TO HOME RULE AND GENERAL LAW MUNICIPALITIES.

ARTICLE 1. GENERAL POWERS.

Sec. 29.33.010. GENERAL POWERS. All Municipalities have the following general powers, subject to other provisions of law:

(1) to establish and prescribe the functions of municipal departments, offices or agencies;

(2) to establish and prescribe salaries for the elected and appointed municipal officers and employees;

(3) to make investigations of the affairs of the municipality and make inquiries into the conduct of a municipal department;

(4) to enter into agreements, including those for cooperative or joint administration of any functions or powers with a local government, with the state, or with the United States;

(5) to require periodic and special reports from a municipal department to be submitted through the municipal executive;

(6) to sue and be sued;

**** (7) to levy taxes and special assessments, and impose liens for their enforcement;

(8) to enforce ordinances and to prescribe penalties for violations;

**** (9) to acquire, manage, control, use and dispose of real and personal property, irrespective of whether or not the property is situated within or outside the municipal boundaries; this power includes the power of a borough to expend, for any purpose authorized by law, money received from the disposal of land in a service area created under AS 29.36.270(f).

(10) to acquire membership in organizations which promote legislation for the good of the municipality;

(11) to expend funds for community purposes for the good of the municipality;

(12) to borrow money and issue evidences of indebtedness.

Dimmick motion 2ND ~~Sec. 29.33.010(1) COMBINING OFFICES. The assembly or council may combine two or more appointive or administrative offices.~~ Repeal

* Sec. 29.33.020. EXTRATERRITORIAL JURISIDICTION. ****(a) A municipality may provide, to the extent otherwise authorized by law, parks, roads (including ice roads), trails, playgrounds, emergency medical services, cemeteries, transportation facilities, airports, utility services, solid and septic waste disposal, and wharves, harbors and other marine facilities outside its boundaries, subject to AS 29.36.010 and may regulate their use and operation to the extent that the jurisdiction in which they are located does not regulate them. A regulation adopted under this section must state that it applies outside the municipality.

(b) A municipality may adopt ordinances to protect its water supply and watershed and may enforce them outside its boundaries. Before this power may be exercised within the boundaries of another municipality, the approval of that municipality must be given by ordinance. This section applies to general law and home rule municipalities.

Sec. 29.33.030. EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250 - 09.55.460.

Sec. 29.33.040. EMERGENCY DISASTER POWERS. (a) A municipality which is wholly or partially within an area which is declared by the President or Governor to be a disaster area may participate in and provide for housing and urban renewal and redevelopment in the same manner as a home rule city. The exercise of these powers by a borough is limited to the area outside a city in the borough.

(b) A borough may exercise the powers for a housing or urban renewal and redevelopment project transferred to it by a city located in the borough as provided by AS 29.36.100.

Dimmick 2nd

(c) AS 29.36.170 - 29.36.200 are not applicable to the housing and urban renewal and redevelopment powers granted by this section.

(d) Powers granted by this section must be initiated within a period of not more than five years from the date of declaration of a natural disaster by the President or Governor, but these powers may be extended for an additional period of not more than three years.

ARTICLE 2. FACILITIES, SERVICES AND REGULATION.

Sec. 29.33.070. MUNICIPAL FACILITIES AND SERVICES.

****(a) To the extent that a municipality may exercise the powers necessary to provide the service or facility and subject to other provisions of law a municipality may exercise the powers necessary to provide the following:

(1) streets and sidewalks;

(2) sewers and sewage treatment facilities;

(3) harbors, wharves, and other marine facilities;

(4) watercourse and flood control facilities;

(5) health services and hospital facilities;

(6) cemeteries;

(7) police protection and jail facilities;

(8) cold storage plants;

(9) telephone systems;

(10) light, power and heat;

(11) water;

(12) transportation systems;

(13) community centers;

(14) libraries, visual or performing arts centers, or museums;

(15) recreation facilities;

(16) airport and aviation facilities;

(17) garbage and solid-waste collection and disposal service and facilities subject to Sec. 080 of this chapter;

(18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;

(19) parking and parking facilities;

(20) housing and urban renewal, rehabilitation and development;

(21) preservation, maintenance and protection of historic sites, buildings and monuments;

**** (22) Repeal.

(23) emergency medical services and facilities.

**** (24) provide any other facility or service necessary to carry out a public purpose.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec.20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

Sec. 29.33.080. GARBAGE AND SOLID WASTE SERVICES. (a) A municipality may by ordinance provide for the establishment, maintenance and operation of a system of garbage and solid waste collection and disposal for the entire municipality or for districts or portions of it; require all persons within the municipality or district to use the system and to dispose of their garbage and solid wastes as provided in the ordinance; award contracts for

collection and disposal, or provide for the collection and disposal of garbage and solid waste by municipal officials and employees; pay for garbage and solid waste collection and disposal from available funds; require property owners or occupants of premises to use the garbage and solid waste collection and disposal system provided by the municipality and fix charges against the property owners or occupants of premises for the collection and disposal; provide that charges for collection and disposal shall be paid by the property owner or occupants of the premises; and provide penalties for violations of the ordinances.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by Sec. 6 ch 76 SLA 1973.

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

Sec. 29.33.090. REGULATORY POWERS. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for-hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

**** (4) Repeal.

(5) licensing, impounding and disposition of animals;

**** (6) Repeal.

**** (7) Repeal.

**** (8) Repeal.

**** (9) Repeal.

(10) alcoholic beverages as provided by AS 04.15.070;

(11) recreational devices as provided by AS 05.20.100;

**** (12) Repeal.

**** (13) Repeal.

**** (14) building, housing and related codes, which may be provided by cities within boroughs or, in the manner required in (b) of this section, by first or second class boroughs in the area outside cities or areawide;

(15) condemnation and abatement of public nuisances and hazards;

**** (16) Repeal.

(17) water pollution control;

(18) air pollution control as provided in AS 46.03.140 - 46.03.230;

**** (19) to the extent not otherwise prohibited, any activity affecting the general health, safety, well-being and welfare of its inhabitants;

(20) licensing of day care facilities.

**** (21) municipally owned utilities to the extent not prohibited by AS 42.05.

(b) First and second class boroughs may exercise the powers conferred by (a) of this section only after they have been assumed in the manner required under AS 29.36.090 - 29.36.130 for areawide exercise or in the manner required under AS 29.36.160 - 29.36.200 for exercise in the borough area outside cities or are conferred by (Sec. 20) of this chapter for exercise in the borough area outside cities. However, as to powers conferred under (a)(5), (17), (18) and (20) of this section, exercise of the powers areawide or, as to (a)(5), (15), (17) and (20), in the borough area outside cities is at the option of the borough and is not subject to those restrictions on acquisition of additional borough powers. Upon adoption of a borough ordinance to provide for areawide exercise of the powers specified, no home rule or general law city within the borough may exercise the powers, unless the borough ordinance provides otherwise or the borough by subsequent ordinance ceases to exercise the power.

****Sec. 29.33.100. MUNICIPALLY-OWNED UTILTIES. Repeal.

Sec. 29.33.110. FRANCHISES AND PERMITS. ****(a) The assembly acting for the area outside cities and the council acting for the area within a city may grant franchises, including exclusive franchise privileges, and may permit them the use of streets and other public places under regulations prescribed by ordinance.

**** (b) No franchise is valid until it has been submitted to the qualified voters of the city or borough area outside cities in which it applies, and at least a majority of the votes cast are in favor of the franchise. At least 30 days notice of a franchise referendum election shall be given in the same manner as is provided for notice of regular municipal elections, and the notice shall specify the purpose of the election. The

ordinance granting a franchise shall provide for its submission for ratification to the qualified voters of the city or borough area outside cities at either a regular or special election, and the result of the election shall be canvassed publicly by the council or assembly and spread upon the records of the minutes and the result declared and certified in the same manner as in a regular election.

(c) Public utilities regulated under AS 42.05 have the right to use the streets and other public places, upon payment of a reasonable permit fee and on reasonable terms and conditions and with reasonable exceptions the assembly or council requires. A dispute as to whether fees, terms, conditions, or exceptions are reasonable shall be decided by the Alaska Public Utilities Commission.

Sec. 29.33.120. PUBLIC UTILITIES RATES. The assembly acting for the area outside cities and the council acting for the area within a city may regulate, fix, establish and change, as it considers proper, the rates and charges imposed for utilities services given to the municipality or its inhabitants by a municipally owned utility not regulated under AS. 42.05 and may regulate and provide what is a reasonable deposit for meters and security for service to be given, provided that interest is paid on the deposit. All rates, charges and regulations shall be reasonable and shall permit a fair and reasonable return on invested capital.

****Sec. 29.33.130. HEARING FOR REGULATION OF UTILITIES RATES. Repeal.

****Sec. 29.33.140. RIGHT TO PARTICIPATE AND COMPEL TESTIMONY. Repeal.

****Sec. 29.33.150. FURTHER PROCEEDINGS. Repeal.

****Sec. 29.33.160. APPLICATION. Repeal.

ARTICLE 3. FISCAL DUTIES.

****Sec. 29.33.190. CENTRALIZED PURCHASING. Repeal.

Sec. 29.33.200. MUNICIPAL PROPERTIES. ****(a) Repeal.

**** (b) Repeal.

**** (c) Repeal.

**** (d) The governing body shall by ordinance establish a formal procedure for acquisition and disposal of land and interests in land by the municipality. Each transaction disposing of land or an interest in land which is not subject to a competitive process shall be by ordinance.

**** (e) Repeal.

**** (f) Repeal.

Sec. 29.33.210. BUDGET AND CAPITAL PROGRAM. (a) The assembly or council shall establish the manner for the preparation and submission of the budgets and capital programs by the executive. After public hearing, the assembly or council may approve the budgets with or without amendments and shall appropriate the funds required for the approved budgets.

**** (b) Repeal.

(c) The governing body may make supplemental and emergency appropriations. No payment may be authorized or made and no obligation incurred except in accordance with appropriations.

**** (d) Repeal.

****Sec. 29.33.220. EXPENDITURE OF BOROUGH REVENUES. Borough revenues received through taxes collected on an areawide basis by a home rule or general law borough may be expended on general administrative costs and on areawide functions only. Borough revenues received through taxes collected in the area outside cities only may be expended on general administrative costs and functions which render service to the area outside cities only. This section does not apply to a unified municipality.

Sec. 29.33.230. POST AUDIT. The governing body shall provide for an annual independent audit of the accounts and financial transactions of the municipality or in the case of a second class city an audit or statement of annual income and expenditures. To make the audit the governing body

shall designate a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the municipality. Copies of the audit shall be available to the public upon request. This section applies to home rule and general law municipalities.

ARTICLE 4. CONSTRUCTION OF POWERS.

Sec. 29.33.260. GENERAL CONSTRUCTION. A liberal construction shall be given to all powers and functions of boroughs and cities conferred in this title.

Sec. 29.33.270. EXTENT OF POWERS. Unless otherwise limited by law, boroughs and cities have and may exercise all powers and functions necessarily or fairly implied in or incident to the object or purpose of all powers and functions conferred in this title.

Sec. 29.33.280. ENUMERATION OF POWERS. Specific examples within an enumerated power or function conferred upon boroughs or cities in this title are illustrative of the object and not a limitation on or exclusion from the exercise of the power or function.

CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES.

ARTICLE 1. SCOPE.

Sec. 29.36.010. SCOPE OF AREAWIDE POWERS. (a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an areawide power once that power is being exercised by a borough.

ARTICLE 2. MANDATORY AREAWIDE POWERS AND DUTIES.

Sec. 29.36.040. EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located.

Sec. 29.36.050. ASSESSMENT AND COLLECTION OF TAXES. Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 45 of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city.

****Sec. 29.36.060. PLANNING, PLATTING, AND LAND USE REGULATION.

ARTICLE 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS.

Sec. 29.36.090. ADDITIONAL AREAWIDE POWERS. First and second class boroughs acquire additional areawide municipal powers by transfer from a city or by holding an areawide election on the question, except as provided otherwise in AS 29.33.080 and 29.33.090.

Sec. 29.36.100. TRANSFER BY CITY. (a) A city may transfer to the first or second class borough in which it is located any of its powers or functions, subject to the approval of the borough assembly.

(b) First and second class boroughs shall exercise all powers transferred to them by cities.

Sec. 29.36.110. PETITION FOR POWER. An election on the question of adding an areawide power may be initiated in two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the borough at the preceding regular election may file a petition with the assembly, or

(2) the assembly may propose the acquisition of the power.

Sec. 29.36.120. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.130. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election to be held on the question. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. The vote on the question of adding an areawide power shall be tabulated in two separate classifications.

One shall consist of all votes cast in the home rule and first class cities of the borough. The other shall consist of all votes cast in the remaining borough area. If the majority of the votes cast in each classification is favorable, the borough shall assume the added power within 30 days of certification of the election results. Upon acquisition of an areawide power the borough succeeds to all of the rights, powers and duties of any city or service area with respect to that power. The borough succeeds to claims, franchises and other contractual obligations, liability for bonded and all other indebtedness and to all of the right, title and interest in the real and personal property held by the city or service area for the exercise of the power. The borough assembly may levy and collect special charges, taxes or assessments including interest for the purpose of amortizing bonded indebtedness previously incurred by the city or service area for continuing services in the area. When a city or service area had previously incurred bonded indebtedness, no less than all property that was within the city or service area at the time the bonds were issued shall remain subject to taxation to pay the principal of and interest on the bond for as long as they remain outstanding. Upon acquisition of additional areawide powers the borough, in consultation with the city or service area personnel, shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties and other matters related to acquisition of the areawide powers. This section applies to home rule and general law cities.

ARTICLE 4. BOROUGH POWERS AND DUTIES IN THE AREA OUTSIDE CITIES.

Sec. 29.36.160. FIRST CLASS BOROUGH. The first class borough may exercise in the area outside cities any general law municipal power. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

Sec. 29.36.170. SECOND CLASS BOROUGH. (a) The second class borough may exercise in the area outside cities municipal powers approved at incorporation, conferred by AS 29.36.170 or added as provided in this chapter. Before exercising a power outside cities only, the borough shall seek to have the identical power transferred from cities within the borough or propose joint borough-city exercise of the power.

****(b) A second class borough may, in the area outside cities,

(1) regulate or prohibit the offering for sale, exposure for sale, sale, use, or explosion of fireworks;

(2) provide for the licensing, impounding, and disposition of animals;

(3) regulate the licensing and operation of motor vehicles and operators;

(4) regulate snow vehicles as provided in AS 05.30.070;

(5) provide for garbage and solid waste collection and disposal subject to AS 29.33.080;

(6) provide for water pollution control;

(7) establish or participate in federal and state government loan programs for housing rehabilitation and improvement for conservation of energy.

**** (8) Tax, spend, and regulate for the purpose of promoting economic development.

Sec. 29.36.180. ADDITIONAL POWERS. The second class borough may initiate the acquisition of additional powers outside cities in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the area outside cities at the preceding regular election may file a petition with the assembly, or

(2) the assembly may place the question on the ballot.

Sec. 29.36.190. INVESTIGATION. The assembly shall hold at least one public hearing in the borough on the question. The assembly shall then evaluate the ability of the borough to exercise the powers and make its findings public.

Sec. 29.36.200. ELECTION. (a) The assembly shall, within 30 days after its findings have been made public, order an election on the question in the borough area outside cities. The election shall be held at least 30 days after the order and not later than the next regular election occurring after the 30-day period.

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

(c) The borough mayor shall certify the election results to the Department of Community and Regional Affairs. If the majority of the votes cast on the question is favorable, the borough shall assume the added power within 30 days of certification of election results.

ARTICLE 5. POWERS OF THIRD CLASS BOROUGHS.

Sec. 29.36.230. POWERS OF THIRD CLASS BOROUGHS. (a) A third class borough shall exercise the areawide powers of education and tax assessment and collection in the manner provided for second class boroughs. Areawide exercise of powers other than education and tax assessment and collection is not authorized.

* (b) A third class borough may by a majority vote of the voters in a general or special election provide for planning, platting and land use regulation in accordance with AS 29.42.010 - 29.42.150 for boroughs and may exercise any general law municipal power which a second class borough is authorized to assume by this title. Powers assumed by a third class borough under this section may be exercised only within service areas. A third class borough may establish, operate, alter or abolish service areas in the

manner provided by AS 29.63.090 for second class boroughs. The acquisition of additional powers on a service area basis may be initiated in either of two ways:

(1) a number of voters equal to 15 percent of the number of votes cast in the proposed service area at the preceding regular election may file a petition with the assembly; or

(2) the assembly may place the question on the ballot.

(c) A third class borough may borrow money and issue negotiable general obligation, revenue or refunding bonds and other evidences of indebtedness as provided for first and second class boroughs in AS 29.51.200 - 29.51.510

(d) A military reservation within a third class borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on the military reservation transfers to the borough school district in which the military reservation is located.

****Sec. 29.36.240. ASSEMBLY TO SERVE AS SCHOOL BOARD. Repeal.

ARTICLE 6. SERVICE AREAS.

****Sec. 29.36.270. SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the

assembly may exercise within a service area any power granted a first class city by general law. Except as provided in (f) of this section, a second class borough may exercise the powers granted a first class city by general law but the exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election, or if no voters reside within the area, all owners of real property within the service area must consent in writing to the exercise of the power.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(e) The assembly may exercise or delegate to a service area any powers which may be exercised by a first class borough in the area outside cities. In a second class borough, each exercised or delegated power must be approved by a majority vote at a regular or special election held within the service area. The rate of taxation and the issuance of bonds are subject to assembly approval.

(f) A second class borough may establish a service area by ordinance which may include only vacant, unappropriated and unreserved land owned by the municipality. A second class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second class borough may provide those services in a service area established under this

subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance.

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGHS.

Sec. 29.39.010. ADDITIONAL POWERS. In addition to the powers granted by ch. 48 of this title, cities outside boroughs are granted the powers specified in this chapter. Powers of this chapter which are incorporated by reference to laws governing boroughs apply to home rule cities outside boroughs only in those cases in which they are made applicable to home rule boroughs in the provisions incorporated.

Sec. 29.39.020. ASSESSMENT AND TAX COLLECTION. Home rule and first class cities outside boroughs may assess, levy and collect a general property tax. A property tax if levied must be assessed, levied and collected as provided by ch. 45 of this title for boroughs. Cities outside boroughs may levy and collect sales and use taxes as provided by ch. 45 of this title for boroughs.

Sec. 29.39.030. DIFFERENTIAL TAX ZONES. Moved to 29.45.535.

Sec. 29.39.040. EDUCATION. Home rule and first class cities outside boroughs constitute city school districts and establish, maintain, and operate a system of public schools as provided by AS 29.36.040 for boroughs.

****Sec. 29.39.050. PLANNING AND LAND USE REGULATION. (a) Home rule and first class cities outside boroughs shall, and second class cities outside boroughs may, provide for planning, platting and land use regulation within their boundaries as provided by AS 29.42.010 - 29.42.245 for boroughs.

(b) Home rule and first class cities within third class boroughs shall, and second class cities within third class boroughs may provide for planning, platting and land use regulation, as provided by AS 29.42.010 - 29.42.150 for boroughs.

****Sec. 29.39.060. EXTENSION OF CURFEWS OUTSIDE CITIES. Repeal.

****Sec. 29.39.070. ENFORCEMENT OF CURFEWS. Repeal.

****Sec. 29.39.080. PENALTY FOR VIOLATION OF CURFEW. Repeal.

CHAPTER 42. PLANNING, PLATTING, AND LAND USE REGULATION

****Sec. 29.42.010. PLANNING, PLATTING, AND LAND USE REGULATION. (a) First and second class boroughs shall provide for planning, platting, and land use regulation on an areawide basis.

(b) The assembly by ordinance may delegate any of its powers and responsibilities under this chapter to a city within the borough, or to a city board or commission, provided the city first consents by ordinance to the delegation. The assembly may, without first obtaining the consent of the city, revoke any power or responsibility delegated under this section.

Sec. 29.42.020. PLANNING COMMISSION. (a) The borough planning commission consists of five residents unless a greater number is otherwise provided by ordinance. Commission membership shall be apportioned so that the number of members from first class cities reflects the proportion of borough population residing within those cities. Members shall be appointed by the borough executive for a term of three years subject to confirmation by the assembly, except that appointments of members from first class cities are selected from a list of recommendations submitted by the city council. Members first appointed shall draw lots for one, two-and three-year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

**** (b) In addition to the responsibilities prescribed by ordinance, the planning commission shall

(1) prepare and recommend to the assembly a comprehensive plan in accordance with AS 29.42.030 for the systematic and organized development of the borough;

(2) prepare, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.42.040.

Sec. 29.42.030. COMPREHENSIVE PLAN. (a) The comprehensive plan is a compilation of policy statements, goals, standards and maps for guiding the physical, social and economic development, both private and public, of the borough, and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan implementation.

**** (b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the plan and update the plan as necessary.

****Sec. 29.42.040. LAND USE REGULATION. (a) In accordance with a comprehensive plan adopted under AS 29.42.030 and in order to implement the plan, the assembly by ordinance as a legislative act, shall adopt or amend provisions governing the use and occupancy of land which may include but are not limited to

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

(b) A variance from a land use regulation adopted under this section shall not be granted if

(1) special conditions which require the variance are caused by the person seeking the variance;

(2) the variance will permit a land use in a district in which that use is prohibited; or

(3) the variance is sought solely to relieve pecuniary hardship or inconvenience.

****Sec. 29.42.050. APPEALS FROM ADMINISTRATIVE DECISIONS. (a) By ordinance the assembly shall provide for an appeal from an administrative decision of a municipal employee, board, or commission made in the enforcement, administration, or application of a land use regulation adopted under this chapter. The assembly may provide for an appeal to a court, board of adjustment, hearing officer, or other body. The assembly shall provide for an appeal from a decision on a request for a variance from the terms of a land use regulation when literal enforcement would deprive a property owner of rights commonly enjoyed by other properties in the district.

(b) By ordinance the assembly may provide for appointment of hearing officers, or for the composition, appointment and terms of office of a board of adjustment or other body established to hear appeals from administrative actions specified in (a) of this section. The assembly may define proper parties, prescribe evidentiary rules, standards of review, and remedies available to the hearing officers, board of adjustment or other body.

****Sec. 29.42.060. ADJUSTMENT PROCEDURE. Repeal

****Sec. 29.42.070. JUDICIAL REVIEW. (a) The assembly shall provide by ordinance for an appeal by a municipal officer or person aggrieved from a decision of the board of adjustment, hearing officer or other body to the superior court.

(b) An appeal to the superior court under this section is an administrative appeal and the appeal is heard solely on the record established by the board of adjustment, hearing officer or other body. A proceeding under this section has preference over all other civil actions and proceedings.

****Sec. 29.42.080. PLATTING JURISDICTION AND POWER. (a) By ordinance the assembly shall adopt subdivision requirements which may include but are not limited to the control of

(1) form, size and other aspects of subdivision, dedications, and vacations of land;

(2) dimensions and design of lots or tracts;

(3) street width, arrangement, and rights-of-way, including requirements for public access to lots and installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements;

(4) dedication of streets, rights-of-way, public utility easements and areas deemed by the platting board necessary for other public uses.

(b) The assembly by ordinance shall establish a platting authority to administer subdivision regulations adopted by the borough and perform other duties. The platting authority may consist of members of the planning commission or of other municipal residents.

****Sec. 29.42.085. APPLICATION TO STATE AND POLITICAL SUBDIVISIONS. All subdivisions of land made by the state, its agencies, instrumentalities and political subdivisions are subject to this chapter and AS 40.15.200. The platting authority in the area outside cities in the unorganized borough and in third class boroughs is subject to this chapter and to AS 40.15.075.

****Sec. 29.42.090. PROCEDURE. (a) The platting authority shall approve or disapprove the plat within 60 days of filing or shall return it to the applicant for modification or correction. If the platting authority fails to act, the plat is considered approved and a certificate of approval shall be issued by the platting authority on demand. The applicant for plat approval may consent to the extension of the period for action by the platting authority. The platting authority shall state on its record and in writing to the applicant its reason for disapproval of a plat.

(b) The platting authority shall submit an approved plat to the district recorder in compliance with AS 40.15.010 - 40.15.020.

****Sec. 29.42.100. WAIVER IN CERTAIN CASES. Repeal

Sec. 29.42.110. INFORMATION REQUIRED. A plat shall show initial point of survey, original or reestablished corners and their descriptions, and actual traverse showing area of closure and all distances, angles and calculations required to determine initial point, corners and distances of the plat, as well as other information which may be required by ordinance.

****Sec. 29.42.115. SHORT PLAT PROCEDURE. (a) Nothwithstanding other provisions of this chapter the assembly may by ordinance establish a short or abbreviated plat filing procedure for a plat which will only relocate or vacate lot lines, or subdivide a single tract or lot into not more than four tracts or lots and which will not:

(1) deny legal and physical public access to all lots or tracts created or adjacent to the subdivision, or require construction or improvements necessary for access;

(2) alter a dedicated street or right-of-way, or require any dedication other than a dedication needed for an existing right-of-way;

(3) allow a change in the permitted use to which the lot or tract may be devoted;

(4) require the granting of a vacation or a variance from a subdivision regulation.

(b) Regulations may provide for an administrative official to review, consider, and approve short plats with notice, hearing, and other procedure requirements established by the assembly.

****Sec. 29.42.120. PENALTIES. Repeal.

****Sec. 29.42.130. ALTERATION OR REPLAT PETITION. No recorded plat may be altered or replatted except by the platting authority upon petition of the state, the municipality, a public utility, or the owners of a majority

of the land affected by the alteration or replat. No platted street may be vacated, except upon petition of the state, municipality, or a public utility, or owners of the majority of the land fronting the part of the street sought to be vacated. The petition shall be filed with the platting authority. It shall be accompanied by a copy of the existing plat showing the proposed alteration or replat.

*Sec. 29.42.140. NOTICE OF HEARING. The platting authority shall fix a time for a hearing on the petition which shall not be more than 60 days after the filing. The platting authority shall publish a notice stating when and by whom the petition was filed, its purpose, and the time and place of the hearing. The notice shall generally describe the alteration or replat sought. The notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the area. The platting authority shall also mail a copy of the notice to each affected property owner not signing the petition.

*Sec. 29.42.150. HEARING AND DETERMINATION. At the hearing the platting authority shall consider the alteration or replat and make its decision on the merits of the proposal. No vacation of a city street may be made without the consent of the city council. No vacation of a street in the borough area outside cities may be made without the consent of the borough assembly. The assembly or council shall have 30 days from the decision in which to veto the board decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

*Sec. 29.42.160. RECORDING. If the alteration or replat is approved, the revised plat must be recorded by the platting authority and is thereafter the lawful plat.

Sec. 29.42.170. TITLE TO VACATED AREA. (a) The title to the street or other public area vacated on a plat attaches to the lot or lands bordering

on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

(b) If the borough or city acquired the street or other public area vacated for legal consideration or by express dedication to and acceptance by the borough or city other than required subdivision platting, before the final act of vacation the fair market value of the street or public area shall be deposited with the platting authority to be paid over to the borough or city on final vacation.

(c) Provisions of (a) of this section notwithstanding, the council of a second class city located outside an organized borough may vacate those streets, alleys, crossings, sidewalks or other public ways that may have been previously dedicated or established when the council, in its discretion, finds that the streets, alleys, crossings, sidewalks or other public ways are no longer necessary for the public welfare, or when the public welfare will be enhanced by the vacation. If the council determines that all or a portion of the area vacated under this subsection should be devoted to another public purpose, title to the area vacated and held for another public purpose does not vest as provided in (a) of this section but remains in the city.

****Sec. 29.42.180. DELEGATIONS. Repeal.

****Sec. 29.42.190. REMEDIES. (a) It shall be unlawful for the owner of land located within a subdivision to transfer, sell, offer to sell, or enter into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this chapter or with an ordinance adopted under this chapter. It shall be unlawful for a person to record a plat or other document depicting subdivided land in any public recorder's office unless the plat or document has been approved by the municipal authority. A person convicted of violating a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority in the exercise of its powers under this chpater is guilty of a class B misdemeanor.

(b) The municipality or an aggrieved person may institute civil action against a person who violates a provision of this chapter, a municipal subdivision regulation adopted under this chapter, or a term, condition, or limitation imposed by a municipal platting authority. In addition to injunctive and compensatory relief, a civil penalty not to exceed $1,000 may be imposed for each violation. An action to enjoin a violation may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of a violation or threatened violation, the superior court shall grant the injunction.

(c) Every day upon which an unlawful act or condition continues shall constitute a separate violation.

CHAPTER 45. MUNICIPAL TAXATION

Article 1. MUNICIPAL PROPERTY TAX

****Sec. 29.45.010. GENERAL PROPERTY TAX. A general law or home rule borough other than a unified municipality, may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A tax if levied on real property, personal property, or both must be assessed, levied and collected as provided in this chapter.

****Sec. 29.45.020. TAXPAYER NOTICE. (a) If a municipality levies and collects real or personal property taxes, or both, the governing body shall provide the following notice:

"NOTICE TO TAXPAYER"

For the current fiscal year the (city)(borough) has been allocated the following amount of state aid for school and municipal purposes under the applicable financial assistance Acts:

PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE
(AS 14.17) $

STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT (AS 43.18.100) $

MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE
(AS 29.88) $

STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES (AS 29.89) $

TOTAL AID $

The millage equivalent of this state aid, based on the dollar value of a mill in the municipality during the current assessment year and for the preceding assessment year, is:

| | MILLAGE EQUIVALENT | |
|---|---|---|
| | PREVIOUS YEAR | THIS YEAR |
| PUBLIC SCHOOL FOUNDATION PROGRAM ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR RETIREMENT OF SCHOOL CONSTRUCTION DEBT | ....MILLS | ....MILLS |
| MUNICIPAL TAX RESOURCE EQUALIZATION ASSISTANCE | ....MILLS | ....MILLS |
| STATE AID FOR MISCELLANEOUS MUNICIPAL SERVICES | ....MILLS | ....MILLS |
| TOTAL MILLAGE EQUIVALENT | ....MILLS | ....MILLS |

Notice shall be provided

(1) by furnishing a copy of the notice with tax statements mailed for the fiscal year for which aid is received; or

(2) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget.

(b) If the municipality levies and collects only a sales tax, the governing body shall provide a notice substantially in the form set out in (a) of this section. In providing notice under this subsection, the council or assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in (a) of this section. Notice shall be provided

(1) by publishing in a newspaper of general circulation within the municipality a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the municipality's budget; or

(2) if there is no newspaper of general circulation in the municipality, by posting a copy of the notice for at least 20 days in at least two public places within the municipality, with posting to occur not later than 45 days after the final adoption of the municipality's budget.

(c) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.62 and state aid for miscellaneous municipal services under AS 29.62. The Department of Community and Regional Affairs shall withhold annual allocations under those chapters until municipal officials demonstrate that the requirements of this section have been met.

Sec. 29.45.030. REQUIRED EXEMPTIONS. (a) The following property is exempt from general taxation:

**** (1) municipal, state or federally owned property, except that a private leasehold, contract or other interest in the property shall be taxable to the extent of those interests;

**** (2) household furniture of the head of a family or household;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

**** (4) property of a nonbusiness organization or its auxiliary composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

**** (3) Repeal.

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups. If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

(e) The real property owned and occupied as a permanent place of abode by a resident 65 years of age or over is exempt from taxation of the assessed value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 and 44.62.570.

**** (f) No exemption may be granted under (e) of this section except upon written application

for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 or a date provided by ordinance which is not later than March 31, of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 or a date provided by ordinance which is not later than March 31, of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under (e) of this section.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under AS 29.53.025(a).

(h) Except as provided in (g) of this section, nothing in (e) - (i) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

(i) In (e) - (i) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes.

(j) Two percent of the assessed value of a structure is exempt from taxation if the structure contains a fire protection system approved under AS 19.70.081, in operating condition, and incorporated as a fixture or part of the structure. The exemption granted by this subsection is limited to

(1) an amount equal to two percent of the value of the structure based on the assessment for 1981, if the fire protection system is a fixture of the structure on January 1, 1981; or

(2) an amount equal to two percent of the value of the structure based on the assessment as of January 1 of the year immediately following the installation of the fire protection system if the fire protection system becomes a fixture of the structure after January 1, 1981.

Sec. 29.45.040. PROPERTY TAX EQUIVALENCY PAYMENTS. (a) A resident of the state 65 years of age or older who rents a permanent place of abode is eligible for tax equivalency payments from the state through the Department of Community and Regional Affairs.

(b) For purposes of determining payments to eligible persons, the department shall calculate a property tax equivalent percentage for each home rule or general law municipality which levies a general property tax at the rate of one percent per mil. The property tax equivalent percentage applied to the annual rent charged to the applicant equals the property tax equivalency payment payable under this section.

(c) To obtain tax equivalency payments the eligible resident must apply to the department for payment for the preceding year by January 15 of each year on forms and in the manner prescribed by the department. Each applicant shall submit with the application rental receipts or, if rental

receipts are not available, other evidence satisfactory to the department for determination of the fact of payment of rent and the amount paid.

(d) If two or more persons occupy a residence as tenants, not all of whom are eligible for tax equivalency payments under this section, the assessor shall determine equitable partial payments to be made to the eligible tenants. However, tax equivalency payments to an eligible applicant may not be reduced because the spouse is less than 65 years of age. If all occupants in a residence are eligible for tax equivalency payments under this section, the occupants shall decide between and among themselves which shall receive payment.

Sec. 29.45.050. (Sec. 29.53.025.) OPTIONAL EXEMPTIONS AND EXCLUSIONS (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed $10,000 for any one residence.

(b) Municipalities may by ordinance

**** (1) classify boats and vessels for the purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage.

(2) classify and exempt from taxation

**** (A) Repeal.

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the

conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

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

(1) a home rule or first or second class borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or

partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is direcly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later.

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later.

****Sec. 29.45.060. MINING CLAIMS. Repeal.

Sec. 29.45.070. FARM OR AGRICULTURAL LANDS. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be

assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file

assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight percent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceeding seven years. The balance of the payment shall be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make application to the assessor before May 15 of each year in which the assessment is desired. The application shall be made upon forms prescribed by the state assessor for the use of the local assessor and shall include information which may reasonably be required to determine the entitlement of the applicant. If the farm use land is leased for farm use purposes, the applicant shall furnish to the assessor a copy of the lease bearing the signatures of both lessee and lessor along with the completed application. The applicant shall furnish the assessor a copy of the lease covering the period for which the exemption is requested.

(c) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural use for profit or any combination thereof. To be farm use land, the owner or the lessee must be actively engaged in farming the land, and derive at least 10 per cent of his yearly gross income from the farm use land. The provisions of this section do not apply to land respecting which the owner has granted, and has outstanding, a lease or option to buy the surface rights. A property owner wishing to file

for farm use classification having no history of farm-related income may submit a declaration of intent at the time of filing the application with the assessor setting out the intended use of the land and the anticipated percentage of income. An applicant using this procedure shall file with the assessor before February 1 of the following year a notarized statement of the percentage of gross income attributable to the farm use land. Failure to make the filing required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year, the owner or lessee may submit an affidavit affirming that 10 percent of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of this section.

Sec. 29.45.080. MOBILE HOMES. Mobile homes, trailers, house trailers, trailer coaches and similar property used or intended to be used for residential office or commercial purposes and attached to the land or connected to water, gas, electric or sewage facilities are classed as real property for tax purposes except where expressly classified as personal property by ordinance. This section does not apply to house trailers and mobile homes which are unoccupied and held for sale by persons engaged in the business of selling mobile homes.

Sec. 29.45.090. TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY. (a) A municipality may levy and collect taxes on taxable property taxable under AS 43.56 only by using one of the methods set out in (b) or (c) of this section.

(b) A municipality may levy and collect a tax on the full and true value of taxable property taxable under AS 43.56 as valued by the Department of Revenue at a rate not to exceed that which produces an amount

of revenue from the total municipal property tax equivalent to $1,500 a year for each person residing within its boundaries.

(c) A municipality may levy and collect a tax on the full and true value of that portion of taxable property taxable under AS 43.56 as assessed by the Department of Revenue which value, when combined with the value of property otherwise taxable by the municipality, does not exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

(d) By February 1 of each assessment year a taxing municipality must inform the Department of Revenue which method of taxation the municipality will use.

(e) For purposes of this section, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data, and shall advise each municipality of its population as so determined by January 15 of each year.

Sec. 29.45.100. TAX LIMITATION. (a) No municipality may levy and tax for any purpose in excess of three percent of the assessed valuation of property within the municipality in any one year.

**** (b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 percent of the average per capita assessed full and true value of property in the state multiplied by the number of

residents of the taxing municipality. If two or more municipalities occupying the same geographical area, in whole or in part, attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding $1,500 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58.

Sec. 29.45.110. NO LIMITATIONS ON TAXES TO PAY BONDS. The limitations provided for in Sec. 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default.

Sec. 29.45.120. FULL AND TRUE VALUE. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and Secs. 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing

market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly.

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

Sec. 29.45.130. RETURNS. (a) The assembly may require every person having ownership or control of or an interest in property to submit a return in the form prescribed by the assessor, based on property values existing on January 1, except as otherwise provided in this chapter.

(b) The assessor may, by written notice, require a person to provide additional information within 30 days.

Sec. 29.45.140. INDEPENDENT INVESTIGATION. (a) The assessor is not bound to accept a return as correct. He may make an independent investigation of property returned or of taxable property upon which no return has been filed. In either case, the assessor may make his own valuation of the taxable property, which is prima facie evidence.

**** (b) For investigation, the assessor or his agent may enter any premise during reasonable hours and may examine property on the premises. He may examine all property records involved. A person shall, upon request, furnish to the assessor or his agent every facility and assistance for the investigation. The assessor may seek a court order to compel entry and production of records.

(c) An assessor may examine a person on oath. Upon request, the person shall present himself for examination by the assessor.

****Sec. 29.45.150. STATEMENT. A person who knowingly fails to file a statement required by ordinance or who knowingly makes a false affidavit to a statement required by a tax ordinance relative to the amount, location, kind or value of property subject to taxation with intent to evade the taxation, is guilty of a class B misdemeanor.

Sec. 29.45.160. REEVALUATION. A systematic reevaluation of taxable real and personal property undertaken by the assessor, whether of specific areas in which real property is located or of specific classes of real or personal property to be assessed, shall be made only in accordance with a resolution or other act of the assembly directing a systematic reevaluation of all taxable property within the borough over the shortest period of time practicable, as determined by the assembly and fixed in the resolution or other act of the assembly.

Sec. 29.45.170. ASSESSMENT ROLL. (a) The assessor shall prepare an annual assessment roll. The roll contains

(1) a description of all taxable property;

(2) the assessed value of all taxable property;

(3) the names and addresses of persons with property subject to assessment and taxation.

(b) The assessor may list real property by any description that may be made certain. Real property is assessed to the owner of record as shown in the records of the district recorder, who shall at least monthly provide the assessor a copy of each recorded change of ownership showing the name and mailing address of the owner and the name and mailing address of the party recording the change of ownership. Other persons having an interest in the property may be listed on the assessment records with the owner. The person in whose name property is listed as owner is conclusively presumed to

be the legal owner of record. If the property owner is unknown, the property may be assessed to "unknown owner." No assessment is invalidated by a mistake, omission or error in the name of the owner, if the property is correctly described.

Sec. 29.45.180. ASSESSMENT NOTICE. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the dates when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing.

Sec. 29.45.190. CORRECTIONS. (a) A person receiving an assessment notice shall advise the assessor of errors or ommissions in the assessment of his property. The assessor may correct errors or ommissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board.

Sec. 29.45.200. APPEAL. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city.

****Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a board of equalization for the purpose of hearing an appeal from a determination of the assessor, or it may delegate this authority to one or more boards appointed by it. An appointed board may be composed of not less than three persons, who may be members of the assembly, municipal residents, or a combination of assembly members and residents. The assembly shall be ordinance establish the qualifications for membership.

(b) The board is governed in its proceedings by rules adopted by ordinance which are consistent with general rules of administrative procedure. The board may alter an assessment of a lot or parcel only pursuant to an appeal filed as the the particular lot or parcel.

(c) Notwithstanding other provisions in this section, a determination of the assessor as to whether property is taxable under law shall be appealed directly to the superior court.

Sec. 29.45.220. HEARING. (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

**** (c) The only grounds for adjustment are proof of unequal excessive, improper, or undervaluation based on facts which are stated in a valid written appeal or proven at the appeal hearing. If a valuation is found to be too low, the board of equalization may raise the assessment.

(d) The board shall certify its actions to the assessor within seven days.

**** (e) Except as to supplementary assessments, the assessor shall enter the changes and certify the final assessment roll by June 1.

**** (f) An appellant or the assessor may appeal the board's determination to the superior court as provided by rules of court applicable to appeals from the decisions of administrative agencies. Appeals are heard on the record established at the hearing before the board of equalization.

Sec. 29.45.230. SUPPLEMENTARY ASSESSMENT ROLLS. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll.

Sec. 29.45.240. TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed $1,000. A reduction of taxes may be made only on losses in excess of $1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe

procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

**** (e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or other federal law, or a disaster declared by the governor under AS 26.23.010 26.23.110.

Sec. 29.45.250. TAX LEVY AND RATE. ****(a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of a general ordinance. The rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest.

Sec. 29.45.260. RATES OF PENALTY AND INTEREST. ****(a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 20 percent may be added to all delinquent taxes, and interest at the rate of 15 percent a year shall accrue upon all unpaid taxes, not including penalty, from the due date until paid in full. If the taxpayer is given the right to pay the tax in two installments penalty and interest on an unpaid installment accrues from the date the installment becomes due.

(b) If the assembly imposes a penalty for the nonpayment of property taxes when due, or the late return of personal property assessment forms, the rate of penalty or combined rates of penalty may not exceed 10 percent of the tax due on the property concerned.

**** (c) Repeal.

ARTICLE 2. ENFORCEMENT OF TAX LIENS

Sec. 29.45.290. VALIDITY. Certified assessment and tax rolls are valid and binding on all persons, notwithstanding any defect, error, omission or invalidity in the assessment rolls or proceedings pertaining to the assessment roll.

Sec. 29.45.300. TAX LIABILITY. (a) The owner of personal property assessed is personally liable for the amount of taxes assessed against his property. The tax, together with penalty and interest, may be collected in a personal action brought in the name of the borough.

**** (b) Property taxes, together with penalty and interest, are a lien upon the property assessed, and the lien is prior and paramount to all other liens or encumbrances against the property.

Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE. The lien of personal property taxes may be enforced by distraint and sale of the property. The assembly shall provide the procedure for distraint and sale by ordinance. No seizure, levy or distraint is legal unless demand is first made of the person assessed for the amount of the tax, penalty and interest, and no sale is valid unless made at public auction after 15 days notice is given by posting or publication. The siezure is made by virtue of a warrant issued by the borough clerk to a peace officer. If the property sold is not sufficient to satisfy the tax, penalty and interest, and costs of sale, the warrant may authorize the seizure of other personal property sufficient to satisfy the tax, penalty, interest and costs of sale. If the property is sold for more money than is needed to satisfy the tax, upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred.

Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) The borough shall enforce delinquent real property tax liens by annual foreclosure, unless otherwise provided by ordinance.

**** (b) If the tax on property described in AS 29.45.080 or on a taxable interest in tax exempt property is not paid when due, a borough may enforce the tax by a personal action against the delinquent taxpayer brought in the district or superior court, in addition to other remedies available to the borough to enforce the lien.

Sec. 29.45.330. FORECLOSURE LIST. (a) The borough shall

(1) annually present a petition for judgment and a certified copy of the foreclosure list for the previous year's delinquent taxes in the superior court for judgment;

(2) publish the foreclosure list for four consecutive weeks in a newspaper of general circulation distributed within the borough or, if there is no newspaper of general circulation distributed within the borough, post the list at three public places for at least 30 days;

(3) within 10 days after the first publication or posting, mail to the last known owner of each property as his name and address appear on the list a notice advising of the foreclosure proceeding in which a petition for judgment of foreclosure has been filed and describing the property and the amount due as stated on the list.

(b) The list shall be arranged in alphabetical order as to the last name and shall include

(1) the last known owner;

(2) the property description as stated on the assessment roll;

(3) years and amounts of delinquency;

(4) penalty and interest due;

(5) a statement that the list is available for public inspection at the clerk's office;

(6) a statement that the list has been presented to the superior court with a petition for judgment and decree.

(c) Completion of the requirements of (a) of this section constitutes and has the same force and effect as the filing of an individual and separate complaint and service of summons to foreclose a lien against each property described on the foreclosure list.

Sec. 29.45.340. CLEARING DELINQUENCIES. During the publication or posting of the foreclosure list and up to the time of transfer to the borough a person may pay the taxes, together with the penalty, interest and costs. The collector shall note payment on the foreclosure list.

Sec. 29.45.350. LIST TO LIENHOLDER. A holder of a mortgage or other lien on real property may request the clerk to send by certified mail notice of a foreclosure list which includes such real property.

Sec. 29.45.360. GENERAL FORECLOSURE. The borough shall bring one general foreclosure proceeding in rem against the properties included in the list. If the owner is unknown, the property is proceeded against as belonging to "unknown owner." Tax foreclosure proceedings have priority over all other civil proceedings except board of adjustment appeals as provided in AS 29.33.130(e).

Sec. 29.45.370. ANSWER AND OBJECTION. A person having an interest in a tract on the foreclosure list may file an answer within 30 days of the date of last publication, specifying his objection. The court shall make its decision in summary proceedings. The foreclosure list is prima facie evidence that the assessment and levy of the tax is valid and that the tax is unpaid.

Sec. 29.45.380. JUDGEMENT. The court shall in a proper case give judgment and decree that the tax liens be foreclosed. It is a several judgment against and a lien on each parcel.

Sec. 29.45.390. TRANSFER AND APPEAL. (a) Foreclosed properties are transferred to the borough for the lien amount. When answers are filed the court may enter judgment against and order the transfer to the borough of all other properties on the list pending determination of the matters in controversy. The court shall hear and determine the issues raised by the complaint and answers in the same manner and under the same rules as it hears and determines other actions.

(b) The court clerk shall deliver a certified copy of the judgment and decree to the borough clerk. The certified judgment and decree constitutes a transfer to the borough.

(c) The judgment and decree stops objections to it which could have been presented before judgment and decree.

(d) Appeal from a judgment and decree of foreclosure, or from a final order in the proceeding, may be taken in the manner provided for appeals in civil actions.

Sec. 29.45.400. REDEMPTION PERIOD. (a) Properties transferred to the borough are held by the borough for at least one year. During the redemption period a party having an interest in the property may redeem it by paying the lien amount plus penalties, interest and costs, including all costs incurred under Sec. 350(a) of this chapter. Property redeemed is subject to all taxes, assessments, liens and claims as though it had continued in private ownership. Only the amount applicable under the judgment and decree must be paid in order to redeem the property.

**** (b) Repeal.

****Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough releases the judgment obtained under AS 29.45.380. The clerk or his designee shall record the redemption and issue a certificate containing a property description, the redemption amount, and the dates of judgment and decree of foreclosure. The clerk or his designee shall collect the recording fee at

the time or redemption and shall file the certificate with the record as part of the judgment roll.

Sec. 29.45.420. ADDITIONAL LIENS. If a property included in a foreclosure list is removed after payment of delinquencies or redemption by another lienholder, the payment represented by receipt for payment constitutes an additional lien on the property, collectible by the lienholder in the same manner as the original lien.

Sec. 29.45.430. POSSESSION DURING REDEMPTION PERIOD. Foreclosure does not affect the former owner's right to possession during the redemption period. In the event that waste is committed by the former owner, or by anyone acting under his permission or control, the borough may declare an immediate forfeiture of the right to possession.

Sec. 29.45.440. EXPIRATION. ****(a) At least 30 days before the expiration of the redemption period the clerk or his designee shall publish a redemption period expiration notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the properties will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than $100,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be

sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality.

Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

**** (b) Conveyance gives the borough or the city clear title except for prior recorded tax liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

**** (d) No deed is invalid for irregularities, omissions or defects in the proceedings under this chapter unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner or other person having an interest in the property is forever barred.

Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a) The assembly of a borough or council of a city shall determine by ordinance whether foreclosed property deeded to the municipality under Sec. 360 of

this chapter shall be retained by the municipality for a public purpose. The ordinance shall contain the legal description of the property, the address or a general description of the property sufficient to provide the public with notice of its location, and the name of the last record owner of the property as his name appears on the assessment rolls of the municipality.

(b) Tax-foreclosed properties conveyed to a borough or city by tax foreclosure and not required for a public purpose may be sold. Before the sale of tax-foreclosed property held for a public purpose, the assembly or council, by ordinance, shall determine that a public need does not exist. The ordinance shall contain the information required in (a) of this section.

**** (c) The clerk or his designee shall send a copy of the published notice of hearing of an ordinance to consider a determination required by (a) or (b) of this section by certified mail to the former record owner of the parcel of property which is the subject of the ordinance. The notice shall be mailed within five days of its first publication and shall be sufficient if mailed to the last record owner of the property as his name appears on the assessment rolls of the municipality.

(d) The provisions of (c) of this section do not apply with respect to property which has been held by the municipality for a period of more than 10 years after the close of the redemption period.

Sec. 29.45.470. REPURCHASE BY RECORD OWNER. (a) The record owner at the time of tax foreclosure of property acquired by a borough or city, or his assigns, may, at any time before the sale or contract of sale of the tax-foreclosed property by the borough or city, repurchase the property. The borough or city shall sell the property for the full amount applicable to the property under the judgment and decree, with interest at the rate of eight percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale,

Sec. 29.45.490. PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure.

****Sec. 29.45.510. REFUND OF TAXES. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough or, if in the absence of suit, it becomes obvious to the assembly that judgment for recovery of the taxes would be obtained if legal proceedings were brough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight percent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred.

(c) The assembly may correct manifest clerical errors at anytime.

ARTICLE 3. CITY PROPERTY TAX.

Sec. 29.45.530. POWER OF LEVY. Home rule and first class cities within boroughs may levy a general property tax. A property tax, if levied, shall be levied in the manner provided for borough levies in Sec. 170(a) of this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter

The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city.

Sec. 29.45.535. DIFFERENTIAL TAX ZONES. Cities may by ordinance establish, alter and abolish differential tax zones to provide and levy property taxes for services not provided generally within the city or a different level of service than that provided generally within the city.

Sec. 29.45.540. LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES. A second class city may by referendum levy real and personal property taxes as provided for first class cities. However, levy by a second class city may not exceed one-half of one percent of the assessed valuation of the property taxed, except that the limit does not apply to a levy necessary to avoid a default upon payment of principal and interest of bonded or other indebtedness which is secured by a pledge to levy ad valorem or other taxes without limit to meet debt payments.

**** Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition for second class city incorporation may request that a property tax proposal be placed in the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the property tax proposition. If so, the incorporation proposition fails if the property tax fails.

ARTICLE 4. BOROUGH SALES AND USE TAX

Sec. 29.45.570. SALES AND USE TAX. ****(a) A borough may levy and collect a sales tax not exceeding six percent on sales, rents, and on services made within the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use or consumption of tangible personal property within the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only upon buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that he has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether in or outside the state.

**** (d) If the assembly of a home rule or general law borough charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year upon the delinquent taxes and shall be charged from the due date until paid in full.

**** (e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales or use tax, and for interest, penalties and administration costs in the event of delinquencies. A lien established under this section has the force, priority and duration of a judgment lien.

Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION. ****(a) A new sales tax or an increase in the rate of levy of a sales tax approved by the assembly by ordinance shall not take effect until ratified by a majority of the voters voting on the question at a regular or special election.

(b) If the proposition receives a majority of the votes cast, the assembly may enact the sales tax or increase the rate of the sales tax as a levy upon buyers, sellers, or both. The sales tax is collected at the time of sale or at the time of payment in credit transactions and transmitted to the borough.

ARTICLE 5. CITY SALES AND USE TAXES

Sec. 29.45.610. POWER OF LEVY. Cities within a borough which levies and collects sales or use taxes for areawide borough functions may levy sales or use taxes upon all sources taxed by the borough in the manner provided for boroughs.

Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Cities within a borough which does not levy and collect sales or use taxes for areawide borough functions may levy and collect sales or use taxes in the manner provided for boroughs.

Sec. 29.45.630. COMBINING SALES TAX WITH INCORPORATION. A petition for second class city incorporation may request that a sales tax proposal be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent upon the passage of the sales tax proposition. If so, the incorporation proposition fails if the sales tax fails.

CHAPTER 48. SPECIAL ASSESSMENTS

****Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The governing body may assess against the property of a state or federal governmental unit and private real property benefited all or a portion of the cost of acquiring, installing or constructing capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an improvement refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the governing body of the owners of one-half in value of the property to be benefited or

(2) the governing body.

Sec. 29.48.020. PROCEDURE. ****(a) The governing body may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvments, including and subject to the following:

**** (1) a procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

**** (4) a resolution or ordinance of the governing body determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

**** (6) published notice of each public hearing required by this section and mailing notice to each record owner of real property within the special assessment district;

**** (7) a resolution or ordinance confirming the special assessment roll for the local improvement;

* (8) if protests as to the necessity of a local improvement are made by owners of property which will bear 50 percent or more of the estimated cost of the improvement, the assembly or council may not proceed with the improvement until the objections have been reduced to less than 50 percent, except upon approval of not fewer than three-fourths of the governing body.

**** (b) To the extent that the governing body does not prescribe a procedure for special assessments as permitted by this section, the governing body shall comply with the special assessment procedures set out in AS 29.48.030 - 29.48.100.

Sec. 29.48.030. CREATION OF DISTRICT. **** (a) When an improvement proposal has been filed with the municipal clerk and presented to the governing body, it shall find by resolution or ordinance whether (1) the improvement requested is necessary and should be made, and (2) if by petition the request has sufficient and proper petitioners. The findings of the governing body are conclusive.

(b) If the governing body approves an improvement proposal with the necessary findings, it shall develop a proposed improvement plan including the cost estimate and the percentage of the improvement plan cost to be assessed against the property benefited. This plan is to be filed with the municipal clerk.

(c) The governing body shall set a time for public hearing on the improvement plan and the period for filing objections to the plan. The governing body shall publish a notice of the hearing and of the period during which objections may be filed at least once a week for four consecutive weeks in a newspaper of general circulation if distributed within the municipality and shall send notice by mail to every record owner of property within the special assessment district.

****Sec. 29.48.040. RECORD OWNER. The person in whose name property is listed on the municipal property tax roll as owner is conclusively presumed to be the legal owner of record. If the owner is unknown, the assessment roll may designate "unknown owner."

****Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improvement plan may be filed during a period of 60 days after publication of notice. The governing body may by resolution or ordinance approve the plan and order the improvement subject to the limitation of (b) of this section.

(b) If objections are made in writing during the period set for objections by the owners of property bearing one-half or more of the estimated cost of the improvement, the governing body may not proceed with the improvement unless it revises the plan to meet the objections and the objections are reduced to less than 50 percent. A revised plan shall be approved and adopted as an original plan in accordance with AS 29.48.030.

Sec. 29.48.060. ASSESSMENT ROLL. ****(a) At any time after project approval, the governing body shall assess the authorized percentage of the cost against property within the district in proportion to benefit received.

**** (b) The special assessment roll shall contain property descriptions, names of record owners and assessment amounts.

(c) The assembly or council shall fix a time to hear objections to the roll. The municipal clerk shall send an assessment and hearing notice by mail to each record owner of an assessed tract not less than 15 days before the hearing.

****Sec. 29.48.070. HEARING AND SETTLEMENT. After the public hearing, the governing body shall correct errors and any inequalities in the roll. If an assessment is increased, a new hearing shall be set and notice mailed, except that a new hearing and notice is not required of all record owners of property subject to the increased assessment consent in writing to the increase. Objections to the increased assessment shall be limited to record

two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the municipality determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the municipality is appealable under AS 44.62.560-44.62.570.

**** (b) No exemption may be granted under this section except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors and in accordance with the following requirements:

**** (1) the claimant must file the initial application during the period of time between the date the assessment roll is confirmed and the time of payment fixed by the governing body. Within one year of the date the assessment roll is confirmed the governing body for good cause shown may waive the claimant's failure to make timely initial application for the exemption and authorize the assessor to accept the application as if timely filed.

(2) a claimant receiving the exemption must file with the deparment by March 15 of each subsequent year a separate application proving eligibility as of January 1 in order to retain the exemption. Within the same year the department for good cause shown may waive the claimant's failure to make timely application and approve the application as if timely filed.

(3) if an application is filed within the required time under this subsection and is approved by the assembly or council, the exemption shall be allowed in accordance with the provisions of this section. If a waiver under this subsection is granted and the application for exemption approved, the amount of any assessment, penalty or interest

which the claimant may have already paid on the assessment shall be refunded to him. The municipality may at any time require proof in the form considered necessary of the right and amount of an exemption claimed under this section.

(c) The state shall reimburse a home rule or general law municipality for the sewer and water assessment revenues which it would receive but for the operation of this section. Reimbursement under this subsection is a lien in favor of the state against the property exempted to the extent of the assessment against the property exempted. Upon recordation in the recording office of the district in which the property exempted is located the lien is prior and superior to other liens against the property except for general taxes or other special assessments and may be enforced by lien foreclosure as provided in AS 34.10.070-34.10.220. The lien becomes immediately due and payable

(1) upon sale or other transfer of the property except to a spouse, widow, widower, or minor heir; however, if the property is transferred to a minor heir the lien becomes due and payable on the date the minor heir reaches the age of 25 years; or

(2) when property exempted under (a)(1) or (2) of this section receives more than one sewer connection or more than one water connection; or

(3) when the claimant fails to prove eligibility under (b)(2) of this section.

(d) In this section

(1) "resident" means a person who for 12 consecutive months has maintained his permanent place of abode in the state;

(2) "real property" includes, but is not limited to, mobile homes, whether classified as real or personal property for municipal tax purposes.

(3) "minor heir" means a person who, at the time of transfer of the property, has not attained the age of 19 years or who, if he has not attained the age of 22 years, is a full-time student at an educational institution or a member of the armed forces of the United States.

Sec. 29.48.100. REASSESSMENT. (a) The assembly or council shall within one year correct any deficiency in a special assessment found by a court.

(b) Notice and hearing must conform to the initial assessment procedures.

(c) Payments on the initial assessment are credited to the property upon reassessment.

(d) The reassessment becomes a charge upon the property notwithstanding failure to comply with any provision of the assessment procedure.

****Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment district is created, there may be included in the assessments

(1) all of the cost of acquiring, installing, making or constructing the local improvement;

(2) the costs of all engineering and surveying to be done in connection with creating the district or improvement;

(3) the cos of mailing and publishing of notices;

(4) interest on interim financing;

(5) the cost of legal services and other expenses incurred in the formation of the special assessment district;

(6) the cost of completing the improvement and financing the improvement, including the issuance of any bonds.

(b) The total amount of the assessment roll may not exceed actual costs but actual costs may include reasonable estimates of the costs to be incurred in connection with issuance of any bonds.

Sec. 29.48.110. OBJECTION AND APPEAL. (a) The regularity or validity of an assessment may not be contested by a person who did not file with the municipal clerk a written objection to the assessment roll before its confirmation.

(b) The decision of the assembly or council upon an objection may be appealed to the superior court within 30 days of the date of confirmation of the assessment roll.

(c) If no objection is filed or an appeal taken within the time provided in this section, the assessment procedure shall be considered regular and valid in all respects.

****Sec. 29.48.115. INTERIM FINANCING. (a) The governing body may provide by resolution or ordinance for the issuance of notes in payment of the costs of any local improvement project, payable out of special assessments for the improvement. The notes shall bear interest at a rate or rates authorized by the resolution or ordinance and shall be redeemed either in cash or bonds for the improvement project.

(b) All notes issued against assessments shall be claims against the assessments which are prior and superior to a right, lien or claim of a surety upon the bond given to the municipality to secure the performance of its contract for a local improvement project or to secure the payment of persons who have performed work or furnished materials under the contract.

(c) The municipal treasurer may accept notes against special assessments upon conditions prescribed by the governing body in payment of

(1) assessments against which the notes were issued in order of priority;

(2) judgments rendered against property owners who have become delinquent in the payment of assessments; and

(3) certificates of purchase when property has been sold under execution or at tax sale for failure to pay the assessments.

Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) The assembly or council may by ordinance authorize the issuance and sale of special assessment bonds to pay all or part of the cost of an improvement in a special assessment district. The principal and interest of bonds issued shall be payable solely from the levy of special assessments against the property to be benefited. The assessments shall constitute a sinking fund for the payment of principal and interest on the bonds. The property benefited may be pledged by the assembly or council to secure a payment.

(b) Upon default in a payment due on a special assessment bond, a bondholder may enforce payment of principal and interest and costs of collection in a civil action in the same manner and with the same effect as actions for the foreclosure of mortgages on real property. Foreclosure shall be against all property on which assessments are in default. The period for redemption shall be the same as in the case of a mortgage foreclosure on real property.

**** (c) Before the governing body may issue special assessment bonds, it shall establish a guarantee fund and appropriate to the fund annually a sum adequate to cover any deficiency in meeting payments of principal and interest of bonds issued by reason of nonpayment of assessments when due. Money received from actions taken against property for nonpayment of assessments shall be credited to the guarantee fund.

CHAPTER 51. MUNICIPAL DEBT.

ARTICLE 1. REVENUE ANTICIPATION NOTES.

Sec. 29.51.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality of the state which is authorized to incur indebtedness may borrow money to meet appropriations for any fiscal year in anticipation of the collection of the revenues for that year but all debt so contracted shall be paid before the end of the next fiscal year. Revenue anticipation notes may be issued as evidence of the borrowing.

Sec. 29.51.020. ISSUANCE OF NOTES. The governing body of a municipality may, by ordinance or resolution, authorize the issuance of revenue anticipation notes and prescribe the form and details of the notes and the manner of their execution. The governing body of the municipality may delegate to its chief fiscal officer the power to issue the notes from time to time under the terms and conditions of the ordinance or resolution which provides for the manner of their sale.

Sec. 29.51.030. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS. (a) The governing body of a municipality, upon adoption of a long-range capital improvement budget by ordinance or resolution, may by resolution provide for revenue anticipation notes in an amount not to exceed the total amount of any state or federal grants finally committed for these projects. The notes mature no later than the end of the next fiscal year. The notes may be for single or multiple projects outlined in the adopted capital improvement budget.

(b) If the state or federal grants for capital improvement projects have not been paid to the municipality before maturity of the notes issued in anticipation of the receipt of the revenue, the governing body of the municipality may issue new notes in order to meet payment of the notes then maturing or may renew the outstanding revenue anticipation notes. New

notes issued or renewals of outstanding revenue anticipation notes shall mature not later than the end of the next fiscal year.

Sec. 29.51.040. PRIORITY OF REPAYMENT. The payment of the principal and interest on revenue anticipation notes shall be payable from revenues, and their payment additionally shall be secured by a pledge of the full faith, credit and unlimited taxing power of the municipality issuing them.

****Sec. 29.51.050. Repeal.

ARTICLE 2. BOND ANTICIPATION NOTES.

Sec. 29.51.080. BOND ANTICIPATION BORROWING. A municipality may borrow money in anticipation of the sale of general obligation and revenue bonds if

(1) the general obligation bonds to be sold have been authorized by the assembly or council and ratified by a majority vote at a regular or special election;

(2) the revenue bonds to be sold have been authorized by ordinance.

Sec. 29.51.090. ISSUANCE OF NOTES. The assembly or council shall issue negotiable or nonnegotiable notes for the amounts borrowed with a maturity date not to exceed one year from the date of issue. All notes and the interest on them are payable at fixed places on or before a fixed time, from the proceeds of the sale of bonds in anticipation of which the original note or notes were issued, unless the bonds have not been sold by the maturity date of the notes.

Sec. 29.51.100. ISSUANCE OF NEW NOTES. If the sale of the bonds has not occurred before the maturity of the notes issued in anticipation of the sale, the assembly or council shall issue new notes in order to meet payment of the notes then maturing or shall renew the outstanding bond anticipation notes. New notes issued or renewals of outstanding bond anticipation notes shall bear a maturity date not to exceed one year from the date of issue.

Notes, new notes, and renewals of notes shall not be outstanding for a total elapsed time of more than three years.

Sec. 29.51.110. REPAYMENT OF NOTES. Every note is payable from the proceeds of the sale of bonds which the notes anticipated or from the proceeds of the sale of new bond anticipation notes.

Sec. 29.51.120. SECURITY. (a) Notwithstanding any other provisions of this chapter as to payment of notes, notes issued in anticipation of the sale of general obligation bonds and the interest on them are secured by the full faith, credit, taxing power and resources of the municipality. The municipality may levy ad valorem taxes for payment without limitation of rate or amount.

(b) Notes issued in anticipation of the sale of revenue bonds and the interest on them are secured in the same manner as are the revenue bonds in anticipation of which the notes are issued.

Sec. 29.51.130. LIMITATION. The total amount of notes issued and outstanding shall at no time exceed the total amount of bonds authorized to be issued.

Sec. 29.51.140. USE OF PROCEEDS. The proceeds from the sale of notes shall be used only for the purposes for which the proceeds from the sale of bonds may be used or to meet payment of outstanding bond anticipation notes.

****Sec. 29.51.150. Repeal.

ARTICLE 3. GENERAL OBLIGATION BONDS.

Sec. 29.51.180. GENERAL OBLIGATION BONDS. A municipality may acquire, construct, improve and equip capital improvements and issue negotiable or nonnegotiable general obligation bonds for these purposes.

Sec. 29.51.190. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED. (a) A municipality may incur general obligation bond debt only after a bond authorization ordinance is approved by a majority of those voting on the question at a regular or special election. Any municipal voter may vote in the bond election, except as otherwise provided by charter or law.

(b) Before a general obligation bond issue election, the assembly or council shall have published a notice of the municipality's total existing bond indebtedness at least once a week for three consecutive weeks. The first notice shall be published at least 20 days before the date of the election. A notice shall include

(1) the current total general obligation bonded indebtedness, including authorized but unsold bonds of the municipality;

(2) the cost of the debt service on the current indebtedness;

(3) the total assessed valuation within the municipality.

****Sec. 29.51.200. Repeal.

Sec. 29.51.210. PAYMENT. (a) The full faith and credit of a municipality are pledged for the payment of principal and interest on general obligation bonds. The municipality may levy ad valorem taxes for payment without limitation of rate or amount to pay or secure the payment of the principal and interest on bonds, regardless of whether the bonds are in default or in danger of default.

(b) General obligation bonds issued for acquiring, constructing, improving and equipping a municipally-owned utility or other revenue-generating enterprise may be additionally secured by a pledge of the revenue derived from operation. Bonds so secured are not subject to a debt limitation imposed by a borough or city home rule charter.

ARTICLE 4. REVENUE BONDS.

Sec. 29.51.240. REVENUE BONDS. ****(a) A municipality may issue revenue bonds for a public enterprise or public corporation of the municipality where the only security is the revenue of the public enterprise or corporation.

(b) A municipality may issue its revenue bonds to finance the purchase of residential mortgage loans. The revenue bonds issued under this subsection are payable solely from the principal and interest of the mortgage

loans and from any other amounts pledged by the municipality, except the pledge of revenues derived from taxes. Revenue bonds issued under this subsection do not constitute a general obligation of the municipality.

**** (c) Repeal.

Sec. 29.51.250. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of revenue bonds, unless otherwise provided by ordinance.

Sec. 29.51.260. FORMS AND TERMS. The assembly or council shall fix the date of the bonds, denominations, maturities, rate or rates of interest, place and manner of payment, redemption terms, registration privileges, manner of execution, signatures required, and other details of the bonds. If an officer whose signature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.270. Repeal.

****Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall not apply to the issuance of revenue bonds or the use of proceeds from revenue bonds by a home rule or general law municipality.

ARTICLE 5. REFUNDING BONDS.

Sec. 29.51.300. AUTHORIZATION. If a municipality has outstanding general obligation or revenue bonds and the assembly or council determines that it would be financially advantageous to refund the bonds, the assembly or council may provide by ordinance for the issuance of general obligation or revenue refunding bonds.

Sec. 29.51.310. EFFECT OF BONDS. The refunding bonds may take up and refund all or any part of outstanding bonds at or before their maturity or redemption date. The assembly or council may include various series and issues of bonds in a single issue of refunding bonds.

Sec. 29.51.320. NO ELECTION REQUIRED. No election is required to authorize the issuance and sale of refunding bonds. Their issuance may be authorized and all proceedings with reference to them prescribed by ordinance of the assembly or council. However, when it is desirable to use general obligation bonds to refund a revenue bond issue, the governing body shall call an election on the question.

Sec. 29.51.330. PAYMENT OF REFUNDING BONDS. General obligation refunding bonds are payable according to Sec. 180 of this chapter. Revenue refunding bonds are payable according to Sec. 220 of this chapter.

****Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation or revenue refunding bonds may, at the discretion of the governing body, be exchanged for the bonds being refunded, or may be sold at public or private sale. They may be issued and delivered at any time before the date of maturity or redemption of the refunded bonds.

****Sec. 29.51.350. OTHER MUNICIPAL FINANCING. (a) A municipality may authorize by ordinance or resolution the issuance of revenue bonds to finance any project which serves a public purpose, and the bonds shall be secured and payable solely from the revenue and property of the project.

(b) Bonds issued under this section are not a debt or liability of the municipality and do not create or constitute an indebtedness, liability or obligation of the municipality nor do they constitute a pledge of faith, credit or taxing power of the municipality. Each bond must contain on its face a statement that the principal and interest on the bond are payable solely from the revenues and property of the project being financed, that the municipality is not obligated to pay the principal or the interest on the bonds except from those sources, and that neither the faith and credit nor the taxing power of the municipality is pledged to the payment of principal or interest on the bond.

(c) A municipality may

(1) loan the proceeds of the bonds issued under this section;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the project being financed;

(3) enter into covenants and agreements concerning bonds issued under this section which the municipality determines to be desirable;

(4) provide for any matter which effects the security of the bonds.

(d) In this section

(1) "bonds" means bonds, notes, or other evidence of indebtedness;

(2) "project" includes but is not limited to commercial, manufacturing, agricultural, industrial, residential housing, recreation, tourism, and medical projects and programs.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

****Sec. 29.51.370. SALE. Bonds and notes issued under this chapter may be sold at either public or private sale by the municipality in the manner and at the price it determines.

****Sec. 29.51.375. FORMS AND TERMS. The governing body may by ordinance or resolution fix the date, denominations, maturities, rate or rates of interest, redemption terms, registration privileges, manner of execution, signatures required, purchase price, manner of sale, and other requirements fo issuing bonds or notes. If an official whose signature appears on the bonds or coupons ceases to be an official before delivery of the bonds, his signature is valid as if he had remained in office until delivery.

****Sec. 29.51.380. INTEREST RATE. The interest rate payable on a bond or note shall be determined by the governing body and is not subject to the usury rate limitations of AS 45.45.010.

****Sec. 29.51.390. Repeal.

Sec. 29.51.400. REDEMPTION BEFORE MATURITY. A bond or note may be made subject to redemption before maturity as stated in the authorization or in the bond or note.

****Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebtedness

(1) on an areawide basis for areawide functions; or

(2) on a nonareawide basis for functions performed in the area outside cities only; or

(3) on a service area basis for functions performed in a service area only.

(b) Payment of debt principal and interest as well as other costs shall be derived from the area incurring the debt under (a)(2) or (a)(3) of this section, except that the full faith and credit of the entire borough may be pledged to guarantee payment of principal and interest.

(c) If the bonded debt to be incurred by a borough is an areawide debt, the vote is areawide; if the full faith and credit of the entire borough is pledged for the payment of the debt of the area outside cities or of a service area, an areawide election is held and the proposition must pass both areawide and in the area which will benefit from the improvement; if the bonded indebtedness to be incurred is limited to areas outside cities only or to service areas, the vote is limited to voters in those areas and only the full faith and credit of the area voting on the indebtedness is pledged for the payment of the debt.

(d) The indebtedness of a municipality reclassified under AS 29.08.040 is not affected by reclassification. Not less than all property within a municipality which is reclassified remains subject to taxation to amortize bonded or other indebtedness affecting the municipality and authorized on the effective date of reclassification.

****Sec. 29.51.420. Repeal.

****Sec. 29.51.430. Repeal.

****Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area acquired under AS 29.51.410 shall remain the indebtedness of the area which incurred the debt notwithstanding a subsequent court determination that the service area was not validly formed under law or by virtue of a defect in the proceedings creating the service area. All the property within the service area remains subject to taxation to pay the bonded indebtedness.

CHAPTER 62. STATE PROGRAMS

No change.

CHAPTER 65. GENERAL GRANT LAND

No change.

CHAPTER 68. MUNICIPAL PROGRAMS

ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT

Repeal.

ARTICLE 2. HISTORICAL DISTRICTS.

No change.

CHAPTER 71. GENERAL PROVISIONS

No change.

17 JANUARY 1981 See # Glenn 680 29.30.040 & wording

| MEMBERS: | PRESENT: | Vote #1 | Vote #2 | Vote #3 | Vote #4 | Vote #5 | Vote #6 | Vote #7 | Vote #8 |
|---|---|---|---|---|---|---|---|---|---|
| Ted Berns | ✓ | ✓ | Y | | | | | | |
| Margaret Branson | ✓ | ✓ | Y | | | | | | |
| Terry Cook Sub | | | | | | | | | |
| Marilyn Dimmick | ✓ LT | ✓ | Y | | | | | | |
| James Kohler | ✓ | ✓ | N | | | | | | |
| Ronald Larson | ✓ | ✓ | Y | | | | | | |
| Gene Moore | ✓ | ✓ | Y | | | | | | |
| Bob Mulcahy | ✓ | ✓ | Y | | | | | | |
| Charles Parr | ✓ | ✓ | N | | | | | | |
| Donna Sherby | | | | | | | | | |
| Arliss Sturgulewski | ✓ | ✓ | Y | | | | | | |
| Jonathan Solomon | | ✓ | Y | | | | | | |
| Russell Walker | ✓ | ✓ | Y | | | | | | |
| Substitute name: TIM TROLL for: TERRY COOK | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| EX-OFFICIO MEMBERS: | | | | | | | | | |
| Ginny Chitwood | | | | | | | | | |
| Palmer McCarter | ✓ | | | | | | | | |
| Phil Smith | ✓ | | | | | | | | |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |

DE JAN 18, 1981 — Athletics — 24.33.13 — Admin. — Food. foods.

| MEMBERS: | PRESENT: | Vote #1 | Vote #2 | Vote #3 | Vote #4 | Vote #5 | Vote #6 | Vote #7 | Vote #8 |
|---|---|---|---|---|---|---|---|---|---|
| Ted Berns | ✓ | N | N | N | Y | Y | N | | |
| Margaret Branson | ✓ | N | N | Y | N | N | N | | |
| Terry Cook | | | | | | | | | |
| Marilyn Dimmick | ✓ | Y | N | Y | N | Y | Y | | |
| James Kohler | ✓ | N | Y | N | Y | Y | N | | |
| Ronald Larson | ✓ | Y | N | Y | Y | Y | N | | |
| Gene Moore | ✓ | Y | N | N | Y | Y | N | | |
| Bob Mulcahy | ✓ | Y | N | N | Y | N | N | | |
| Charles Parr | ✓ | N | N | N | Y | N | Y | | |
| ~~Donna Sherby~~ | | | | | | | | | |
| Arliss Sturgulewski | ✓ | Y | N | N | N | Y | N | | |
| Jonathan Solomon | ✓ | Y | Y | N | Y | Y | N | | |
| Russell Walker | ✓ | Y | Y | Y | N | Y | N | | |
| Substitute name: TIM TROLL for: TERRY COOK | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| Substitute name: for: | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |
| EX-OFFICIO MEMBERS: | | | | | | | | | |
| Ginny Chitwood | | | | | | | | | |
| Palmer McCarter | ✓ | | | | | | | | |
| Phil Smith | | | | | | | | | |
| Substitute name: Marilyn Miller for: Chitwood | | XXX | XXX | XXX | XXX | XXX | XXX | XXX | XXX |

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

13 Jan 81

TO: Title 29 Revision Committee Members
FROM: Committee Member, Terry Cook

I am sorry that I am unable to attend this meeting. In my place, I am sending Mr. Tim Troll from St. Marys to represent me and speak in my behalf on issues that concern me and those of us that are within the unorganized borough.

Mr. Troll has beer an attorney for Alaska Legal Services in the past and is currently the City Manager for St. Marys. He is aware of the responsibility of the Revision Committee and I have made available to him the items I would like to see changed and supporting Drafts made by the Technical Committee and pertaining correspondence.

Please make him feel welcome, thank you.

SCOMM 24: SENATE SPECIAL COMMITTEE ON MINORITY RELATIONS, 1979
LIST OF FILES (PAGE 1) MICROFICHE #

1. SENATE SPECIAL COMMITTEE ON MINORITY RELATIONS, 1979 (ONE FOLDER ONLY)