

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

753 SCOMM23: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

I. Regulation of Oil and Gas Activities
Conducted Pursuant to State Leases.

Home rule municipalities have broad constitutional authority to "exercise all legislative powers not prohibited by law or charter." Alaska Constitution, Article X, section 11. This authority is to be liberally construed. Alaska Constitution, Article X, section 1. The contours of this constitutional limitation have been addressed in a line of decisions of the Alaska Supreme Court. ^{2/} Those cases stand for the proposition that mere inconsistency with a state statute is not sufficient to invalidate a municipal ordinance as unconstitutional. In Jefferson v. State, 527 P.2d 37 (Alaska 1974), the court explained:

The test we derive from Alaska's Constitutional provisions is one of prohibition, rather than traditional tests such as state-wide versus local concerns. A municipal ordinance is not necessarily invalid in Alaska because it is inconsistent or in conflict with a state statute. The question rests on whether the exercise of authority has been prohibited

^{2/} See, e.g., Wright v. Municipality of Anchorage, 590 P.2d 425 (Alaska 1979); City of Kodiak v. Jackson, 584 P.2d 1130 (Alaska 1978); DeHusson v. City of Anchorage, 583 P.2d 791 (Alaska 1978); Johnson v. City of Fairbanks, 583 P.2d 181 (Alaska 1978); Cremer v. Anchorage, 575 P.2d 306 (Alaska 1978); Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976); State v. City of Petersburg, 538 P.2d 263 (Alaska 1975); Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970).

to municipalities. The prohibition must be either by express terms or by implication such as where the statute and ordinance are so substantially irreconcilable that one cannot be given its substantial effect if the other is to be accorded the weight of law.

527 P.2d at 43 (footnotes omitted). 3/ Jefferson plainly rejects a quantitative standard of conflict, which would look only to the actual terms of allegedly conflicting statutes and ordinances, in favor of a qualitative standard, which examines the impact of each upon the other's operation and purposes.

This approach was recently affirmed in Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978), which held that constitutional conflict exists "only where an ordinance substantially interferes with the effective functioning of a state statute or regulation or its underlying purpose." 584 P.2d at 1122. The exercise of local regulatory authority over hydrocarbon and mineral exploration and development must therefore be measured against all existing state statutes and regulations concerning that use. 4/ Where an express or implied prohibition is found, under Jefferson, or a substantial interference is found, under Liberati, the local ordinance must fall. If, on the other hand, there exists

3/ Accord, DeHusson v. City of Anchorage, 583 P.2d 791 (Alaska 1978); Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024 (Alaska 1976).

4/ There is no prohibition against this regulation in the North Slope Borough charter. Each municipal charter will have to be examined for any prohibiting language.

neither prohibition, express or implied, nor a substantial interference, the local government ordinance may stand.

The first statute which must be scrutinized for a potential conflict with municipal oil and gas regulation is the Alaska Coastal Management Act (the act), AS 46.40.-010-.210, and its implementing regulations. It is this act which is the foundation for the enactment of local coastal management plans which, when approved by the Coastal Policy Council (Council) become part of the Alaska Coastal Management Program (ACMP). AS 46.40.010(c)(1). 5/ The act expressly prohibits council approval of a local coastal management plan which "arbitrarily restricts or excludes a use of state concern." AS 46.40.060(a). "Uses of state concern" include:

(A) Use of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;

(B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal resource

5/ A recent Attorney General Opinion concluded that State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980) has rendered void the legislative approval requirements for amendments to the ACMP, including local district programs, contained in AS 46.40.080. Op. Atty. Gen. April 29, 1980.

district;

(C) the siting of major energy facilities, activities pursuant to a state oil and gas lease, or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

(D) facilities serving statewide or interregional transportation and communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.20 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20. (am § 3 ch 129 SLA 1978.)

AS 46.40.210(6). 6/

6/ This section of the Alaska Coastal Management Act sets out priorities for consideration in each local plan but it does not establish a hierarchy among these priorities. If, for instance, a particular coastal management plan embraces a geographical area rich in fishery resources but is also proposed as the site of a coastal dependant energy facility likely to present issues of more than local significance, there is created a tension between two uses of state concern having equal stature.

The notion that Congress sought through the federal Coastal Zone Management Act, 16 U.S.C. § 1451 et seq. (CZMA) to require the states to give preference to energy facilities has been emphatically discarded in the recent Ninth Circuit decision in American Petroleum Institute v. Knecht, 609 F.2d 1307 (9th Cir. 1979). There, in a per curiam opinion, the court of appeals rejected a claim by the appellants that it was the intent of congress to induce the states to adopt coastal management plans which would include "explicit commitments" to energy facilities. Rather, the court concluded that the federal requirement that "adequate consideration" be

However, AS 46.40.070(c) provides that the council "shall approve a restriction or exclusion of state concern" if it finds that it is based upon (1) consultation with, and consideration of the views of, state, federal and regional agencies, (2) the availability of reasonable alternative sites, and (3) a showing that the proposed use of state concern is incompatible with the proposed site. Assuming that a municipality can demonstrate that any given restriction is not arbitrary by satisfaction of these three criteria, its local coastal program may properly restrict a use of state concern. To return to the example previously offered, 7/ a municipality exercising jurisdiction over an area for coastal management purposes may decide that preservation of a rich fishery is of paramount concern in its coastal management plan. In order to protect the fishery, the municipality adopts a coastal management plan which limits oil and gas exploration and development activities pursuant to a state lease. Under the Coastal Management Act, the council must

6/ (continued)

given to energy facilities of national interest, 16 U.S.C. section 1455(c)(8), was designed to achieve "equitable balance", involving "consideration of the (federal) act's broader finding of a national interest in the . . . beneficial use, protection and development of the coastal zone . . . including the requirement of subsection 302(g) of the Act that "high priority" be given to the protection of natural systems." Id. at 1314. The ACMP, in tacit recognition of that principle requires adequate consideration of, rather than unilateral commitment to, any given use of state concern.

7/ See n. 6

approve such a plan, even though it restricts a use of state concern, as long as that restriction is not arbitrary. In order to demonstrate the reasonableness of the restriction, the municipality must show that it considered the views of appropriate federal, state and local agencies on the matter, that there are reasonably available alternative sites for exploration and development activities, and that the lease activities are incompatible with the maintenance of the fishery. This restriction is neither impliedly or expressly prohibited by the act, nor does it substantially interfere with the act. The act not only contemplates, but mandates, approval of such a local district program. AS 46.40.070(c).

To summarize, a municipality enacting a local district coastal management program may restrict or exclude a use of state concern without falling afoul of the constitutional limitations on the exercise of municipal authority if that restriction or exclusion is reasonable, within the meaning of AS 46.40.070(c).

A similar analysis applies with reference to the Alaska Lands Act, AS 38.05.005-.370, which, inter alia, provides for the leasing of state lands for mineral extraction and concomitant uses, such as pipeline rights-of-way.

The leasing of lands in the coastal zone for exploration and development of oil and gas resources must, as with other state agencies actions, be accomplished in a manner which is harmonious with the ACMP.

State agencies may not authorize a use or activity in the coastal zone unless "the agency finds that the use or activity is consistent with the applicable district program and the standards [of the ACMP]." 6 AAC 80.010(b). 8/ Indeed, the legislative directive of the Alaska Lands Act to lease lands only after a finding that the "interests of the state will best be served," 9/ AS 38.05.35(a)(14), compliments the balancing of demands on coastal resources which is a linchpin of the ACMP. See AS 46.40.020. Statutes relating to the same subject matter should be read together as a whole in order that a total scheme emerges which preserves the integrity of each. This is particularly true where both can be harmonized to further a specific legislative policy: balanced use of natur-

8/ Once land is leased and exploration for oil and gas commences, each lessee must secure a permit to drill any well. 11 AAC 22.005. The grant of such a permit is state agency action with the meaning of 6 AAC 80.010(b) and must therefore be conditioned upon compliance with the ACMP.

9/ AS 38.05.180(a) provides in pertinent part:

- (2) It is in the best interests of the state to encourage an assessment of its oil and gas resources and to allow the maximum flexibility

(continued)

al resources. Hafling v. Inland Boatmen's Union of Pacific, 585 P.2d 870, 878-79 (Alaska 1978).

Any local coastal management plan approved by the council is by definition based upon a balancing of all demands on land and water in the coastal zone. Therefore, properly drawn coastal management plan would not be in conflict with the Alaska Lands Act.

Finally, for the reasons stated above, the Alaska Oil and Gas Conservation Act, AS 31.05.005 et seq., which mandates the conservation of oil and gas and prohibits their waste, would not be contravened by a local coastal management plan which comports with the ACMP. Conservation of these valuable resources is one of the objectives of the ACMP ("the orderly, balanced utilization and protection of the resources of the coastal area consistent with sound conservation and sustained yield principles", AS 46.40.020(3)), to be

9/ (continued)

in the methods of issuing leases to:

(a) recognize the many varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;

(B) minimize the adverse impact of exploration, development, production, and transport activity.

balanced with other objectives of the act. As long as a local coastal plan achieves this balancing in a reasonable manner, no implied or express prohibition or substantial interference will exist between a local coastal management plan and the Oil and Gas Conservation Act.

To sum up, a local coastal management plan which does not arbitrarily or unreasonably restrict or exclude oil and gas exploration and development is a constitutionally permissible exercise of municipal authority. The test for reasonableness of any restriction or exclusion is set forth in AS 46.40.070(c). If a local plan survives scrutiny under that test, it must be approved by the coastal policy council. Approved plans become part of the ACMP, AS 46.40.010(c)(1), and have equal dignity with other state statutes which will read in harmony with it. State, Dept. of Highways, v. Green, 586 P.2d 595 (Alaska 1978); Hafling v. Inland Boatmen's Union of Pacific, supra.

There is a very large caveat which accompanies this analysis. The state constitution mandates "the utilization, development, and conservation of all natural resources belonging to the state . . . for the maximum benefit of its people." Alaska Const., art. VIII, § 2. The determination of what constitutes this maximum benefit necessarily involves questions of basic policy formulation for the state. Swindel v. Kelly, 499 P.2d 291 (Alaska 1972); Kelly v. Zamarello, 486 P.2d 906

(Alaska 1971); Pan American Petroleum Corp. v. Shell Oil Co., 455 P.2d 12 (Alaska 1969). Reading AS 46.40.070(b) as vesting local officials with complete control over that basic policy formulation would probably render the act unconstitutional. Accordingly, it may not be read as authorizing a local permit system which would have the effect of overruling the state's basic policy formulation as to what use of its resources will provide the maximum benefit for all of the state's people.

B. Regulation of Oil and Gas Activities Conducted Pursuant to Federal Leases in the Coastal Zone.

The question of municipal authority to regulate exploration and development of oil and gas by federal lessees requires a somewhat different analysis. On-shore lands which are subject solely to the discretion of the federal government are excluded from the coastal zone as defined, section 304(1) of the federal act. 10/ In spite of the fact that the regulations implementing the federal act suggest that certain impacts from activities conducted on excluded federal lands may be regulated as part of a local

10/ Sec. 304 reads:

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes

(continued)

coastal management program, 11/ municipal regulation of federal lessees may be prohibited under the recent opinion in Ventura County v. Gulf Oil, 601 F.2d 1080 (9th Cir. 1979) summarily aff'd _____ U.S. _____, 48 USLW 3622 (April 1, 1980) . There, the court of appeals concluded that in light of extensive federal regulation of the field, federal lessees could not be required to obtain a local zoning permit in order to drill a well.

The leases in question were granted under the Mineral Lands Leasing Act of 1920 which the court found to pre-empt local regulation "standing as an obstacle to the

10/ (continued)

islands transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

11/ 15 CFR section 923.33(c) states:

(c) Comment. The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of section 307 of the Act when Federal actions on these excluded lands have spillover impacts that significantly affect coastal zone areas, uses or resources within the purview of a State's management program.

accomplishment and execution of the full purposes and objectives of Congress." 601 F. 2d at 1086. 12/ Apparently, the facts of that case did not call into question the effect of the federal CZMA, and, on that basis, it appears to be distinguishable.

Exploration, development and production plans for off-shore federal lands leased under the Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. Section 1331 et seq., are treated differently. They require state consistency determinations under the federal CZMA, section 307(c)(3)(B). That is, all federal license and permit activities described in detail in OCS plans and which affect the coastal zone must be conducted in a manner which is consistent with the Alaska Coastal Management program. See, 15 CFR 930.70. (The consistency determination is made by the Division of Policy, Development and Planning, within the Office of the Governor.)

12/ The State of Alaska joined in an amicus brief in the Supreme Court urging reversal of the Ninth Circuit's decision, protesting that "the decision below radically curtails traditional state power to secure the public interest, just at the time when burgeoning private development of public land resources is giving new urgency to that long established state and local role." Brief Amicus Curiae of the Western Governor's Policy Office (WESTPO) at 3.

Local zoning authority Page 1

It would therefore appear that reasonable restrictions on oil and gas activities embodied in a local coastal management plan, incorporated into the ACMP, would be enforceable against off-shore federal lessees. The doctrine of federal pre-emption, derived from the supremacy clause of the United State Constitution, Article VI, clause 2, would not apply to state regulation of OCS activities in the coastal zone. This appears from both the language of section 307(c)(3) of the federal CZMA and the legislative history of that act. 13/

In conclusion, municipal authority to regulate oil and gas activities of federal lessees depends upon whether the leases are on-shore or off-shore. In the case of the former, the doctrine of federal pre-emption may prohibit local coastal zone ordinances from affecting any measure

13/ The senate committee report in support of the federal act expressly states that Congress did not intend to pre-empt state authority:

There is no attempt to diminish state authority through federal pre-emption. The intent of this legislation is to enhance state authority by encouraging and assisting the states to assure planning and regulatory powers over their coastal zones.

S. Rep. No. 753, 92nd Cong., 2d Sess., reprinted in [1972] U.S. Code Cong. & Adm. News 4776.

of control. In the case of the latter, local coastal management programs which are approved by the council and thus part of the ACMP will become one of the touchstones in the state consistency determination required by section 307(c)(3) of the CZMA. Of course, under the federal act, the Secretary of Commerce has the authority to override a state consistency determination on the basis of national security or a finding that the proposed activity is consistent with the federal act, section 307(c)(3)(B)(iii). A local permit system which seriously interfered with oil or gas production might be overridden.

II

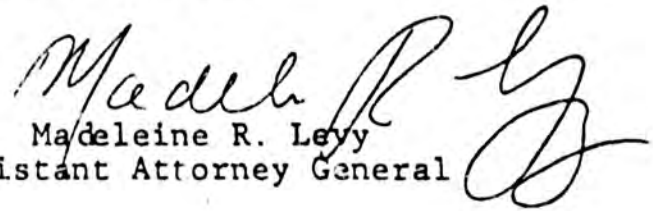
A lease confers a property interest ^{14/} the diminution of which warrants protection under constitutional requirements of due process and equal protection, Nichols v. Eckert, 504 P.2d 1359 (Alaska 1973). A local district program which reasonably restricts oil and gas development may be administered through a permitting system as long as that system is itself reasonably drawn to achieve its legitimate ends. Kelly v. Zamarello, 486 P.2d 906 (Alaska

^{14/} See, e.g., Union Oil Co. v. Morton, 512 F.2d 743 (9th Cir. 1975).

1974). The plan must be sufficiently specific to give notice of what it prohibits or conditions upon a permit, Herscher v. State, Dept. of Commerce 568 P.2d 996 (Alaska 1977), and sufficiently definite so that it does not confer unbridled discretion upon its administrator, Brown v. Municipality of Anchorage, 584 P.2d 35 (Alaska 1978). Any classification system established in the plan must be reasonable and not arbitrary: that is, it must rest upon some ground of difference which has a fair and substantial relationship to the object of the plan so that all applicants for permits who are similarly situated will be treated alike. Herscher v. State, supra.

In short, any permitting system to be valid must comport with fundamental constitutional requirements of due process and equal protection. In the absence of any existing plan to test against these principles, it can only be said that such scrutiny must await the submission of a specific permitting plan to the council.

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May 21, 1980

The Honorable Ted Stevens
United States Senate
260 Russell Building
Washington, D.C. 20510

Re: State of Alaska's Objection
to Provisions of S. 1181
(Tribal-State Compact Bill)

Dear Senator Stevens:

On behalf of the Attorney General for the State of Alaska, I wish to register the strong objection of the State to certain provisions of S. 1181, which I have today learned is on the Senate's unanimous consent calendar. For the reasons which I will outline in this letter, we strongly urge that you seek to have this bill removed from the unanimous consent calendar and held over until the objections stated in this letter have been resolved.

The State of Alaska is certainly not opposed to the laudable objectives set forth in S. 1181 regarding jurisdictional agreements between states and Indian tribes. However, the state opposes the inclusion of Alaska Native villages in the statutory definition of an "Indian tribe",

and the implicit assumption in the bill that these village "tribes" are situated in "Indian country" within the State of Alaska. These concerns have been previously expressed by the state regarding pending congressional legislation, as the attachment to this letter demonstrates. I will briefly outline the state's position in the remainder of this letter.

With the exception of the Metlakatla Indian Reservation on Annette Island, Alaska has never been "Indian country", as that term is defined in 18 U.S.C. § 1151 (regarding criminal jurisdiction) or 28 U.S.C. § 1360 (with regard to civil actions). Thus, on its face, S. 1181, which is limited to agreements regarding civil or criminal jurisdiction over Indians "within Indian country" (Section 101 of the bill), would apply in Alaska only to the Metlakatla Indian Reservation on Annette Island. References to "Alaska Native villages" in the definition of an "Indian tribe" in Section 3(a) of the bill would achieve no legal purpose, because the Metlakatla Indian community was specifically excluded from coverage of the Alaska Native Claims Settlement Act by Section 19(a) of that Act (43 U.S.C. § 1618(a)); thus it is not an "Alaska Native village" mentioned in Section 3(c) of ANCSA (43 U.S.C. § 1602(c)) and defined therein as a "Native village". Therefore, on its face the bill's applicability only to "Indian country" and the definition of an "Indian tribe" as

including "Alaska Native villages" creates an inherent inconsistency, since the only "Indian country" in Alaska is not one of the Alaska Native villages defined in Section 3(c) of ANCSA or listed in Section 11 or 16 of ANCSA.

This inconsistency in the bill if allowed to remain, might in the future be interpreted as an instance of legislative misinformation or oversight, in which case the inconsistency might optimistically be termed "harmless". However, since judicial or administrative interpretations of congressional action as being mistaken or misinformed are strongly disfavored, it is the state's concern that, if S. 1181 remains in its present proposed form, unwarranted interpretations may be made that Congress, by this bill, has broadened the definition of "Indian country" with respect to Alaska, or has elevated Alaska Native villages named in ANCSA to "tribal" status, or both. Such interpretations, the state feels, are diametrically opposed to the purposes and structure of the Alaska Native Claims Settlement Act, and would thwart its successful implementation.

The Alaska Native Claims Settlement Act ("ANCSA") represents a congressional approach to the final settlement of Native claims of aboriginal title which is strikingly different from settlements (by treaty, allotments, reservations, etc.) in the remainder of the United States. Section 2(b) of ANCSA (43 U.S.C. § 1601(b)) states:

Congress finds and declares that --

* * *

(b) the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institutions, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States government and the State of Alaska;

[Emphasis supplied]. Thus ANCSA specifically rejected the usual approach of creating "permanent racially-defined institutions, rights, privileges, or obligations," and furthermore rejected the implication of "creating a reservation system or lengthy wardship or trusteeship." The remainder of ANCSA consistently implements this congressional declaration of policy. For example, existing executive order or statutory reservations in Alaska, with the sole exception of the Metlakatla community, were specifically revoked by Section 19(a) of ANCSA (43 U.S.C. § 1618(a)), and the village corporations for the villages located within these former reservations were given the option of either obtaining title in fee to the former reservation lands, or selecting lands withdrawn under the formula applicable to all other Native village selections under Section 11(a) of ANCSA (43 U.S.C. § 1610).

Section 3(c) of ANCSA (43 U.S.C. § 1602(c)),
defines a "Native village" for purposes of ANCSA as follows:

"Native village" means any tribe, band, clan, group, village, community, or association in Alaska listed in Sections 11 and 16 of this Act, or which meets the requirements of this Act, in which the Secretary determines was, on the 1970 census enumeration date . . . composed of twenty-five or more Natives;

ANCSA did not establish any "Native village" as a recognized "tribe, band, nation, or other group formally organized as such. Nor did ANCSA establish or attribute any powers of self-government to those Native villages defined in ANCSA and listed in Sections 11 and 16 (43 U.S.C. §§ 1610, 1615). The only criteria required to fit within the definition of "Native village" in ANCSA were that there be 25 or more persons, that they in fact be identifiable as a distinct group, and that they be Natives.

Certainly, some of the Native villages listed in Sections 11 and 16 of ANCSA had organized, prior to ANCSA, as IRA village councils under the Indian Reorganization Act (Wheeler-Howard Act, 25 U.S.C. § 473a). Such organization, if it had occurred, had no relationship to the later passage of ANCSA, and any councils so organized do not owe their identity to the definition of a "Native village" in Section 3 of ANCSA or their listing in Sections 11 or 16 of that

Act. If such councils do in fact possess powers of self-government today, they would fit within the definition of an "Indian tribe" in S. 1181 without regard to ANCSA.

The majority of the villages listed in Sections 11 and 16 of ANCSA did not possess any IRA council structure prior to ANCSA, and none has been created since (nor, the state would argue, could it lawfully be created after ANCSA). Even with regard to the villages which possessed some type of recognized IRA council prior to ANCSA, they did not possess tribal court and law enforcement powers, nor, after the revocation of reservations by Section 19 of ANCSA, do any remaining IRA village councils have defined jurisdictional boundaries or any "Indian country".

ANCSA left unclear what role, if any, former village IRA councils would have after implementation of the land and monetary grants made by the Settlement Act. It is clear, however, that no "Indian reservations" were created by ANCSA. The land conveyed to Native corporations is conveyed in fee, with no continuing trust responsibility or oversight by the United States. The Act does not restrict the village corporations' ability to sell that land, and it may be conveyed to third parties immediately upon its receipt from the United States. The land conveyed to Native village corporations will become fully taxable by state and local governments 20 years after the enactment of ANCSA.

Section 21(d) of ANCSA (43 U.S.C. § 1620(d)). In order to receive land and monetary benefits under ANCSA, each "Native village", as defined in Section 3(c) of ANCSA, was required to incorporate as a "Village corporation" pursuant to Section 3(j) of ANCSA (43 U.S.C. § 1602(j)). Each of the Native villages listed in the Act has in fact incorporated as a profit-making corporation under the laws of the State of Alaska. This status under state law does not carry with it any inherent powers of community self-government, such as taxation, law-enforcement, fish and game management, or other police powers attributable to representative government at the local or municipal level. In short, the Native village corporations receiving land and monetary benefits under ANCSA are private, profit-making corporations, and are neither recognized units of municipal government under state law, nor sovereign "tribes" or "nations" under federal law.

Therefore, the state strongly urges that the definition of "Indian tribe" set forth in Section 3(a) of S. 1181 be amended to delete the phrase "including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688-689)." If so amended, the bill will still apply to the single recognized Indian community in Alaska (Metlakatla) which is located

within "Indian country" and which has retained statutorily-recognized powers of self-government after enactment of ANCSA. It will also include any other Indian community (if indeed there are any) similarly situated. As amended, it would exclude those Alaska Native villages which, after passage of ANCSA, do not have recognized powers of self-government and are not located within "Indian country", and would avoid any implicit elevation of these villages and their village corporations to the status of "Indian tribes", a result certainly disfavored by ANCSA.

For your information, I am enclosing a copy of a letter written by our office to Representative Don Young on September 12, 1978 discussing the implications of S. 2502, then pending in the House, with regard to the same subjects I have discussed in this letter. If I may be of further assistance to you, please contact me at your convenience. My telephone number in Anchorage is (907) 276-3550. Thank you for your assistance in this matter.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:

Thomas E. Meacham
Assistant Attorney General

cc: Senator Gravel
Representative Young
Governor Hammond

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FLOOR 4 - STATE CAPITOL

September 12, 1978

Honorable Donald E. Young
House of Representatives
1210 Longworth House Office Bldg.
Washington, D.C. 20515

Re: S. 2502 defining Alaska
Native Villages as tribes.

Dear Representative Young:

I am writing to express the state's concern with a phrase in the definition section of S. 2502, "A bill to authorize States and Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country". I have discussed this concern with Lynn Ager of your staff several times over the last two weeks.

On its face, this bill appears to have little effect on Alaska since we have only one true "tribe" and very little "Indian country" in the state (i.e. Metlakatla). The bill is apparently offered primarily as a solution to recent problems concerning jurisdiction over management of fish and game on reservations in such states as Washington and Montana and in response to recent court decisions which have very little impact on Alaska.

Nonetheless, § 3(a) of the most recent committee print (dated July 24, 1978) contains the following definition:

Sec. 3. For purposes of this Act:

(a) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community exercising powers of self-government which is recognized as eligible for services provided by the United States to Indians because of their status as Indians, [including any Alaska Native villages included in the Alaska Native Claims Settlement Act] (85 Stat. 688,697).

(Emphasis added.)

This definition is nearly identical to the definition of

Education Assistance Act, Pub. L. 93-226 and in 1978, the recent Indian Child Welfare Act of 1978, Pub. L. 95-1386. The appropriateness of those definitions is, of course, not at issue now. The state's present concern is that defining Indian tribes to include Alaska Native villages included in the Settlement Act, in this bill, is entirely inappropriate.

This bill is directed at tribes which have their own civil, criminal and regulatory laws as well as their own tribal court (Sec. 101 (a)(1)-(3)). The bill would authorize compacts between such tribes and states respecting jurisdiction and governmental operations in Indian country. The only such tribe in Alaska, is the Metlakatla Indian Community which occupies the only Indian country in the state.

Therefore, the state urges that every effort be made to delete the last phrase in the definition which refers to Settlement Act villages. Ironically, that phrase would seem to exclude the Metlakatla Indians, the only tribe in Alaska which could actually properly enter into a compact with the State of the type envisioned by the bill.

Even though the bill would not require the state to enter compacts with other village entities, the retention of the objectionable phrase in the definition would only serve to further confuse the status of the approximately 210 Alaska Native village corporations and the approximately 155 village councils (including approximately 90 "traditional" councils and approximately 65 "IRA" councils, under the Indian Reorganization Act, 48 Stat. 985). According to our Department of Community and Regional Affairs and the Tribal Operations Division of the Bureau of Indian Affairs Office in Juneau, Metlakatla is the only IRA council with a charter authorizing any true law making and enforcement powers. All the other councils essentially function only as providers of social services and administrators or conduits for welfare oriented programs and funds. Likewise, village corporations under the Settlement clearly have no "powers of self government".

The definition of "Indian tribe" in the bill, as written, would have serious implications for the implementation of the Settlement Act, and for the creation and subsequent authority of municipal governments under Alaska law in each of the villages eligible for benefits under that Act. In its broadest context, the bill would raise serious questions regarding the ability of the State of Alaska to exercise all of its tax and police powers, including law enforcement, fish and wildlife management, water and resource allocation, property and income taxation, licensing, and other functions inherent in the division of governmental power between the federal and state governments. This

...have within "Indian country" and vest therein by
virtue of 28 U.S.C. § 1360, et seq.

The bill, with the objectionable inclusion of Alaska Native villages, appears dangerously close to a de facto amendment of the Settlement Act to vest Alaska village corporations and/or councils with implicit federally established powers of self-government and federally "imposed immunity from the full range of inherent state government powers which apply uninformatly to all other citizens, corporations, municipalities and communities. Indeed, a logical, though admittedly extreme, extension of the bill as written would be the establishment of 40 million acres of "Indian country" in Alaska.

We urge you to help prevent all these undesirably implications and confusion by making every effort to amend the bill by simply deleting the last phrase in Section 3(a). This minor change, while solving the state's problems with the bill, would not affect the accomplishment of its intent and purpose on reservations in the rest of the country and on Annette Island. It seems that curative action is easiest and most appropriate now, before the bill reaches the house floor.

Please contact me in Juneau (465-3684) or Douglas Riggs in Washington D.C. (624-5858) if we can provide any further information or assistance on this bill.

Thank you for your help and cooperation.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:


Peter B. Froehlich
Assistant Attorney General

cc: Senator Gravel
Senator Stevens
Governor Hammond

PBF:ams

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October 6, 1980

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Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
Ron Larson, Mayor, Matanuska-Susitna Borough
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1. Introduction of guests and members of the public attending.
2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.
3. Old Business:
 - a. Report by Palmer McCarter on material prepared for newsletters.
 - b. Report by Bob Lohr or Phil Smith on special problems of rural communities.
 - c. Presentation of proposed drafts by the Technical Committee.
 - d. Other old business.

4. New Business:
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It is the intention of the Policy Advisory Group to undertake a thorough review of Title 29. To make this possible, the Policy Group requests that any questions about Title 29 be forwarded to them. Comments on Title 29 may be sent to:

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

As the review of Title 29 must be completed before the next legislative session, it is important that any suggestions for revision be mailed as soon as possible. It is hoped that all areas of Title 29 needing revision can be identified before this meeting.

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Suggestions
received by
Leg. Affairs

9/17/80

JES:jcs

SUGGESTED REVISIONS - TITLE 29

Sec. 29.28.140. Grounds (for recall)

This section differs from AS 15.45.510 which provides grounds for recall of State officials; there could be an argument made for consistency between the two:

Municipal grounds for recall
AS 29.28.140

- 1) misconduct in office
- 2) incompetence
- 3) failure to perform pre-scribed duties

State grounds for recall
AS 15.45.510

- 1) lack of fitness
- 2) incompetence
- 3) neglect of duties
- 4) corruption

Sec. 29.28.150. Petition (for recall)

Should be rewritten to include a requirement of the name and office of the person (singular) to be recalled and a clarification that if more than one official is considered for recall a petition for each individual must be circulated.

Sec. 29.28.190. Submission (of recall petition)

The present wording is too vague with the use of the word "immediately" and should specify a specific time frame, i.e. 10 days

Sec. 29.48.035 (14). Regulatory powers (of municipalities)

"building, housing and related codes, which may be provided by cities within cities. . ." needs rewording (cities within its own boundaries?)

Sec. 29.48.037. Extraterritorial jurisdiction (of municipalities)

(b) states that a city can protect its watersheds and enforce such protection outside its boundaries ONLY upon the approval, by ordinance, of the municipality where the watersheds are located. This poses a problem when a city tries to exercise the protection of its water supply which lies outside the city limits but within the organized borough and where the borough is not actively involved in any such protection but refuses to allow the city to exercise such. If a borough has, in effect, veto power over the city's action in this regard, the borough government should be required to be actively involved in the exercise of such protected activity itself.

AS 29.33.070(b)

If a first class or home city is located more than 25 miles from the boundary of the borough seat, the planning, platting and zoning responsibilities within the city may be exercised by the city after a city ordinance providing for the exercise thereof is approved by a majority of the electors within the city voting on the question at a regular or special election.

or by Council ordinance

John Schaefer
9/19/80

AS 29.48.050(d)

For purposes of AS 29.48.050 - .070 a public utility which is not regulated as to rates and services by the Alaska Public Utilities Commission shall not be considered as regulated by AS 42.05.

CITY OF UNALASKA

P.O. BOX 89
UNALASKA, ALASKA 99685
581-1251

"Capital of the Aleutians"



September 22, 1980

Tamara Brandt Cook
Division of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Ms. Cook:

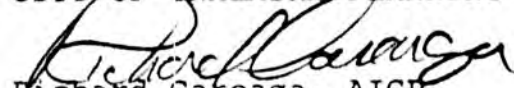
There are two aspects of Title 29 revision which I wish to comment upon.

First, I urge consideration be given to the American Law Institute's (1975) Model Land Development Code which represents a major improvement over the Hoover-era model upon which the present provisions of Title 29 governing the conduct of local planning are based. I particularly urge that the Code's recommendations concerning the division of responsibility between State and local planning responsibilities be considered.

Second, there are other statutes which can be interpreted to impose duties upon general purpose units of local government which are not specifically tied to Title 29. I have in mind, in particular, Chapter 35 of Title 46, the Alaska Coastal Management Program. This program and any similar program enacted in the attempt to attain consistency should be accompanied by a definitive tie to Title 29 which establish an affirmative obligation on the part of local governments to exercise their substantive powers if this is the intent of the Legislature. Otherwise, Title 29 should indicate that it is the complete statement of the substantive duties and powers of municipalities.

Sincerely,

CITY OF UNALASKA PLANNING DEPARTMENT


Richard Careaga, AICP
Director



CITY OF NOME

P.O. BOX 281 - NOME, ALASKA 99762
TELEPHONE (907) 443-5242

September 22, 1980

Tamara Brandt Cook
Div. of Legal Services
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, AK 99811

Dear Ms. Cook:

RE: TITLE 29 Review

I have had one general problem with Title 29. As City Manager in Dillingham, Kodiak and now Nome, it seems obvious that Title 29 has been organized and written for governments who have an attorney that interprets each provision.

Many times one refers to Title 29 and needs an attorneys interpretation to understand what it means. This is not practical in a smaller city because of the cost and the amount of time it takes to get an opinion.

More specifically, I am referring to references to boroughs that apply to first class cities. This is very confusing because it's hard to understand when borough statutes apply. First class cities should be set out specifically to end the confusion.

There are a number of specific problems I'd like to bring to the Policy Advisory Groups attention.

29.28.040. Majority elections. The 40 per cent runoff election should be thoroughly considered if allowed to remain in the Statutes.

Article 3. Recall. These provisions should also be researched and grounds 29.28.140 should be made more clear.

Chapter 33. Areawide Borough Powers & Duties. 29.33.010 Scope. From this point on, Boroughs are given too much power. To be more specific, the fact that a borough plans for a city is a disaster in my experience. How can a city possibly exist as a city and not have control over its destiny? In Kodiak, while I was the manager, the Borough continually attempted to manage the City through its planning powers. This caused creation of service areas (another issue) and confusion where the City was to extend its services. City planning must be a responsibility of the government that

Tamara Brandt Cook
September 22, 1980
Page 2

is going to implement the projects planned for. In the case of Kodiak, I personally had to attend each planning commission and assembly meeting to make certain the City's interests were considered. Since the City Council had no real influence over the assembly or the planning commission, it became an unbelievable political struggle that wound up in Court. In this case, the City's taxpayers footed the bill for both attorneys since the majority of the tax base was inside the City.

The conflict with the Borough and the City regarding Borough powers adjacent to a City is a similar issue. In the case of Kodiak, the Borough wanted to establish a water, sewer and road service area that would utilize the City's water and sewer system and possibly contract for road service. This was their attempt to stop the City from annexing an area immediately adjacent to the City that needed to do something about those services. The competing aspects of this caused undue hardship and strains on the political as well as the social systems on the island. As far as I was concerned, the whole problem was the result of Chapter 38, Borough Powers and Duties in the Area Outside Cities. This chapter actually allowed the establishment of another taxing entity that was going to increase the cost of services to the users in the service area. It also made it more difficult for the city to plan for use and expansion of its facilities and equipment.

The conflicts described above are in direct conflict with Article X, Local Government of the Constitution of the State of Alaska.

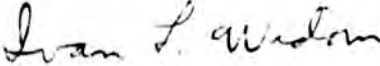
Section 1. Purpose & Construction. The purpose of this article is to provide maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions.

If the system of using Boroughs is to continue and expand into the Unorganized Borough, then the items I have mentioned, plus others will have to be straightened out.

I believe that 29.48.150. Ordinance. Procedure should be redone to clarify the number of times an ordinance should be voted upon. The question has come up a number of times.

Thank you for the opportunity to make suggestions regarding the Title 29 revisions. I am quite interested in these items as well as what others are suggesting and would like to be kept fully informed as to the Groups deliberations.

Sincerely,


Ivan L. Widom
City Manager

cc: Mayor & City Council

For an Act entitled: "An Act relating to senior citizen exemption from motor vehicle property tax; and providing for an effective date."

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

* Section 1. AS 29.53.020(h) is amended to read:

(h) Except as provided in (g) of this section, nothing in (e) - (1) [(i)] of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

(j) One motor vehicle owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax established under AS 28.10.431(b).

(k) The state shall pay a borough or city for tax revenues lost to it under (j) of this section. The payment shall be an amount equal to the tax levied under AS 28.10.431(b) for each vehicle for which a senior citizen exempt affidavit form, as prescribed by the Department of Public Safety, Division of Motor Vehicles, is submitted.

(l) The Department of Community and Regional Affairs shall adopt regulations to implement the provisions of (g), (j), and (k) of this section.

* Sec. 3. AS 29.10.411(d) is repealed.

* Sec. 4. This Act is retroactive to January 1, 1981.

Note: This replaces a suggestion already submitted to the policy group.

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<u>New Sec. #</u>	<u>Old Sec. #</u>	<u>Heading</u>
<u>29.03.000</u>		<u>CHAPTER 03. THE UNORGANIZED BOROUGH</u>
29.03.010	29.03.010	ESTABLISHMENT
29.03.020	20.03.020	SERVICE AREAS
<u>29.06.000</u>		<u>CHAPTER 06. CLASSIFICATION OF MUNICIPALITIES</u>
29.06.010	29.08.010	HOME RULE (80)
29.06.020	29.08.020	GENERAL LAW
29.06.030	29.08.030	CLASSES OF GENERAL LAW
29.06.040	29.08.040	RECLASSIFICATION
29.06.050	29.08.050	TRANSITION
<u>29.09.000</u>		<u>CHAPTER 09. INCORPORATION</u>
<u>29.09.005</u>		<u>ARTICLE 1. REQUIREMENTS</u>
29.09.010	29.18.011	INCORPORATION OF CITIES
29.09.020	29.18.021	LIMITATIONS ON INCORPORATION OF CITIES
29.09.030	29.18.030	ORGANIZED BOROUGHs
<u>29.09.035</u>		<u>ARTICLE 2. PROCEDURES</u>
29.09.060	29.18.050	PETITION (80S)
29.09.070	29.18.060	REVIEW
29.09.080	29.18.070	INVESTIGATION
29.09.090	29.18.080	REPORT AND HEARING
29.09.100	29.18.090	DECISION ON MUNICIPAL INCORPORATION
29.09.110	29.18.110	INCORPORATION ELECTION
29.09.120	29.18.120	ELECTION OF INITIAL OFFICERS
29.09.130	29.18.130	INTEGRATION OF SPECIAL DISTRICTS AND SERVICE AREAS
29.09.140	29.18.140	TRANSITION
29.09.150	29.18.150	CHALLENGE OF LEGALITY
<u>29.09.155</u>		<u>ARTICLE 3. TRANSITIONAL ASSISTANCE</u>

29.09.180	29.18.180	ORGANIZATION GRANTS
<u>29.12.000</u>		<u>CHAPTER 12. ALTERATION OF MUNICIPALITIES</u>
<u>29.12.005</u>		<u>ARTICLE NEW. CHANGE OF MUNICIPAL NAME</u>
29.12.010	29.73.050	CHANGE OF MUNICIPAL NAME
<u>29.12.015</u>		<u>ARTICLE 2. ANNEXATION AND EXCLUSION</u>
29.12.040	29.68.010	LOCAL BOUNDARY COMMISSION
29.12.050	29.68.020	ANNEXATION OF MILITARY RESERVATIONS
<u>29.12.055</u>		<u>ARTICLE 3. MERGER AND CONSOLIDATION</u>
29.12.080	29.68.030	METHODS OF MERGER OR CONSOLIDATION
29.12.090	29.68.040	PETITION
29.12.100	29.68.050	REVIEW
29.12.110	29.68.060	INVESTIGATION
29.12.120	29.68.070	REPORT AND HEARING
29.12.130	29.68.080	DECISION
29.12.140	29.68.090	ELECTION
29.12.150	29.68.100	ASSETS AND LIABILITIES
29.12.160	29.68.110	ORDINANCES
<u>29.12.165</u>		<u>ARTICLE 4. UNIFICATION OF LOCAL GOVERNMENTS</u>
29.12.190	29.68.240	UNIFICATION OF LOCAL GOVERNMENTS AUTHORIZED
29.12.200	29.68.250	UNIFICATION TO BE PROPOSED BY PETITION
29.12.210	29.68.260	PETITION REQUIREMENTS
29.12.220	29.68.270	REVIEW OF PETITION
29.12.230	29.68.280	CALL FOR CHARTER COMMISSION NOMINATIONS
29.12.240	29.68.290	NOMINATION OF CHARTER COMMISSION CANDIDATES
29.12.250	29.68.300	QUALIFICATIONS OF CHARTER COMMISSION CANDIDATES
29.12.260	29.68.310	COMPOSITION OF CHARTER COMMISSION

29.12.270	29.68.320	ELECTION
29.12.280	29.68.330	REQUIREMENTS FOR APPROVAL OF UNIFICATION AND ELECTION OF CHARTER COMMISSION
29.12.290	29.68.340	CHARTER COMMISSION ORGANIZATION AND PROCEDURE
29.12.300	29.68.350	CHARTER PREPARATION (80)
29.12.310	29.68.360	PUBLIC HEARINGS
29.12.320	29.68.370	FILING OF PROPOSED CHARTER
29.12.330	29.68.380	PUBLICATION AND POSTING OF PROPOSED CHARTER
29.12.340	29.68.390	ELECTION ON CHARTER
29.12.350	29.68.400	EFFECT OF THE CHARTER AFTER RATIFICATION
29.12.360	29.68.410	ASSETS AND LIABILITIES
29.12.370	29.68.420	ORDINANCES
29.12.380	29.68.430	RIGHT TO STATE AND FEDERAL FUNDS PRESERVED
29.12.390	29.68.440	POWERS OF A UNIFIED MUNICIPALITY
<u>29.12.395</u>		<u>ARTICLE 4. DISSOLUTION</u>
29.12.420	29.68.500	METHODS OF DISSOLUTION
29.12.430	29.68.510	PETITION
29.12.440	29.68.520	STANDARDS
29.12.450	29.68.540	REVIEW
29.12.460	29.68.540	INVESTIGATION
29.12.470	29.68.550	REPORT AND HEARING
29.12.480	29.68.560	DECISION
29.12.490	29.68.570	ELECTION
29.12.500	29.68.580	SUCCESSION
<u>29.15.000</u>		<u>CHAPTER 15. HOME RULE MUNICIPALITIES</u>
<u>29.15.005</u>		<u>ARTICLE 1. CHARTERS</u>
29.15.010	29.13.010	MUNICIPAL CHARTER ADOPTION (80)

29.15.020	29.13.020	NOMINATION
29.15.030	29.13.030	ELECTION
29.15.040	29.13.040	PREPARATION OF CHARTER
29.15.050	29.13.050	INITIATIVE AND REFERENDUM
29.15.060	29.13.060	CHARTER ELECTION
29.15.070	29.13.070	CHARTER ADOPTION
29.15.080	29.13.080	CHARTER AMENDMENT
<u>29.15.085</u>		<u>ARTICLE 2. HOME RULE LIMITATIONS</u>
29.15.110	29.13.100	LIMITATION OF HOME RULE POWERS
<u>29.18.000</u>		<u>CHAPTER 18. DEVELOPMENT CITIES</u>
29.18.010	29.18.220	LEGISLATIVE FINDINGS
29.18.020	29.18.230	DEVELOPMENT CITIES
29.18.030	29.18.240	INCORPORATION
29.18.040	29.18.250	PETITION FOR INCORPORATION
29.18.050	29.18.260	REVIEW
29.18.060	29.18.270	INVESTIGATION
29.18.070	29.18.280	REPORT
29.18.080	29.18.290	DECISION ON DEVELOPMENT CITY INCORPORATION
29.18.090	29.18.300	PRELIMINARY PLANNING
29.18.100	29.18.310	REVIEW AND REPORT
29.18.110	29.18.320	LIMITATION
29.18.120	29.18.330	LOCAL HIRE
29.18.130	29.18.340	DEVELOPMENT CITY COUNCIL
29.18.140	29.18.350	FILLING A VACANCY
29.18.150	29.18.360	POWERS AND DUTIES OF COUNCIL
29.18.160	29.18.370	POWERS AND DUTIES OF A DEVELOPMENT CITY EXECUTIVE DIRECTOR

29.18.170	29.18.380	PROCEDURES
29.18.180	29.18.390	DEVELOPMENT CITY CAPITAL IMPROVEMENT FUNDS
29.18.190	29.18.400	TRANSITION
29.18.200	29.18.410	HOUSING POWERS
29.18.210	29.18.430	REVENUE BONDS
29.18.220	29.18.440	SHARED REVENUE
29.18.230	29.18.450	APPLICABILITY OF OTHER PROVISIONS OF THIS TITLE
29.18.240	29.18.460	DEFINITION
<u>29.21.000</u>		<u>CHAPTER 21. CAPITAL CITY</u>
29.21.010	29.18.510	INCORPORATION
29.21.020	29.18.520	BOUNDARIES
29.21.030	29.18.530	CITY COUNCIL
29.21.040	29.18.540	FILLING A VACANCY
29.21.050	29.18.550	APPOINTMENT OF CITY OFFICIALS
29.21.060	29.18.570	TRANSITION
29.21.070	29.18.580	PLANNING AND ZONING AUTHORITY
29.21.080	29.18.590	TRANSFER OF UTILITIES TO CAPITAL CITY
29.21.090	29.18.600	DEFINITIONS
29.21.100	29.18.610	SHORT TITLE
29.23.120	29.48.060	PUBLIC UTILITIES RATES (80)
<u>29.24.000</u>		<u>CHAPTER 24. MUNICIPAL OFFICERS AND EMPLOYEES</u>
<u>29.24.005</u>		<u>ARTICLE 1. CONFLICTS OF INTEREST, PUBLIC MEETINGS</u>
29.24.010	29.23.555	CONFLICTS OF INTEREST
29.24.020	29.23.580	MEETINGS PUBLIC
<u>29.24.025</u>		<u>ARTICLE 2. BOROUGH ASSEMBLY</u>
29.24.050	29.23.010	GENERAL POWER

29.24.060	29.23.021	ASSEMBLY COMPOSITION AND APPORTIONMENT (80S)
29.24.070	29.23.023	COMPOSITION AND FORM OF REPRESENTATION (80)
29.24.080	29.23.025	ASSEMBLY RECOMPOSITION AND REAPPORTIONMENT (80S)
29.24.090	29.23.027	APPORTIONMENT APPEALS (80)
29.24.100	29.23.029	APPORTIONMENT APPEALS (80)
29.24.110	29.23.031	EFFECTIVE DATE OF APPORTIONMENT (80)
29.24.120	29.23.033	APPLICABILITY OF APPORTIONMENT PROVISIONS (80)
29.24.130	29.23.040	REGULAR TERM OF OFFICE
29.24.140	29.23.050	QUALIFICATIONS
29.24.150	29.24.060	PROCEDURE (80)
29.24.160	29.23.70	DEPARTMENTS
29.24.170	29.23.080	ASSEMBLY VACANCIES
<u>29.24.175</u>		<u>ARTICLE 3. BOROUGH EXECUTIVE AND ADMINISTRATOR</u>
29.24.200	29.23.130	POWER GENERALLY (80S)
29.24.210	29.23.140	POWERS AND DUTIES OF BOROUGH ADMINISTRATOR
29.24.220	29.23.150	EXECUTIVE ABSENCE
29.24.230	29.23.160	ASSEMBLY PARTICIPATION
29.24.240	29.23.170	VETO
29.24.250	29.23.180	FILLING A VACANCY
<u>29.24.255</u>		<u>ARTICLE 4. CITY COUNCIL</u>
29.24.280	29.23.200	COMPOSITION, ELIGIBILITY, ELECTION & TERM
29.24.290	29.23.210	PROCEDURE (80S)
29.24.300	29.23.220	FILLING A VACANCY
<u>29.24.305</u>		<u>ARTICLE 5. CITY EXECUTIVE AND ADMINISTRATOR</u>
29.24.330	29.23.240	MAYOR
29.24.340	29.23.250	ELECTION AND TERM OF MAYOR

29.24.350	29.23.255	REMOVAL FROM OFFICE (80)
29.24.360	29.23.260	MAYOR'S VOTE
29.24.370	29.23.270	VETO
29.24.380	29.23.280	FILLING A VACANCY
29.24.390	29.23.290	POWERS AND DUTIES OF CITY MANAGER
<u>29.24.395</u>		<u>ARTICLE 6. SCHOOL BOARDS</u>
29.24.420	29.23.310	ELECTION
<u>29.24.425</u>		<u>ARTICLE 7. UTILITY BOARDS</u>
29.24.450	29.23.340	UTILITY BOARDS
29.24.455		<u>ARTICLE 8. OTHER OFFICERS AND EMPLOYEES</u>
29.24.480	29.23.360	APPOINTMENT OF OFFICERS
29.24.490	29.23.370	MUNICIPAL ATTORNEY
29.24.500	29.23.380	MUNICIPAL CLERK
29.24.510	29.23.390	MUNICIPAL TREASURER
29.24.520	29.23.401	APPOINTMENT TO MUNICIPAL BOARDS AND COMMISSIONS
<u>29.24.525</u>		<u>ARTICLE 9. ADOPTION OR REPEAL OF MANAGER PLAN</u>
29.24.550	29.23.410	APPLICATION
29.24.560	29.24.420	PETITION
29.24.570	29.23.430	ELECTION
29.24.580	29.23.440	ADOPTION
29.24.590	29.23.450	APPOINTMENT
29.24.600	29.23.460	TERM
29.24.610	29.23.470	APPOINTMENT OF TEMPORARY OR NEW MANAGER
29.24.620	29.23.480	REPEAL
29.24.625		<u>ARTICLE 10. MISCELLANEOUS PROVISIONS</u>
29.24.650	29.23.500	OATHS OF OFFICE

29.24.660	29.23.520	BONDING
29.24.670	29.23.530	SALARIES OF ELECTED OFFICERS
29.24.680	29.23.540	PROHIBITIONS
29.24.690	29.23.550	PERSONNEL SYSTEM
29.24.700	29.23.560	REPORTS (8CS)
29.24.710	29.23.570	VACANCIES
29.27.000		<u>CHAPTER 27. MUNICIPAL ENACTMENTS</u>
29.27.010	29.48.130	ACTS REQUIRED TO BE BY ORDINANCE
29.27.020	29.48.140	FORM OF ORDINANCES
29.27.030	29.48.150	ORDINANCE PROCEDURE
29.27.040	29.48.160	EMERGENCY ORDINANCES
29.27.050	29.48.170	CODES OF REGULATION
29.27.060	29.48.180	CODIFICATION
29.27.070	29.48.185	RESOLUTIONS
29.27.080	29.48.200	PENALTIES
<u>29.30.000</u>		<u>CHAPTER 30. ELECTIONS</u>
<u>29.30.005</u>		<u>ARTICLE 1. REGULAR AND SPECIAL ELECTIONS</u>
29.30.010	29.28.010	ADMINISTRATION
29.30.020	29.28.015	NOMINATIONS
29.30.030	29.28.020	ELECTION DATES
29.30.040	29.28.030	VOTER QUALIFICATION
29.30.050	29.28.040	MAJORITY ELECTIONS
29.30.060	29.28.050	ELECTION CONTEST AND APPEAL (80)
<u>29.30.065</u>		<u>ARTICLE 2. INITIATIVE AND REFERENDUM</u>
29.30.090	29.28.060	RESERVATION OF POWERS
29.30.100	29.28.062	PETITION
29.30.110	29.28.065	CONTENTS OF PETITION

29.30.120	29.28.070	REQUIRED SIGNATURES
29.30.130	29.28.073	SUFFICIENCY OF PETITION
29.30.140	29.28.075	PROTEST
29.30.150	29.28.077	NEW PETITION
29.30.160	29.28.080	PRESENTATION OF INITIATIVE
29.30.170	29.28.090	PRESENTATION OF REFERENDUM
29.30.180	29.28.110	EFFECT
<u>29.30.185</u>		<u>ARTICLE 3. RECALL</u>
29.30.210	29.28.130	RECALL
29.30.220	29.28.140	GROUND
29.30.230	29.28.150	PETITION
29.30.240	29.28.160	EXAMINATION FOR SUFFICIENCY
29.30.250	29.28.170	SUPPLEMENTAL PETITION
29.30.260	29.28.180	NEW PETITION
29.30.270	29.28.190	SUBMISSION
29.30.280	29.28.200	ELECTION
29.30.290	29.28.210	FORM OF RECALL BALLOTS
29.30.300	29.28.220	ELECTION PROCEDURE
29.30.310	29.28.230	MAJORITY REQUIRED
29.30.320	29.28.240	EFFECT
29.30.330	29.28.250	ELECTION OF SUCCESSOR
<u>29.33.000</u>		<u>CHAPTER 33. POWERS AND DUTIES APPLICABLE TO HOME RULE AND GENERAL LAW MUNICIPALITIES</u>
<u>29.33.005</u>		<u>ARTICLE 1. GENERAL POWERS</u>
29.33.010	29.48.010	GENERAL POWERS
29.33.010(1)	29.23.510	COMBINING OFFICES
29.33.020	29.48.037	EXTRATERRITORIAL JURISDICTION

29.33.030	29.73.020	EMINENT DOMAIN
29.33.040	29.48.270	EMERGENCY DISASTER POWERS
<u>29.33.045</u>		<u>ARTICLE 2. FACILITIES SERVICES AND REGULATION</u>
29.33.070	29.48.030	MUNICIPAL FACILITIES AND SERVICES
29.33.080	29.48.033	GARBAGE AND SOLID WASTE SERVICES
29.33.090	29.48.035	REGULATORY POWERS
29.33.100	29.48.040	MUNICIPALLY-OWNED UTILITIES
29.33.110	29.48.050	FRANCHISES AND PERMITS
29.33.120	29.33.280	INVESTIGATION
29.33.130	29.48.070	HEARING FOR REGULATION OF UTILITIES RATES
29.33.140	29.48.080	RIGHT TO PARTICIPATE AND COMPEL TESTIMONY
29.33.150	29.48.090	FURTHER PROCEEDINGS
29.33.160	29.48.100	APPLICATION
<u>29.33.165</u>		<u>ARTICLE 3. FISCAL POWERS AND DUTIES</u>
29.33.190	29.48.250	CENTRALIZED PURCHASING
29.33.200	29.48.260	MUNICIPAL PROPERTIES
29.33.210	29.48.190	BUDGET AND CAPITAL PROGRAM
29.33.220	29.48.210	EXPENDITURE OF BOROUGH REVENUE
29.33.230	29.48.220	POST AUDIT
<u>29.33.235</u>		<u>ARTICLE 4. CONSTRUCTION OF POWERS</u>
29.33.260	29.48.310	GENERAL CONSTRUCTION
29.33.270	29.48.320	EXTENT OF POWERS
29.33.280	29.48.330	ENUMERATION OF POWERS
<u>29.36.000</u>		<u>CHAPTER 36. AREAWIDE BOROUGH POWERS AND DUTIES</u>
<u>29.36.005</u>		<u>ARTICLE 1. SCOPE</u>
29.36.010	29.33.010	SCOPE OF AREAWIDE POWERS

29.36.015

29.36.040

29.36.050

29.36.060

29.36.065

29.36.090

29.36.100

29.36.110

29.36.130

29.36.135

29.36.160

29.36.170

29.36.170

29.36.180

29.36.190

29.36.200

29.36.205

29.36.230

29.36.240

29.36.245

29.36.270

29.39.000

29.39.010

29.39.020

29.39.030

29.39.040

29.33.050

29.33.030

NEW

29.33.250

29.33.260

29.33.270

29.33.290

29.38.010

29.38.020

29.48.020

29.38.030

29.38.040

29.38.050

29.41.010

29.41.020

29.63.090

29.43.010

29.43.020

29.53.405

29.43.030

ARTICLE 2. MANDATORY AREAWIDE POWERS AND DUTIES

EDUCATION

ASSESSMENT AND COLLECTION OF TAXES

PLANNING, PLATTING, AND ZONING

ARTICLE 3. ACQUISITION OF ADDITIONAL AREAWIDE POWERS

ADDITIONAL AREAWIDE POWERS

TRANSFER BY CITY

PETITION FOR POWER

ELECTION

ARTICLE 4. BOROUGH POWERS & DUTIES IN THE AREA OUTSIDE CITIES

FIRST CLASS BOROUGH

SECOND CLASS BOROUGH

SECOND CLASS BOROUGH POWERS OUTSIDE CITIES

ADDITIONAL POWERS

INVESTIGATION

ELECTION

ARTICLE 5. POWERS OF THIRD CLASS BOROUGH

POWERS OF THIRD CLASS BOROUGH

ASSEMBLY TO SERVE AS SCHOOL BOARD (80)

ARTICLE 6. SERVICE AREAS

SERVICE AREAS

CHAPTER 39. POWERS OF CITIES OUTSIDE BOROUGH

ADDITIONAL POWERS

ASSESSMENT AND TAX COLLECTION

DIFFERENTIAL TAX ZONES

EDUCATION

29.39.050	29.43.040	PLANNING AND ZONING
29.39.060	29.43.100	EXTENSION OF CURFEWS OUTSIDE CITIES
29.39.070	29.43.105	ENFORCEMENT OF CURFEWS
29.39.080	29.43.110	PENALTY FOR VIOLATION OF CURFEW
<u>29.42.000</u>		<u>CHAPTER 42. PLANNING, PLATTING, AND ZONING</u>
29.42.010	29.33.070	PLANNING, PLATTING, AND ZONING
29.42.020	29.33.080	PLANNING COMMISSION (80)
29.42.030	29.33.085	COMPREHENSIVE PLAN
29.42.040	29.33.090	ZONING (80S)
29.42.050	29.33.110	BOARD OF ADJUSTMENT
29.42.060	29.33.120	ADJUSTMENT PROCEDURE
29.42.070	29.33.130	JUDICIAL REVIEW
29.42.080	29.33.150	PLATTING JURISDICTION AND POWER
29.42.090	29.33.160	PROCEDURE
29.42.100	29.33.170	WAIVER IN CERTAIN CASES
29.42.110	29.33.180	INFORMATION REQUIRED
29.42.120	29.33.190	PENALTIES
29.42.130	29.33.200	ALTERATION OF REPLAT PETITION
29.42.140	29.33.200	NOTICE OF HEARING
29.42.150	29.33.220	HEARING AND DETERMINATION
29.42.160	29.33.230	RECORDING
29.42.170	29.33.240	TITLE TO VACATED AREA
29.42.180	29.33.245	DELEGATIONS
<u>29.45.000</u>		<u>CHAPTER 45. MUNICIPAL TAXATION</u>
<u>29.45.005</u>		<u>ARTICLE 1. MUNICIPAL PROPERTY TAX</u>
29.45.010	29.53.010	GENERAL PROPERTY TAX

29.45.020	29.73.070	TAXPAYER NOTICE (80)
29.45.030	29.53.020	REQUIRED EXEMPTIONS (80S)
29.45.040	29.73.060	PROPERTY TAX EQUIVALENCY PAYMENTS (80S)
29.45.050	29.53.025	OPTIONAL EXEMPTIONS AND EXCLUSIONS
29.45.060	29.53.030	MINING CLAIMS
29.45.070	29.53.035	FARM OR AGRICULTURAL LANDS
29.45.080	29.53.040	MOBILE HOMES
29.45.090	29.53.045	TAX ON OIL AND GAS PRODUCTION AND PIPELINE PROPERTY
29.45.100	29.53.050	TAX LIMITATION
29.45.100	29.63.070	REASSESSMENT
29.45.110	29.53.055	NO LIMITATION ON TAXES TO PAY BONDS
29.45.120	29.53.060	FULL AND TRUE VALUE
29.45.130	29.53.070	RETURNS
29.45.140	29.53.080	INDEPENDENT INVESTIGATION
29.45.150	29.53.090	STATEMENT
29.45.160	29.53.095	REEVALUATION
29.45.170	29.53.100	ASSESSMENT ROLL
29.45.180	29.53.110	ASSESSMENT NOTICE
29.45.190	29.53.120	CORRECTIONS
29.45.200	29.53.130	APPEAL
29.45.210	29.53.135	BOARD OF EQUALIZATION
29.45.220	29.53.140	HEARING
29.45.230	29.53.150	SUPPLEMENTARY ASSESSMENT ROLLS
29.45.240	29.53.160	TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL DISASTER
29.45.250	29.53.170	TAX LEVY AND RATE
29.45.260	29.53.180	RATES OF PENALTY AND INTEREST

29.45.265

29.45.290

29.45.300

29.45.310

29.45.320

29.45.330

29.45.340

29.45.350

29.45.360

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29.45.380

29.45.390

29.45.400

29.45.410

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29.45.430

29.45.440

29.45.450

29.45.460

29.45.470

29.45.480

29.45.490

29.45.500

29.45.505

29.45.530

29.45.540

29.53.200

29.53.210

29.53.220

29.53.230

29.53.240

29.53.250

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29.53.270

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39.53.290

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29.53.310

29.53.320

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29.53.350

29.53.460

29.53.370

29.53.375

29.53.380

29.53.385

29.53.390

29.53.400

29.53.410

ARTICLE 2. ENFORCEMENT OF TAX LIENS

VALIDITY

TAX LIABILITY

ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT AND SALE

REAL PROPERTY TAX COLLECTION

FORECLOSURE LIST

CLEARING DELINQUENCIES

LIST TO LIENHOLDER

GENERAL FORECLOSURE

ANSWER AND OBJECTION

JUDGMENT

TRANSFER AND APPEAL

REDEMPTION PERIOD

EFFECT

ADDITIONAL LIENS

POSSESSION DURING REDEMPTION PERIOD

EXPIRATION

DEED TO BOROUGH OR CITY

DISPOSITION AND SALE OF FORECLOSED PROPERTIES

REPURCHASE BY RECORD OWNER

PROCEEDS OF TAX SALE

PAYMENT OF TAXES UPON PUBLIC UTILIZATION

REFUND OF TAXES

ARTICLE 3. CITY PROPERTY TAX

POWER OF LEVY

LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES

29.45.545

29.45.570

29.45.580

29.45.585

29.45.610

29.45.620

29.45.630

29.48.000

29.48.005

29.48.010

29.48.020

29.48.030

29.48.040

29.48.050

29.48.060

29.48.070

29.48.080

29.48.090

29.48.110

29.48.120

29.51.000

29.51.005

29.51.010

29.51.020

29.51.030

29.51.040

29.53.415

29.53.420

29.53.440

29.53.450

29.45.460

29.63.010

29.63.015

29.63.020

29.63.025

29.63.030

29.63.040

29.63.050

29.63.060

29.63.065

29.63.080

29.63.085

29.58.010

29.58.020

29.58.040

29.58.050

ARTICLE 4. BOROUGH SALES AND USE TAXES

SALES AND USE TAX

REFERENDUM, ADOPTION, AND MODIFICATION

ARTICLE 5. CITY SALES AND USE TAXES

POWER OF LEVY

POWER OF LEVY AND COLLECTION

COMBINING SALES TAX WITH INCORPORATION

CHAPTER 48. SPECIAL ASSESMENTS

ARTICLE 1. SPECIAL ASSESSMENTS

ASSESSMENT AND PROPOSAL

PROCEDURE

DECISION AND NOTICE

RECORD OWNER

OBJECTIONS AND REVISION

ASSESSMENT ROLL

HEARING AND SETTLEMENT

PAYMENT

EXEMPTION

OBJECTION AND APPEAL

SPECIAL ASSESSMENT BONDS

CHAPTER 51. MUNICIPAL DEBT

ARTICLE 1. REVENUE ANTICIPATION NOTES

BORROWING IN ANTICIPATION OF REVENUE

ISSUANCE NOTES

ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL GRANTS

PRIORITY OF REPAYMENT

29.51.050	29.58.060	SALE OF NOTES
<u>29.51.055</u>		<u>ARTICLE 2. BOND ANTICIPATION NOTES</u>
29.51.080	29.58.070	BOND ANTICIPATION BORROWING
29.51.090	29.58.080	ISSUANCE OF NOTES
29.51.100	29.58.090	ISSUANCE OF NEW NOTES
29.51.110	29.58.100	REPAYMENT OF NOTES
29.51.120	29.58.110	SECURITY
29.51.130	29.58.120	LIMITATION
29.51.140	29.58.130	USE OF PROCEEDS
29.51.150	29.58.140	SALE OF NOTES
<u>29.51.155</u>		<u>ARTICLE 3. GENERAL OBLIGATION BONDS</u>
29.51.180	29.58.150	GENERAL OBLIGATION BONDS
29.51.190	29.58.160	VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED
29.51.200	29.58.170	FORM AND TERMS OF SALE
29.51.210	29.58.180	PAYMENT
<u>29.51.215</u>		<u>ARTICLE 4. REVENUE BONDS</u>
29.51.240	29.58.200	REVENUE BONDS
29.51.250	29.58.205	NO ELECTION REQUIRED
29.51.260	29.58.210	FORMS AND TERMS
29.51.270	29.58.220	PAYMENT
<u>29.51.275</u>		<u>ARTICLE 5. REFUNDING BONDS</u>
29.51.300	29.58.240	AUTHORIZATION
29.51.310	29.58.250	EFFECT OF BONDS
29.51.320	29.58.260	NO ELECTION REQUIRED
29.51.330	29.58.270	PAYMENT OF REFUNDING BONDS
29.51.340	29.58.280	SALE

29.51.345

29.51.370

29.51.380

29.51.390

29.51.400

29.51.410

29.51.420

29.51.430

29.62.000

29.62.005

29.62.010

29.62.020

29.62.030

29.62.040

29.62.050

29.62.060

29.62.070

29.62.080

29.62.085

29.62.110

29.62.120

29.62.130

29.62.140

29.62.150

29.62.160

29.62.170

29.58.300

29.58.310

29.58.315

29.58.320

29.58.340

29.58.345

29.58.350

29.88.010

29.88.015

29.88.020

29.88.025

29.88.030

29.88.035

29.88.040

29.88.045

29.89.010

29.89.020

29.89.030

29.89.040

29.89.050

29.89.060

29.89.070

ARTICLE 6. MISCELLANEOUS PROVISIONS

PUBLIC SALE

INTEREST RATE

BOND ATTORNEYS, BOND AND FINANCIAL CONSULTANTS

REDEMPTION BEFORE MATURITY

BOROUGH INDEBTEDNESS

BONDED INDEBTEDNESS FOR SCHOOL CONSTRUCTION

BOND GUARANTEE FUND

CHAPTER 62. MUNICIPAL TAX RESOURCE EQUALIZATION

ARTICLE 1. STATE PROGRAMS

STATE EQUALIZATION OF TAX RESOURCES FOR LOCAL GOVERNMENT SERVICES (80)

DETERMINATION OF POPULATION (80)

DETERMINATION OF MILLAGE RATE EQUIVALENT (80)

REPORTS (80)

LIMITATION ON COMPUTATION AND USE OF PAYMENTS (80)

TAX EQUALIZATION ACCOUNT(80)

ADMINISTRATION (80)

DEFINITIONS

ARTICLE 2. STATE AID FOR MISCELLANEOUS MUNICIPAL PURPOSES (80)

REVENUE SHARING PAYABLE (80)

STATE AID TO MUNICIPALITIES FOR ROADS (80)

STATE AID TO MUNICIPALITIES AND OTHER ELIGIBLE RECEIPIENTS FOR HEALTH FACILITIES AND HOSPITALS (80)

STATE AID TO VOLUNTEER FIRE DEPARTMENTS IN THE UNORGANIZED BOROUGH (80)

STATE AID TO CERTAIN NATIVE VILLAGE GOVERNMENTS (80)

POPULATION DETERMINATION (80)

AREA COST-OF-LIVING DIFFERENTIAL (80)

29.62.180	29.89.180	MISCELLANEOUS SERVICES ACCOUNT (80)
29.62.190	29.89.090	REGULATIONS (80)
29.62.200	29.89.100	DEFINITIONS (80)
<u>29.62.205</u>		<u>ARTICLE 3. STATE AID FOR HOSPITAL CONSTRUCTION (80)</u>
29.62.230	29.90.010	STATE AID FOR HOSPITAL CONSTRUCTION (80)
29.62.240	29.90.020	HOSPITAL CONSTRUCTION ASSISTANCE ACCOUNT (80)
29.62.250	29.90.030	DEFINITIONS (80)
<u>29.62.255</u>		<u>ARTICLE 4. ADMINISTRATION OF MUNICIPAL FINANCIAL ASSISTANCE PROGRAMS (80)</u>
29.62.280	29.95.010	ALLOCATION AND DISTRIBUTION (80)
29.62.290	29.95.020	QUALIFICATION FOR MINIMUM PAYMENT (80)
29.62.300	29.95.030	PRORATION OF PAYMENTS (80)
<u>29.65.000</u>		<u>CHAPTER 65. GENERAL GRANT LAND</u>
29.65.010	29.18.201	DETERMINATION OF ENTITLEMENT OF BOROUGHs AND UNIFIED MUNICIPALITIES
29.65.020	29.18.202	DETERMINATION OF ENTITLEMENT FOR CITIES
29.65.030	29.18.203	DETERMINATION OF ENTITLEMENT FOR NEWLY INCORPORATED MUNICIPALITIES
29.65.040	29.18.204	STATUS OF ENTITLEMENTS
29.65.050	29.18.205	FULFILLMENT OF LAND ENTITLEMENTS
29.65.060	29.18.206	SCHOOL, UNIVERSITY, AND MENTAL HEALTH LAND
29.65.070	29.18.207	SELECTION AND CONVEYANCE PROCEDURE
29.65.080	29.18.208	PAYMENT FOR LAND DEFICIENCY
29.65.090	29.18.209	AUTHORIZATION FOR LAND EXCHANGES
29.65.100	29.18.210	PUBLIC PURPOSE AND EXPANSION NEEDS
29.65.110	29.18.211	ELECTION OF BENEFITS
29.65.120	29.18.212	ADMINISTRATION
29.65.130	29.18.213	DEFINITIONS
<u>29.68.000</u>		<u>CHAPTER 68. MUNICIPAL PROGRAMS</u>

29.68.005		<u>ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT</u>
29.68.010	29.23.395	INTEENT OF AS 23.397-.401
29.68.020	29.23.397	COMMISSION
29.68.030	29.23.399	INTERNS
<u>29.68.035</u>		<u>ARTICLE 2. HISTORICAL DISTRICTS</u>
29.68.060	29.48.108	CREATION OF HISTORICAL DISTRICT COMMISSIONS
29.68.070	29.48.110	ESTABLISHMENT OF HISTORICAL DISTRICTS
<u>29.71.000</u>		<u>CHAPTER 71. GENERAL PROVISIONS</u>
29.71.010	29.73.030	ADVERSE POSSESSION
29.71.020	29.73.040	TAXATION OF MUNICIPALITIES
29.71.030	29.78.010	DEFINITIONS

**Agenda Suggestions
from the Title 29 Working Group
to the Title 29 Policy Group**

1. Are unified municipalities home rule or general law? This needs to be clarified.
2. We recommend that AS 29.08.050 Transition be repealed as out of date.
3. We recommend that the statute concerning REAAs be expanded to include procedures for integrating REAAs into newly organized boroughs.
4. AS 29.18.180. Organization Grants. The dollar amounts of the organizational grants are inadequate. We recommend the amount be tripled.
5. AS 29.68.290 Nomination of charter commission candidates. Should a legislative body be authorized to make appointments to the charter commission in case of vacancies on the commission because of a failure to elect enough people?
6. AS 29.68.440. Powers of a unified municipality. What is a unified municipality?
7. Should the percentage requirements for signatures on petitions be lowered?
8. AS 29.68.500 Methods of dissolution. The section regarding the methods of dissolution are confusing, in that the two methods outlined involve substantially the same processes.
9. AS 29.13.050 Initiative and Referendum. This section should be clarified so that Home Rule municipalities are not bound by the procedures set out in the statute.

10. We need a more precise way of dealing with inconsistencies between Home Rule and state enactments.

11. AS 29.13.100 Limitation of home rule powers. This "laundry list" of limitations on Home Rule needs to be reviewed. Should there be cross-referencing to the home rule provisions in other statutes?

12. Chapter 18. Development cities. The chapter on development cities should either be reviewed and improved or deleted.

13. Chapter 23. Municipal Officers and Employees. This chapter should have provisions for dealing with the public records of municipalities. Municipalities should have a public records policy such as "except as provided by ordinance, all records shall be public."

14. Should municipalities be allowed to set residency requirements for voters? Should the three year residency requirement for elected officials which municipalities are permitted to set be lowered to one year in view of Castner v. City of Homer, specifically upholding one year requirements?

15. We feel there should be alternate methods for majority requirements of the votes of municipal assemblies.

16. AS 29.23.021 Assembly composition and apportionment. We feel there should be a greater delineation between composition and reapportionment.

17. There should be provisions for emergency situations arising when there is a lack of a quorum.

18. AS 29.48.130 (a) This should be amended to make possible budget transfers and supplemental appropriations by resolution instead ordinance.

19. What should mayoral veto powers encompass?

20. How are planning responsibilities to be divided between cities and boroughs?

21. We recommend that the sections of chapter 23 dealing with the involvement of young people in local government be repealed.

KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney

THRU: Marvin Yoder, ^{my} Interim Borough Manager

FROM: M. Westfall, Revenue Collector _{AW}

RE: Title 29 Review

DATE: September 2, 1980

I have reviewed the material relating to the review of Title 29 and approve and support those portions pertaining to chapter 53 of this title.

A few other changes which might be considered are listed below:

1. Sec. 29.52.025 the classification of boats for purposes of taxation by tonnage should be changed to more realistic amounts.
2. Sec. 29.53.060 include the words having a situs within the taxing district after the word property. Many property owners believe that property not within the taxing district on January 1 of the taxing year is free of tax. Boats and airplanes are commonly removed from the taxing district during the first month of the year to avoid taxation.
3. Sec. 29.53.320 change person to receive redemption monies from clerk to tax collector who has in his/her possession the records of assessment and taxation, applied penalties, interest & costs.



A BILL

For an Act entitled: "An act providing for determination of full and true value by the Department of Community and Regional Affairs; and providing for an effective date."

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

* Section 1. AS 29.53 is amended by adding a new section to read:

AS 29.53.190. Determination of full and true value by Department of Community and Regional Affairs. (a) The Department of Community and Regional Affairs, in consultation with the assessor for each district, shall determine the full value of the taxable real and personal property in each district. If there is no local assessor or current local assessment for a district, then the Department of Community and Regional Affairs shall make the determination of full value from information available. In making the determination, the Department of Community and Regional Affairs shall be guided by AS 29.53.060. The determination of full value shall be made before October 1. The Department shall notify all municipalities for which a determination is done of that determination by October 1. The governing body of the borough or city which is the district may obtain judicial review of the determination by filing a motion in the superior

court of the judicial district in which the district is located within 30 days after receipt of the determination. The superior court may modify the determination of the Department of Community and Regional Affairs only upon a finding of abuse of discretion or upon a finding that there is no substantial evidence to support the determination.

(b) Motor vehicles subject to the motor vehicle registration tax under AS 28.10.255 shall be treated as taxable property for purposes of (a) of this section.

(c) To determine the debt-to-valuation ratio to be applied to the determination of state aid for school construction under AS 43.18.105-43.18.135, the Department of Community and Regional Affairs, in consultation with the responsible financial officer of each municipality which is a school district, shall annually determine the debt of the municipality and report the determination to the mayor of the municipality and the commissioner of the Department of Education. The determination shall be made by October 1 of each year and shall report the outstanding debt as of July 1 each year.

* Sec. 2. AS 29.88.020(d) is amended to read:

(d) The full and true assessed property value shall be determined by the department in the manner provided under AS 29.53.190 [AS 14.17.140]. When the determination of locally generated revenue includes revenue of a utility received under AS 29.88.010(c)(1)(E), the full and true assessed property value shall include the computed assessed value of the utility,

determined by dividing the amount of the payment in place of taxes made by the utility by the millage rate which would apply to the utility if the utility were subject to levy and collection of taxes under AS 29.53.

* Sec. 3. AS 14.17.140 is repealed.

* Sec. 4. This Act takes effect January 1, 1982.

A BILL

For an Act entitled: "An Act requiring disclosure on a real estate conveyance".

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

* Section 1. AS 34.15.345 is amended to read:

AS 34.15.345. Disclosure of address of record purchaser and consideration. (a) A conveyance may not be accepted for recording unless the instrument shows the mailing address of the buyer.

(b) No instrument evidencing a sale of real property shall be accepted for recording unless the face of the instrument shows the selling price paid for the transfer.

* Sec. 2. AS 34.15.350 is amended by adding a new subsection to read:

(b) "Selling price" means the consideration, in money or any other thing of value, paid, delivered or contracted to be paid or delivered, in return for the transfer of real property, including but not limited to the amount of a lien, mortgage, contract, indebtedness or other encumbrance against the property.

A BILL

For an Act entitled: "An Act relating to assessments and exemptions from property taxation; and providing for an effective date."

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

* Section 1. AS 29.53.020(h) is amended to read:

(h) Except as provided in (g) of this section, nothing in (e) - (1) [(1)] of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from granting similar exemptions by ordinance as provided in AS 29.53.025.

* Sec. 2. AS 29.53.020 is amended by adding new subsections to read:

(j) One motor vehicle owned by a resident 65 years of age or older on January 1 of the assessment year is exempt either from taxation on its assessed value or from the registration tax established under AS 28.10.431(b).

(k) The state shall reimburse a borough or city for tax revenues lost to it under (j) of this section.

(l) The Department of Community and Regional Affairs shall adopt regulations to implement the provisions of (g), (j), and (k) of this section.

* Sec. 3. AS 28.10.411(d) is repealed.

* Sec. 4. This Act is retroactive to January 1, 1981.

A BILL

For an Act entitled: "An Act relating to determination of full
and true assessed value for municipalities."

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

* Section 1. AS 29.38.020(e)(3) is amended to read:

(3) all other second class cities, by comparision, on
an individual city basis, with the most comparable cities [DETERMINING
THE AVERAGE FULL AND TRUE ASSESSED PROPERTY VALUE OF ALL CITIES HAVING
A POPULATION OF LESS THAN 750 PERSONS IN WHICH AN ASSESSMENT HAS BEEN
COMPLETED BY A MUNICIPALITY OR] for which a determination is [NOT] made
under (1) or (2) of this subsection. The department shall establish
which cities are most comparable for purposes of the determination.

public funds aimed at economic development would be converting or burdening the public purse, or at the very least, merely transferring income burdens from one public agency (welfare) to another, rather than obtaining private means for achieving reductions in unemployment. Public investment in designated economic development projects should be directed primarily toward stimulating private investment, since the costs to society are lessened. Except for manpower training, transferring income burdens from a welfare agency to a social program budget generally results in zero benefits and non-zero costs. The net result is an additional and needless cost to society. Most of the key investment guidelines that are appropriate for publicly-supported commercial and industrial projects can be derived from this simple observation. ALNA's project appraisal criteria and process translates these guidelines into a workable and systematic format. The advantages of this appraisal process are that (1) it provides decision-makers the information needed to adequately assess differences between private and social returns to capital; (2) it provides the decision-maker with a common analytical framework so that valid comparisons among projects can be made; and (3) it provides for a common language among the actors in the economic development field. (This common language is no small matter. Decision-making will be less than adequate as long as decision-makers attribute different meanings to the words used among them).

PROJECT APPRAISAL AS AN INSTRUMENT OF ECONOMIC DEVELOPMENT POLICY

ALNA views the project as the basic unit of analysis of commercial and industrial development. Each project should pass nine feasibility tests in a specific order. Projects failing to pass a test in the designated sequences would not proceed to the next test. For example, under the alternative sequence below, a project which is not technically feasible would not be expected to be financially feasible. A project which is not financially and economically feasible would not be expected to impact on poverty, etc. Ordering the feasibility tests in this manner achieves the following: (1) it clearly distinguishes the trade-offs between the main elements of a project; (2) it assures a project being financially and economically feasible before consideration of its poverty impact; and (3) it saves time for the analyst or the decision-maker. The nine feasibility tests for judging the worth of any project are:

Technical Feasibility

The test of technical justification is passed if the project is physically capable of performing its intended function. The key components to technical justification are appropriate engineering design, appropriate market, appropriate management, appropriate location, and appropriate comparative advantage. A technical analysis would involve the types of analyses listed below:

