

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

755 SCOM423: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

56. AS 29.63.090 - (O) January 14, 1974
Depending upon circumstances, a service area can embrace one or more cities as well as unincorporated areas.
57. AS 29.68.010(b)(3), 29.78.010 - (M) August 24, 1979
The state and the United States need not be considered "property owners" for purposes of obtaining consent to annexation by ordinance. This way property-owner consent is not lost when state or federal holders of rights of way, easements, railroads, streambeds and the like do not consent to annexation.
58. AS 29.68.010(b)(3) - (M) April 17, 1979
The Bureau of Land Management's townsite trustee is a "property owner" for purposes of the requirement of obtaining consent to annexation.
59. AS 29.68.020 - (O) April 29, 1975
The repeal of the provision which excluded military reservations from mandatory boroughs did not thereby cause their inclusion. The borough must annex military reservations.
60. AS 29.68.240, .410 - (O) February 18, 1976
A unified municipality can issue general obligation bonds approved by the voters of its predecessor units of government.
61. AS 29.68.500 - (O) October 5, 1973
Including an existing city within a new city does not, in itself, dissolve it. (This is probably wrong, i.e., the lesser is probably swallowed by the greater.)
62. (M) August 21, 1973
There is no state law which prohibits boroughs and municipalities from levying user charges and industrial cost recovery assessments for waste treatment facilities which have been federally funded.

ARTICLE X

LOCAL GOVERNMENT

Purpose and Construction

SECTION 1. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Local Government Powers

SECTION 2. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Boroughs

SECTION 3. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

Assembly

SECTION 4. The governing body of the organized borough shall be the assembly, and its composition shall be established by law or charter.

(The amendment to this section was approved by the voters of the State August 22, 1972 and became effective October 14, 1972. It deleted the second and third sentences which specified city and non-city representation on the borough assembly.)

Service Areas

SECTION 5. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, the new service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services.

Unorganized Boroughs

SECTION 6. The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Cities

SECTION 7. Cities shall be incorporated in a manner prescribed by law, and shall be a part of the borough in which they are located. Cities shall have the powers and functions conferred by law or charter. They may be merged, consolidated, classified, reclassified, or dissolved in the manner provided by law.

Council

SECTION 8. The governing body of a city shall be the council.

Charters

SECTION 9. The qualified voters of any borough of the first class or city of the first class may adopt, amend, or repeal a home rule charter in a manner provided by law. In the absence of such legislation, the governing body of a borough or city of the first class shall provide the procedure for the preparation and adoption or rejection of the charter. All charters, or parts or amendments of charters, shall be submitted to the qualified voters of the borough or city, and shall become effective if approved by a majority of those who vote on the specific question.

**Extended
Home Rule
Home Rule
Powers**

SECTION 10. The legislature may extend home rule to other boroughs and cities.

SECTION 11. A home rule borough or city may exercise all legislative powers not prohibited by law or by charter.

Boundaries

SECTION 12. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

**Agreements:
Transfer of
Powers**

SECTION 13. Agreements, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the State, or with the United States, unless otherwise provided by law or charter. A city may transfer to the borough in which it is located any of its powers or functions unless prohibited by law or charter, and may in like manner revoke the transfer.

**Local
Government
Agency**

SECTION 14. An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities; collect and publish local government information, and perform other duties prescribed by law.

**Special
Service
Districts**

SECTION 15. Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law.

STATE OF ALASKA

THE LEGISLATURE

1980

Source

CSSCR 66

Legislative
Resolve No.

39



Directing the Alaska Legislative Council to revise AS 29
(Municipal Government).

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

WHEREAS Alaska has a system of local government that differs uniquely in constitutional concept and in law from traditional local government; and

WHEREAS the law governing municipalities in Alaska was last reviewed completely in 1972 at which time significant elements of the local government structures were still in a formative stage; and

WHEREAS numerous amendments to the municipal code have been made since its adoption which have not been fully integrated into the code; and

WHEREAS much experience in the Alaska system of local government has been gained since adoption of the municipal code; and

WHEREAS there is a need for a comprehensive revision of the municipal code which will consider the 1972 code, amendments to it, and the experience gained since its adoption;

BE IT RESOLVED by the Alaska State Legislature that under the provisions of AS 24.20.090 and Uniform Rule 48(c) the Alaska Legislative Council is directed to prepare a revision of Title 29 of the Alaska Statutes (Municipal Government) by directing the legal services division of the Legislative Affairs Agency to prepare the revision with the assistance of a policy advisory group representative of the concerned public from all areas of the state and persons experienced in the application of AS 29, and soliciting the advice of the Alaska Code Revision Commission; and be it

FURTHER RESOLVED that the policy advisory group consist of two members of each house of the legislature appointed by the presiding officer of each house; public members of the policy advisory group shall be selected by the presiding officer of each house from persons recommended by legislative members, by the Department of Community and Regional Affairs, the Alaska Municipal League, the Rural Alaska Community Action Program, Inc., the Department of Law, and by the legal services division; and be it

FURTHER RESOLVED that a proposed revision of AS 29 be presented to the legislature during the first 30 days of the First Session of the Twelfth Legislature.

SCOMM

#23:12

NAME

SENT TO:

DATE:

Suggestions

Title 29 Rev.

Wkg Grp. Sventsen

16 Sep 80

SUGGESTIONS - TITLE 29 REVISION

AS 29.08.

(Allan Tesche)

Adopt uniform definitions of "municipality", "borough", and use the terms consistently throughout the title.

010 Need to be better defined

AS 29.08.010

(Gerald L. Sharp)

(& 29.13.010 & 100, & 29.78.010(1)(2)(8) - 29.68.010

A careful reading of the code indicates that a unified unit of home rule local government is not a municipality. Under these sections, it is not a home rule municipality. If this was the intent, it should be clarified in the definitions. Along this same line, all sections which apply to home rule boroughs and home rule cities should be reviewed to determine whether they should also apply to unified units.

AS 29.08.020

(Gerald L. Sharp)

An interpretive guide should be provided for the the court so that it does not seize upon this section to revive Dillon's rule.

AS 29.13.100

(Richard W. Garnett, III)(Allan E. Tesche)

Clarify criteria for application of non-title 29 provisions to home rule, maybe require inclusion in laundry list.

AS 29.13.100

(Gerald L. Sharp)

The effect of the phrase "acting otherwise than as provided" should be examined to determine whether this phrase means that a home rule municipality may do neither more nor less than is prescribed for home rule municipalities. See the Whitson case.

AS 29.18.

(Richard W. Garnett, III)

Clarify rights to VUU land vis a vis state classification under AS 38.

AS 29.18.130

(Gerald L. Sharp)

We should probably address REAA's under this section.

AS 29.18.140(a)(b)

(Gerald L. Sharp)

This section implies that a newly incorporated city or borough may succeed a home rule or previously incorporated general law city or borough. Was this meant?

SUGGESTIONS - TITLE 29 REVISION

AS 29.18.180

(Gerald L. Sharp)

Organizational grants under this section appear to be inadequate.

AS 29.18.330

(Gerald L. Sharp)

The resident training and hire preference should be examined for constitutionality.

AS 29.23.025(e) (9)

(Marjorie Gorsuch)

Clarify what happens to the reapportionment order if a reapportionment ordinance has not been approved by the voters.

AS 29.23.029

(Marjorie Gorsuch)

There should be additional provisions for judicial review and relief.

AS 29.23.031

(Marjorie Gorsuch)

There should be additional provisions for judicial review and relief.

AS 29.23.040

(Gerald L. Sharp)

(et.seq.) The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualifications of officers as these relate to the mayor, council, and assembly members should be uniform as between a city and a borough.

AS 29.23.050

(Allan E. Tesche)

The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

AS 29.23.060(a)

(Gerald L. Sharp)

This section implies that there may be no special meetings if any member is not notified.

AS 29.23.060(d)

(Gerald L. Sharp)

Some consideration should be give to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

SUGGESTIONS - TITLE 29 REVISION

AS 29.23.060(d)

(Allan E. Tesche)

Circumstances, other than financial interests, which allow a member to abstain should be better defined.

AS 29.23.070

(Gerald L. Sharp)

This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

33

AS 29.23.070 &

(City of St. Mary's)

(& 29.43.040) The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

AS 29.23.080

(Gerald L. Sharp)

This section should be checked to determine whether it tracks with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.080

(Allan E. Tesche)

The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

AS 29.23.130(B)

(Allan E. Tesche)

Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

AS 29.23.150

(Allan E. Tesche)

(& 29.23.470) Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

AS 29.23.170

(Allan E. Tesche)

This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto.

SUGGESTIONS - TITLE 29 REVISION

AS 29.23.170(cont'd)

(Allan E. Tesche)

For instance, if the mayor vetos a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden? *mayoral approval?*

AS 29.23.200

(Allan E. Tesche)

The three year residency requirement here is also probably invalid.

AS 29.23.210

(Gerald L. Sharp)

Does this require four votes on a procedural motion? This language should parallel the similar provisions for boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions. *why*

AS 29.23.210

(Allan E. Tesche)

As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

AS 29.23.250

(Allan E. Tesche)

Another probably invalid three year residency requirement.

AS 29.23.270

(Allan E. Tesche)

This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

AS 29.23.310

(Gerald L. Sharp)

Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)

(Gerald L. Sharp)

Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360

(Gerald L. Sharp)

My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

SUGGESTIONS - TITLE 29 REVISION

AS 29.23.370

(Gerald L. Sharp)

I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to service two different masters, the legislative body, and the chief administrator.

AS 29.23.395

(Gerald L. Sharp)

(Through .401) This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470

(Gerald L. Sharp)

I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480

(Gerald L. Sharp)

I suggest that the adoption of an ordinance at the very next meeting after the repeal of manager plan is expecting too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540

(Gerald L. Sharp)

The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school board's budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. Also, it appears that this section would permit a person working in the grants section of the Department of C&RA to serve on an assembly or a council.

AS 29.23.555

(Allan E. Tesche)

This section has been superceded by AS 39.50.

AS 29.23.570

(City of St. Mary's)

This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570.

SUGGESTIONS - TITLE 29 REVISION

AS 29.25.110

(Richard W. Garnett, III) (Allan E. Tesche)

Clarify application of public records law to municipality.

AS 29.28.

(Bruce Aronson)

Once a sufficient petition has been accepted, members of the council should not be able to resign and be re-appointed to the council.

AS 29.28.

(Bruce Aronson)

Statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition.

AS 29.28.

(Bruce Aronson)

A transition period should be provided by statute to allow a person recalled to service for a while after the recall election has been certified to allow a government to continue to operate.

AS 29.28.015

(Gerald L. Sharp)

I question why the mayor in a manager-type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030

(Gerald L. Sharp)

It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the State of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.040

(Richard W. Garnett, III)

More specificity as to whether recall may be based on "political" factors.

AS 29.28.070(b)

(Richard W. Garnett, III)

Service area initiatives are potential problems; could lead to "Balkanization" of municipalities.

SUGGESTIONS - TITLE 29 REVISION

AS 29.28.070(b)

(Richard W. Garnett, III) (Allan Tesche)

Standardize use of "general" and "regular" as to elections to avoid uncertainty as to required number of signatures.

AS 29.28.080(a)

(Gerald L. Sharp)

This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the

AS 29.28.080(a) (cont'd)

(Gerald L. Sharp)

initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.090(b)

(Richard W. Garnett, III)

Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

AS 29.28.110

(Gerald L. Sharp)

This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

AS 29.28.130

(Bruce Aronson) (Lee Sharp)

Change provision so that all officials would be subject to recall after six months in office. The six month grace period would not apply if a person is re-elected to the same office.

AS 29.28.130

(Allan E. Tesche)

(Et. seq.) Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28.070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

AS 29.28.140

(Bruce Aronson)

Grounds for recall are too narrow.

SUGGESTIONS - TITLE 29 REVISION

AS 29.28.140

(Gerald L. Sharp)

This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting.

AS 29.28.140(cont'd)

(Gerald L. Sharp)

They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.

AS 29.28.150

(Bruce Aronson) (Lee Sharp)

A recall petition should be required to contain the mailing address of each person who signs it and a separate petition should be filed for each person sought to be recalled. Statement of grounds should be limited to 200 words.

AS 29.28.160

(Gerald L. Sharp)

Either the clerk of the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170

(Gerald L. Sharp)

I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60? If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be give an additional ten days for their sloppiness or inadequate performance.

AS 29.28.180

(Bruce Aronson)

A new petition should not be filed sooner than six months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

SUGGESTIONS - TITLE 29 REVISION

AS 29.28.190

(Elsie O'Brien)

Add a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.

AS 29.28.200(c)

(Gerald L. Sharp)

If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name is removed from the recall ballot, may he then be reappointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?

AS 29.28.210

(Gerald L. Sharp)

If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?

AS 29.28.250

(Jack Chenoweth)

Include a provision somewhere by which a state officer has authority to appoint municipal voters to fill elected city or borough offices when the number of members drops below the number required to produce a quorum.

AS 29.28.250

(Gerald L. Sharp)

What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS.29.33.

(Allan E. Tesche)

The current language of this chapter, as it incorporates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restrictive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

AS 29.33.

(Allan E. Tesche)

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

SUGGESTIONS - TITLE 29 REVISION

AS 29.33.010

(Gerald L. Sharp)

Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in it's Lafayette decision.

AS 29.33.050

(Gerald L. Sharp)

While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read "and shall establish, maintain, and operate".

AS 29.33.070

(Allan E. Tesche)

It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

AS 29.33.070

(Allan E. Tesche)

(Through 29.33.245) Serious thought should be given to the purpose of the planning, platting, and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

AS 29.33.080(e)

(Gerald L. Sharp)

Consideration should also be give here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

AS 29.33.085(b)

(Gerald L. Sharp)

The requirement that the commission present new recommendations on a comprehensive plane very two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it does not appear that there is any question as to the validity of an ordinance which is adopted pursuant to a comprehensive plan which has not been reviewed for more than two years.

SUGGESTIONS - TITLE 29 REVISION

AS 29.33.085(b) (cont'd)

(Gerald L. Sharp)

Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.110(b)(1)

(Gerald L. Sharp)

I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works.

AS 29.33.110(b)(1) (cont'd)

(Gerald L. Sharp)

The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)

(Gerald L. Sharp)

It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance", or "requests...".

AS 29.33.120

(Gerald L. Sharp)

It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)

(Gerald L. Sharp)

I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150

(Gerald L. Sharp)

It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

How do rules & regs relate to subdivision ordinance

SUGGESTIONS - TITLE 29 REVISION

AS 29.33.150(b)

(Gerald L. Sharp)

(& 29.33.169(c)) These sections need to be revised out of the code.

170(b) - can leg body limit boards right to grant waiver

AS 29.33.170(a)(1)

(Gerald L. Sharp)

I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.

AS 29.33.190

This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.190

(Allan E. Tesche)

This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which has not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even

AS 29.33.190(cont'd)

(Allan E. Tesche)

though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

AS 29.33.200

(Gerald L. Sharp)

This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

resubdiv. of lot = replat?

AS 29.33.240

(Gerald L. Sharp)

I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vests in a municipality upon vacation.

245 - administrative officer

SUGGESTIONS - TITLE 29 REVISION

AS 29.33.250

(Allan E. Tesche)

Presumably the transfer required is one from all cities exercising the power rather than from a city.

service area of city inside

+ after borough has acquired non-annexable power

Also - if borough has non-annexable

AS 29.38.

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

AS 29.41.

(Bruce Aronson) (Lee Sharp)

Eliminate third class boroughs. Re-examine idea.

AS 29.48.

(Richard W. Garnett, III)

Consider need for APUC regulation of municipality owned utilities.

AS 29.48.010

(Gerald L. Sharp)

I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I believe some consideration should be given to whether or not there should be a catch-all grant clause.

AS 29.48.010(cont'd)

Gerald L. Sharp

Also, something should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.030

(Bruce Aronson)

There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what type of enforcement services a city must provide.

AS 29.48.030

(Palmer McCarter)

Clarify whether "health and hospital power" is one or two separate local powers.

AS 29.48.030(b)

(Allan E. Tesche)

(& 29.48.035(b)&(c)) These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code. Moreover, AS 29.48.030 and .35, inasmuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

AS 29.48.030(b) (cont'd)

(Allan E. Tesche)

(& 29.48.035(b)&(c)) Reference to powers granted to second class boroughs to construct and maintain Local Service Road and Trails under AS 19.30.251 should be made in this section. Reference to the power granted to local governments to regulate use of public streets, alleys, and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

AS 29.48.030(a) (12)

(Allan E. Tesche)

The term transportation "system" used in this section should be defined.

AS 29.48.033

(Gerald L. Sharp)

Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

035 - first sentence of (a) should be general grant

AS 29.48.050

(Gerald L. Sharp)

I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.070

(Gerald L. Sharp)

(& 29.48.080 & 48.090) The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)

(Gerald L. Sharp)

Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110

(Gerald L. Sharp)

AS 29.48.110 should be changed to make it clear that a municipality may establish more than a single historic district.

AS 29.48.130(5)

(Richard W. Garnett, III)

No need to require ordinance for routine fund transfers.

AS 29.48.150(a)

(Richard W. Garnett, III)

Majority required to set ordinance for hearing. Should be less.

AS 29.48.160(b)

(Gerald L. Sharp)

If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.170

(Richard W. Garnett, III)

Need some procedure for enacting municipal regulations.

AS 29.48.190(b)

(Gerald L. Sharp)

This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and before a capitol improvement.

AS 29.48.190

(City of St. Mary's)

Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except through lengthy procedures to amend the budget.

AS 29.48.190 (cont'd)

(City of St. Mary's)

The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or \$10,000 whichever is less of the original appropriation.

AS 29.48.200

(Gerald L. Sharp)

The fine limitation and imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

AS 29.48.210

(Gerald L. Sharp)

This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide bases.

AS 29.48.220

(City of St. Mary's)

The audit requirement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class.

AS 29.48.220(cont'd)

(City of St. Mary's)

The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million.

AS 29.48.250

(Gerald L. Sharp)

Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260

(Richard W. Garnett, III)

Vote on sale of property over \$25,000 is unduly burdensome.

AS 29.48.260

(Gerald L. Sharp)

I believe the exemption which is set forth in (d) should be expanded to encompass any land which the municipality disposes of.

AS 29.48.260

(City of St. Mary's)

I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's.

AS 29.48.260(cont'd)

(City of St. Mary's)

First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak English from participating in auctions.

AS 29.48.260(cont'd)

(City of St. Mary's)

The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

AS 29.48.260

(Allan E. Tesche)

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

AS 29.48.270(b)(c)

(Gerald L. Sharp)

These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

AS 29.48.310

(Gerald L. Sharp)

(& 29.48.320, & 330) Although these sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.

(Allan E. Tesche)

Should be amended to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years.

AS 29.53.(cont'd)

(Allan E. Tesche)

An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

AS 29.53.010

(Richard W. Garnett, III)

Permit exemption of all personalty or of various classes.

AS 29.53.010

(Gerald L. Sharp)

Again the problem of how this is to apply to unified units of government; also, this section should be changed to permit the use of areawide revenues on a non-areawide bases.

AS 29.53.020

(Clara M. Eccles)

Extend property tax exemption to include disabled veterans of any age.

AS 29.53.020(a)(1)

(Gerald L. Sharp)

Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

AS 29.53.020(a)(3)

(Gerald L. Sharp)

A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps hospital, which are used in this section. Also, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt;

AS 29.53.020(a)(3) (cont'd)

(Gerald L. Sharp)

for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.025(b)(1)

(Richard W. Garnett, III)

Clarify "delegation" of powers to service areas.

AS 29.53.030

(Gerald L. Sharp)

This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

AS 29.53.060

(Gerald L. Sharp)

Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.080

(Ribert H. Ziegler, Sr.)

Assessors should not be allowed to have access to sale price of property by requesting this information from buyers or sellers.

AS 29.53.135

(Gerald L. Sharp)

This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to exempt use.

AS 29.53.135

(Allan E. Tesche)

The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

AS 29.53.150

(Gerald L. Sharp)

A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

AS 29.53.180

(Gerald L. Sharp)

This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.415

(Gerald L. Sharp)

(& 29.53.440) Something needs to be added to these sections to take care of problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.58.

(Ben T. Delahay)

A new section should be added authorizing that an ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

AS 29.63.

(Ben T. Delahay)

The chapter on service areas should be clarified; there is too much authority in the assembly to handle decisions in the service area which should be made by the people paying the taxes in the area.

AS 29.63.

(Bruce Aronson)

Community councils should be advisory only by statute and money from the state for service areas ought to be appropriated for the city, not the local council.

AS 29.63.090(e)

(Richard W. Garnett, III)

Clarify "delegation" of powers to service areas.

AS 29.63.090

(Elsie O'Brien)

Loans by borough to service area should be subject to prior approval by voters within the service area.

AS 29.63.090

(Allan E. Tesche)

The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

AS 29.68.

((Bruce Aronson)

Statutes should be changed so that cities are not able to annex territory without providing services to the annexed area and so that people living outside cities who are receiving services pay for them.

AS 29.68.010(cont d)

(City of St. Mary's)

The delay in time between the decision of the Local Boundary commission and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

AS 29.68.010

(City of St. Mary's)

The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative session has begun.

AS 29.73.020

(Gerald L. Sharp)

This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.

AS 29.78.101(16)

(Richard W. Garnett, III)

Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

General Revision Suggestions - Title 29

AS 29

(Tanana Chiefs Conference, Inc.)

Do not create new forms of local government in the unorganized borough, but rather recognize the traditional governments currently operating.

(Tanana Chiefs Conference, Inc.)

Allow local government to contract for the providing of state services, so that programs can be administered locally.

(Tanana Chiefs Conference, Inc.)

Coordinated regional planning should be done by existing local governments on a voluntary basis through the formation of consortiums of existing governments. These would be allowed to jointly exercise authority outside of their local boundaries.

(Tanana Chiefs Conference, Inc.)

Reduce municipal liability by raising the standard of municipal tort liability for only those official acts involving, "wanton and willful" conduct rather than mere negligence. Municipal ordinances and regulations should be assimilated into state law to allow state prosecution of local violations.

(Tanana Chiefs Conference, Inc.)

Alternatives for fuller local participation in the unorganized borough in state action:

1. A community or consortium must agree to agency actions/plans affecting the community. In the absence of consent, the agency would have to show, in a locally neutral administrative hearing, that the best interest of the state requires the action/plan.
2. Communities or consortiums produce regional plans with which state agencies must comply or get a waiver from the community or proceed through a local neutral hearing.
3. Agencies could be required to have local plans/actions approved after a local hearing by a local hearing officer.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.

(Ernst Mueller)

[Also applicable to AS 46.07.020(2)] Replace the term "village" with "eligible rural community".

AS 29.

(David Dye, Planner III, C&RA)

Improve the index.

AS 29.

(Richard Careaga)

Consider replacing present local planning provisions with the Model Land Development Code (1975). Particularly consider the Code's division of responsibilities between state and local planning.

AS 29.

(Richard Careaga)

Tie other provisions located on other titles to Title 29, AS 46.35 in particular, if they impose obligations on local governments in addition to those set out in Title 29.

AS 29.

(Ivan Widom)

Reconsider the 40% runoff election and perhaps remove that requirement.

AS 29.

(Frederick McGinnis)

Allow for local administration of DHSS programs. See "Outline of Discussion Topic".

AS 29.08.

(Allan Tesche)

Adopt uniform definitions of "municipality", "borough", and use the terms consistently throughout the title.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.08.010

(Gerald L. Sharp)

(& 29.13.010 & 100, & 29.78.010(1)(2)(8)

A careful reading of the code indicates that a unified unit of home rule local government is not a municipality. Under these sections, it is not a home rule municipality. If this was the intent, it should be clarified in the definitions. Along this same line, all sections which apply to home rule boroughs and home rule cities should be reviewed to determine whether they should also apply to unified units.

AS 29.08.020

(Gerald L. Sharp)

An interpretive guide should be provided for the the court so that it does not seize upon this section to revive Dillon's rule.

AS 29.13.100

(Richard W. Garnett, III)(Allan E. Tesche)

Clarify criteria for application of non-title 29 provisions to home rule, maybe require inclusion in laundry list.

AS 29.13.100

(Gerald L. Sharp)

The effect of th phrase "acting otherwise than as provided" should be examined to determine whethr this phrase means that a home rule municipality may do neither more nor less than is prescribed for home rule municipalities. See the Whitson case.

AS 29.18.

(Richard W. Garnett, III)

Clarify rights to WU land vis a vis state classification under AS 38.

AS 29.18.

(David Dye, Planner III, C&RA)

Eliminate or restructure provisions dealing with development cities.

AS 29.18.130

(Gerald L. Sharp)

We should probably address REAA's under this section.

AS 29.18.140(a)(b)

(Gerald L. Sharp)

This section implies that a newly incorporated city or borough may succeed a home rule or previously incorporated general law city or borough. Was this meant?

AS 29.18.180

(Gerald L. Sharp)

Organizational grants under this section appear to be inadequate.

AS 29.18.330

(Gerald L. Sharp)

The resident training and hire preference should be examined for constitutionality.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.23.025(e) (9)

(Marjorie Gorsuch)

Clarify what happens to the reapportionment order if a reapportionment ordinance has not been approved by the voters.

AS 29.23.029

(Marjorie Gorsuch)

There should be additional provisions for judicial review and relief.

AS 29.23.031

(Marjorie Gorsuch)

There should be additional provisions for judicial review and relief.

AS 29.23.040

(Gerald L. Sharp)

(et.seq.) The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualifications of officers as these relate to the mayor, council, and assembly members should be uniform as between a city and a borough.

AS 29.23.050

(Allan E. Tesche)

The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

AS 29.23.060(a)

(Gerald L. Sharp)

This section implies that there may be no special meetings if any member is not notified.

AS 29.23.060(d)

(Gerald L. Sharp)

Some consideration should be give to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

AS 29.23.060(d)

(Allan E. Tesche)

Circumstances, other than financial interests, which allow a member to abstain should be better defined.

AS 29.23.070

(Gerald L. Sharp)

This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.070 &

(City of St. Mary's)

(& 29.43.040) The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.23.080

(Gerald L. Sharp)

This section should be checked to determine whether it tracks with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.080

(Allan E. Tesche)

The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

AS 29.23.130(B)

(Allan E. Tesche)

Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

AS 29.23.150

(Allan E. Tesche)

(& 29.23.470) Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

AS 29.23.170

(Allan E. Tesche)

This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto.

AS 29.23.170(cont'd)

(Allan E. Tesche)

For instance, if the mayor vetos a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

AS 29.23.200

(Allan E. Tesche)

The three year residency requirement here is also probably invalid.

AS 29.23.210

(Gerald L. Sharp)

Does this require four votes on a procedural motion? This language should parallel the similar provisions for boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions.

AS 29.23.210

(Allan E. Tesche)

As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

AS 29.23.250

(Allan E. Tesche)

Another probably invalid three year residency requirement.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.23.270

(Allan E. Tesche)

This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

AS 29.23.310

(Gerald L. Sharp)

Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)

(Gerald L. Sharp)

Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360

(Gerald L. Sharp)

My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

AS 29.23.370

(Gerald L. Sharp)

I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to serve two different masters, the legislative body, and the chief administrator.

AS 29.23.395

(Gerald L. Sharp)

(Through .401) This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470

(Gerald L. Sharp)

I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480

(Gerald L. Sharp)

I suggest that the adoption of an ordinance at the very next meeting after the repeal of manager plan is expecting too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540

(Gerald L. Sharp)

The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school board's budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. Also, it appears that this section would permit a person working in the grants section of the Department of C&RA to serve on an assembly or a council.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/83

AS 29.23.555

(Allan E. Tesche)

This section has been superceded by AS 39.50.

AS 29.23.570

(City of St. Mary's)

This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570.

AS 29.25.110

(Richard W. Garnett, III) (Allan E. Tesche)

Clarify application of public records law to municipality.

AS 29.28.

(Bruce Aronson)

Once a sufficient petition has been accepted, members of the council should not be able to resign and be re-appointed to the council.

AS 29.28.

(Bruce Aronson)

Statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition.

AS 29.28.

(Bruce Aronson)

A transition period should be provided by statute to allow a person recalled to service for a while after the recall election has been certified to allow a government to continue to operate.

AS 29.28.015

(Gerald L. Sharp)

I question why the mayor in a manager-type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030

(Gerald L. Sharp)

It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the State of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.040

(Richard W. Garnett, III)

More specificity as to whether recall may be based on "political" factors.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.28.070(b)

(Richard W. Garnett, III)

Service area initiatives are potential problems; could lead to "Balkanization" of municipalities.

AS 29.28.070(b)

(Richard W. Garnett, III) (Allan Tesche)

Standardize use of "general" and "regular" as to elections to avoid uncertainty as to required number of signatures.

AS 29.28.080(a)

(Gerald L. Sharp)

This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the

AS 29.28.080(a) (cont'd)

(Gerald L. Sharp)

initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.090(b)

(Richard W. Garnett, III)

Not specifically provided that assembly may not immediately repeal ordinance enacted under threat of initiative.

AS 29.28.110

(Gerald L. Sharp)

This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

AS 29.28.130

(Bruce Aronson) (Lee Sharp)

Change provision so that all officials would be subject to recall after six months in office. The six month grace period would not apply if a person is re-elected to the same office.

AS 29.28.130

(Allan E. Tesche)

(Et. seq.) Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28.070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

AS 29.28.140

(Bruce Aronson)

Grounds for recall are too narrow.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.28.140

(Gerald L. Sharp)

This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting.

AS 29.28.140 (cont'd)

(Gerald L. Sharp)

They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.

AS 29.28.140

(JoAnne Shanley)

There could be an argument made for consistency between this section and AS 15.45.510 which provides the grounds for recall of state officials.

AS 29.28.150

(Bruce Aronson) (Lee Sharp)

A recall petition should be required to contain the mailing address of each person who signs it and a separate petition should be filed for each person sought to be recalled. Statement of grounds should be limited to 200 words.

AS 29.28.150

(JoAnne Shanley)

This section 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.

AS 29.28.160

(Gerald L. Sharp)

Either the clerk of the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170

(Gerald L. Sharp)

I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60? If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be give an additional ten days for their sloppiness or inadequate performance.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.28.180

(Bruce Aronson)

A new petition should not be filed sooner than six months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.

AS 29.28.190

(Elsie O'Brien)

Add a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.

AS 29.28.190

(JoAnne Shanley)

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

AS 29.28.200(c)

(Gerald L. Sharp)

If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name is removed from the recall ballot, may he then be reappointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?

AS 29.28.210

(Gerald L. Sharp)

If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?

AS 29.28.250

(Jack Chenoweth)

Include a provision somewhere by which a state officer has authority to appoint municipal voters to fill elected city or borough offices when the number of members drops below the number required to produce a quorum.

AS 29.28.250

(Gerald L. Sharp)

What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS.29.33.

(Allan E. Tesche)

The current language of this chapter, as it incorporates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restrictive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.33.

(Allan E. Tesche)

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

AS 29.33.

(Ivan Widom)

Boroughs have too much power. A borough should not plan for a city.

AS 29.33.010

(Gerald L. Sharp)

Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in it's Lafayette decision.

AS 29.33.050

(Gerald L. Sharp)

While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read "and shall establish, maintain, and operate".

AS 29.33.070

(Allan E. Tesche)

It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

AS 29.33.070

(Allan E. Tesche)

(Through 29.33.245) Serious thought should be given to the purpose of the planning, platting, and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

AS 29.33.070(b)

(JoAnne Shanley)

Redraft to read: 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 ordinances 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.

AS 29.33.070(b)(2)

(David Dye, Planner III, C&RA)

Do not allow a borough to delegate planning authority to a city, but allow only the delegation of administrative and enforcement responsibilities.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.33.080(e)

(Gerald L. Sharp)

Consideration should also be give here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

AS 29.33.080(f)

(David Dye, Planner III, C&RA)

Require the assembly to adopt rules and regulations by ordinance. In the alternative, add a section requiring regulations of all municipal boards, commissions, and departments to be codified and published.

AS 29.33.080(b) (4)

(David Dye, Planner III, C&RA)

Define the term "official map".

AS 29 33.085(b)

(Gerald L. Sharp)

The requirement that the commission present new recommendations on a comprehensive plane very two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it does not appear that there is any question as to the validity of an ordinance which is adopted pursuant to a comprehensive plan which has not been reviewed for more than two years.

AS 29.33.085(b) (cont'd)

(Gerald L. Sharp)

Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.090

(David Dye, Planner III, C&RA)

Eliminate the use of the term "zoning" and use "land use regulation". Add enabling legislation for the transfer of development rights.

AS 29.33.110(b) (1)

(Gerald L. Sharp)

I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.33.110(b)(1)(cont'd)

(Gerald L. Sharp)

The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)

(Gerald L. Sharp)

It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance", or "requests...".

AS 29.33.120

(Gerald L. Sharp)

It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)

(Gerald L. Sharp)

I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150

(Gerald L. Sharp)

It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

AS 29.33.150(b)

(Gerald L. Sharp)

(& 29.33.169(c)) These sections need to be revised out of the code.

AS 29.33.150(a)

(David Dye, Planner III, C&RA)

Explicitly state that all subdivisions are required to be platted and that plats must be recorded. Integrate AS 40.15 into Title 29.

AS 29.33.170

(David Dye, Planner III, C&RA)

Modify waiver provisions and add authority for short subdivisions. See model provision.

AS 29.33.170(a)(1)

(Gerald L. Sharp)

I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.33.190

This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.190

(Allan E. Tesche)

This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which has not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even

AS 29.33.190(cont'd)

(Allan E. Tesche)

though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands to obtain release for portions of lots or tracts originally subdivided even though such lands were illegally subdivided in violation of AS 29.33.190.

AS 29.33.200

(Gerald L. Sharp)

This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

AS 29.33.240

(Gerald L. Sharp)

I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vests in a municipality upon vacation.

AS 29.33.250

(Allan E. Tesche)

Presumably the transfer required is one from all cities exercising the power rather than from a city.

AS 29.38.

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities?)

AS 29.41.

(Bruce Aronson) (Lee Sharp)

Eliminate third class boroughs. Re-examine idea.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.41.

(David Dye)

Specifically include or exclude all or part of the provisions of AS 29.48., especially 29.48.010 and 29.48.260.

AS 29.48.

(Richard W. Garnett, III)

Consider need for APUC regulation of municipality owned utilities.

AS 29.48.

(David Dye, Planner III, C&RA)

Add a new section allowing preferences in land being disposed of to individuals to certain classes of people (heads of household, non-owners of real property) to avoid the use of durational residency requirements. Allow a preference for people who have occupied land after December 18, 1971. See proposed draft.

AS 29.48.010

(Gerald L. Sharp)

I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I believe some consideration should be given to whether or not there should be a catch-all grant clause.

AS 29.48.010(cont'd)

Gerald L. Sharp

Also, something should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.010(9)

(David Dye, Planner III, C&RA)

Rewrite to provide procedural safeguards (the action be done by ordinance). Allow for land exchanges between municipalities and private persons. Under ANSCA, municipalities will receive land for future municipal expansion, but some municipalities will not be able to select land which is near the municipality because land is not available. It would be advantageous to allow for exchange of inconveniently located parcels.

AS 29.48.020

(David Dye, Planner III, C&RA)

This section should be placed in another chapter. It does not deal with "Powers Applicable to All Municipalities".

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.48.030

(Bruce Aronson)

There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what type of enforcement services a city must provide.

AS 29.48.030

(Palmer McCarter)

Clarify whether "health and hospital power" is one or two separate local powers.

AS 29.48.030

(Gerald L. Sharp)

This may be the appropriate section to deal with the Lafayette antitrust problems. Under subsection (b), someone to check to determine whether the reference to the Alaska Transportation Commission makes sense in the light of SB 577. (Sorry, I do not have the bill with me as I dictate this.)

AS 29.48.030(b)

(Allan E. Tesche)

(& 29.48.035(b)&(c)) These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code. Moreover, AS 29.48.030 and .35, inasmuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

AS 29.48.030(b) (cont'd)

(Allan E. Tesche)

(& 29.48.035(b)&(c)) Reference to powers granted to second class boroughs to construct and maintain Local Service Road and Trails under AS 19.30.251 should be made in this section. Reference to the power granted to local governments to regulate use of public streets, alleys, and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

AS 29.48.030(a)(12)

(Allan E. Tesche)

The term transportation "system" used in this section should be defined.

AS 29.48.033

(Gerald L. Sharp)

Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

AS 29.48.035(14)

(JoAnne Shanley)

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

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.48.037

(JoAnne Shanley)

(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.

AS 29.48.037(cont'd)

(JoAnne Shanley)

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 29.48.050

(Gerald L. Sharp)

I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.050(d)

(JoAnne Shanley)

Redraft to read: 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.

AS 29.48.070

(Gerald L. Sharp)

(& 29.48.080 & 48.090) The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)

(Gerald L. Sharp)

Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110

(Gerald L. Sharp)

AS 29.48.110 should be changed to make it clear that a municipality may establish more than a single historic district.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.48.130(5)

(Richard W. Garnett, III)

No need to require ordinance for routine fund transfers.

AS 29.48.150(a)

(Richard W. Garnett, III)

Majority required to set ordinance for hearing. Should be less.

AS 29.48.150

(Ivan Widom)

Clarify the number of times an ordinance should be voted upon.

AS 29.48.160(b)

(Gerald L. Sharp)

If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.170

(Richard W. Garnett, III)

Need some procedure for enacting municipal regulations.

AS 29.48.190(b)

(Gerald L. Sharp)

This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and before a capitol improvement.

AS 29.48.190

(City of St. Mary's)

Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except through lengthy procedures to amend the budget.

AS 29.48.190 (cont'd)

(City of St. Mary's)

The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or \$10,000 whichever is less of the original appropriation.

AS 29.48.200

(Gerald L. Sharp)

The fine limitation and imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.48.210

(Gerald L. Sharp)

This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide bases.

AS 29.48.220

(City of St. Mary's)

The audit requirement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class.

AS 29.48.220(cont'd)

(City of St. Mary's)

The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million.

AS 29.48.250

(Gerald L. Sharp)

Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260

(Richard W. Garnett, III)

Vote on sale of property over \$25,000 is unduly burdensome.

AS 29.48.260

(Gerald L. Sharp)

I believe the exemption which is set forth in (d) should be expanded to encompass any land which the municipality disposes of.

AS 29.48.260

(City of St. Mary's)

I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's.

AS 29.48.260(cont'd)

(City of St. Mary's)

First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak English from participating in auctions.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.48.260(cont'd)

(City of St. Mary's)

The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

AS 29.48.260

(Allan E. Tesche)

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover, the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

AS 29.48.260(a)

(David Dye)

The term "municipal purpose" should be defined or standards for determining when land is no longer required for municipal purposes should be added.

AS 29.48.260(c)

(David Dye, Planner III, C&RA)

Add authority for disposal by lottery of land. Increase the \$25,000.00 figure by two to four times.

AS 29.48.260(d)

(David Dye, Planner III, C&RA)

Rewrite to exempt transfers of land for specific purposes regardless of the source of the land.

AS 29.48.260(e)

(David Dye, Planner III, C&RA)

Exclude these transactions for the requirements of (c).

AS 29.48.270(b)(c)

(Gerald L. Sharp)

These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.48.310

(Gerald L. Sharp)

(& 29.48.320, & 330) Although these sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.

(Allan E. Tesche)

Should be amended to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years.

AS 29.53. (cont'd)

(Allan E. Tesche)

An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

AS 29.53.

(Terry Earley, State Assessor)

Add a section requiring the Department of Community and Regional Affairs, in consultation with an assessor, to determine the full value of taxable property in each district. See proposed bill draft.

AS 29.53.

(Dave Braden, Assessor)

Add a section requiring confidentiality of information gathered for assessment purposes should be added. See sample statutes.

AS 29.53.

(Dave Braden, Assessor)

Assess exempt property used by a non-exempt person. See sample Michigan law.

AS 29.53.

(Michael Worley, Assessor)

Add a section allowing the assessment roll to be corrected by the assessor and an adjustment made subsequent to its certification.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.53.010

(Richard W. Garnett, III)

Permit exemption of all personalty or of various classes.

AS 29.53.010

(Gerald L. Sharp)

Again the problem of how this is to apply to unified units of government: also, this section should be changed to permit the use of areawide revenues on a non-areawide bases.

AS 29.53.020

(Clara M. Eccles)

Extend property tax exemption to include disabled veterans of any age.

AS 29.53.020

(Terry Earley, State Assessor)

Exempt one motor vehicle owned by a resident 65 years of age or older from taxation. See proposed bill draft.

AS 29.53.020

(Dave Braden, Assessor)

It is logical that reimbursement be limited to that amount which exceeds a local exemption granted to senior citizens, but to extend it to a local exemption that if applied for "would have been granted" is too much. Mobile homes should not be taxed as real property, but should be licensed like motor vehicles at which time an ownership tax is charged.

AS 29.53.020(c)

(Michael Worley, Assessor)

Delete "educational groups for classroom space".

AS 29.53.020(f)

(Michael Worley, Assessor)

After "granted" on the first line insert a reference "under (e) of this section".

AS 29.53.020

(Mark Lewis, City Manager, Valdez)

Change the age limit for qualifying for the senior tax exemption to 62 to encourage people to retire earlier.

AS 29.53.020(a)(1)

(Gerald L. Sharp)

Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.53.020(a) (2)

(Michael Worley, Assessor)

Delete \$500.00 limitation on the exemption of household furniture.

AS 29.53.020(a) (3)

(Gerald L. Sharp)

A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps hospital, which are used in this section. Also, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt;

AS 29.53.020(a) (3) (cont'd)

(Gerald L. Sharp)

for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.025

(M. Westfall)

Classification of boats for purposes of taxation by tonnage should be changed to more realistic amounts.

AS 29.53.025(b) (1)

(Richard W. Garnett, III)

Clarify "delegation" of powers to service areas.

AS 29.53.025(b) (2) (A)

(Michael Worley, Assessor)

Delete optional exemption for household furniture.

AS 29.53.030

(Gerald L. Sharp)

This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

AS 29.53.030

(Michael Worley, Assessor)

Replace section dealing with mining claims with a local severance tax on all resources (timber, fill, minerals, etc.)

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.53.030(b)

(Michael Worley, Assessor)

Delete "30 days before the equalization hearings".

AS 29.53.035(c)

(Dave Braden, Assessor)

The income requirement for the farm use exemption should be reduced to 5% or eliminated in order to encourage agriculture in the state. Consider additional preferential tax treatment.

AS 29.53.050(b)

(Michael Worley, Assessor)

Change the \$1,000.00 to \$1,500.00 to be consistent with 29.53.045.

AS 29.53.060

(Gerald L. Sharp)

Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.060

(M. Westfall)

Include the words "having a situs within the taxing district" after the word "property". Boats and airplanes are commonly removed from the district during the first month of the year to avoid taxation.

AS 29.53.080

(Ribert H. Ziegler, Sr.)

Assessors should not be allowed to have access to sale price of property by requesting this information from buyers or sellers.

AS 29.53.110(a)

(Michael Worley, Assessor)

Delete "and the dates when the board of equalization will sit" for the assessment notice requirement.

AS 29.53.120(a)

(Michael Worley)

Insert a requirement that a person advise the assessor of errors within 30 days of the effective date of the notice.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.53.120(b)

(Michael Worley, Assessor)

Delete. Add the following subsection: "If the property owner disagrees with the assessed value, the assessor shall review the assessment and inform the property owner of his findings allowing 10 days for appeal to the board. If the assessed value changes, the assessor shall send a revised notice to the property owner".

AS 29.53.130(b)

(Michael Worley, Assessor)

Amend to allow 10 days for appeal from the date the notice is effective. Delete "unless the board finds that the taxpayer was unable to comply".

AS 29.53.135

(Gerald L. Sharp)

This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to exempt use.

AS 29.53.135

(Allan E. Tesche)

The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

AS 29.53.135

(Michael Worley)

Provide that the board of equalization consist of not fewer than three members. Delete "including but not limited to quorum and voting requirements".

AS 29.53.140(c)

(Michael Worley, Assessor)

Delete "or improper" and "or proved at the hearing".

AS 29.53.150

(Gerald L. Sharp)

A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.53.180

(Gerald L. Sharp)

This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.320

(M. Westfall)

Change person to receive redemption monies from clerk to tax collector, who has the records of assessment and taxation.

AS 29.53.390(a)

(Michael Worley)

Delete "against the borough, the borough shall refund the amount of taxes to the taxpayer" and insert "or if in the absence of suit, the borough assembly determines that judgment for the recovery of the taxes would be obtained if legal proceedings were brought, the amount of the taxes shall be paid to the taxpayer".

AS 29.53.415

(Gerald L. Sharp)

(& 29.53.440) Something needs to be added to these sections to take care of problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.58.

(Ben T. Delahay)

A new section should be added authorizing that an ordinance for refunding bonds be passed on one hearing, at either a regular or special meeting, and with only the normal majority vote.

AS 29.63.

(Ben T. Delahay)

The chapter on service areas should be clarified; there is too much authority in the assembly to handle decisions in the service area which should be made by the people paying the taxes in the area.

AS 29.63.

(Bruce Aronson)

Community councils should be advisory only by statute and money from the state for service areas ought to be appropriated for the city, not the local council.

AS 29.63.090(e)

(Richard W. Garnett, III)

Clarify "delegation" of powers to service areas.

AS 29.63.090

(Elsie O'Brien)

Loans by borough to service area should be subject to prior approval by voters within the service area.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.63.090

(Allan E. Tesche)

The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

AS 29.68.

((Bruce Aronson)

Statutes should be changed so that cities are not able to annex territory without providing services to the annexed area and so that people living outside cities who are receiving services pay for them.

AS 29.68.010(cont'd)

(City of St. Mary's)

The delay in time between the decision of the Local Boundary commission and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

AS 29.68.010

(City of St. Mary's)

The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative session has begun.

AS 29.73.020

(Gerald L. Sharp)

This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.

AS 29.78.

(David Dye, Planner III, C&RA)

Expand definitions to include other terms used in Title 29.

AS 29.78.101(16)

(Richard W. Garnett, III)

Definition of "subdivision"; consider application to division for leasing, as by holders of oil leases.

SUMMARY OF SUGGESTIONS - TITLE 29 REVISION COMMISSION, Cook, 10/7/80

AS 29.88.020(e) (3)

(Terry Earley, State Assessor)

Allow the determination of full and true assessed value for second class cities with a population of less than 750 to be based on a comparison with the most comparable cities for which a determination has previously been made. See proposed draft.

SCOMM

#23:13

Sen. Mulcahy
486-3561

Kodiak

information -

Mary Jo Simmons
486-4881

Kodiak
legislative
information,

Mulcahy
out fishing

per call 7/1 -
S. Mulcahy is out fishing
& not reachable by radio -
Will be out all of July
but messages can be gotten
to him by radio with
several days notice.

STATE OF ALASKA
Inter-Department Route Slip

TO:

MAIL STATION NUMBER 3101

DEPARTMENT Legislative Council

ATTENTION Theresa Grant Cook

- | | |
|--|--|
| ☐ Approval | ☐ Note & Return |
| ☐ Signature | ☐ Initial & Return |
| ☐ Comment | ☐ Return As Requested |
| ☐ Contact Me | ☐ Return For Approval |
| ☐ Prepare Reply | ☐ Necessary Action |
| ☐ For Your File | ☐ Your Information |

Remarks:

FROM:

MAIL STATION NUMBER 3101

DEPARTMENT Legislative Council

BY Theresa Grant Cook

DATE 6-16-81

STATE OF ALASKA

JAY E. HARRISON, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

DIVISION OF LOCAL GOVERNMENT ASSISTANCE

POUCH B

JUNEAU, ALASKA 99811

January 13, 1981

Ms. Stephanie K. Scott
Administrative Secretary
Haines Borough
P.O. Box H
Haines, Alaska 99827

Dear Stephanie:

RE: TITLE 29 REVISION REGARDING ELECTION OF SCHOOL BOARD MEMBERS

It appears as if the Title 29 Technical Advisory Group has addressed the concern you raised in your January 6, 1981 letter regarding the language of AS 29.33.310. You were concerned that the language, as written, for the election of school board members would not allow for the election of Haines Borough Assembly members on a district basis.

The latest draft of AS 29.33.310 is now numbered 29.24.420 and it has been revised along the same lines as you suggested in your January 6, 1981 letter. The new sections reads as follows:

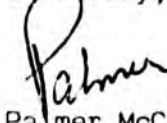
Sec. 29.24.420. SCHOOL BOARDS. (a) Each municipal school district has a school board. Members are elected at the regular election held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance. Members are elected for three-year terms and until their successors take office. All board members are elected at large unless a different method of election has been approved by the voters in a regular election.

(b) Notwithstanding (a) of this section, assembly members in a third class borough serve as the school board and the mayor is president of the school board.

I interpret this to mean that subsection (a) of this section does not apply to third class boroughs and that you can continue to elect assembly/school board members by election district. This, of course, is only a proposed change and it could be amended again before it is passed as part of the Title 29 revision package. I will keep you posted if this section is altered to significantly change its intent.

If you have any additional questions or comments please write me.

Sincerely,



Palmer McCarter
Director

cc: Tamara Brandt Cook,
Legislative Affairs Agency

21-P3LH

HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

January 5, 1980

Tamara Cook
Legislative Affairs
Pouch Y
Juneau, Alaska 99811

RE: Title 29 Revisions with respect to a third class borough

Dear Tam:

Now that the Commission has agreed to "grandfather" the Haines Borough we need to look at the statutes and revisions to the statutes which are a problem for the third class borough and which, in some cases, just forget the third class borough.

First of all, we suggest that you simplify 29.41.020 Assembly to Serve as School Board by striking the sentence "Where applicable weighted voting shall apply to board decisions." This sentence is profoundly misleading because weighted voting is prohibited by AS 29.23.021(c).

In order to assert the applicability of 29.48.010 General Powers to the third class borough, we suggest that a sub-section (e) be added to 29.41.010 stating that the general powers conferred by 29.48.010 apply to the third class borough. This would clarify the question posed by Marie Matsuno in her letter of 9/4/80 to Jon Halliwill, Mayor, City of Haines, as to whether the general powers are applicable to the third class borough area-wide or only on a specifically granted service area basis. We believe that our interpretation of 29.48.010 as applicable to the third class borough carte blanche is in line with the interpretation provided in Femmer v. City of Juneau 9 Alaska 175(1937) as foot noted in the present Title 29.

During the revision process I noticed that the third class borough seems to be at odds with 29.33.310 (new section 29.23.420) School Boards. This section states that all board members are elected at large. As you know, the third class borough assembly is the school board. The assembly may elect to be composed other than at large as outlined in 29.23.023 Composition and Form of Representation. It seems that neither the existing 29.23.310 nor the revised version recognize the special relationship between the third class borough assembly and the school board. Does the statement in 29.41.020 that the third class borough assembly is the school board supercede 29.23.310 which mandates an at large election

January 3, 1980

of school board members or is it necessary to write a clarifying subsection to 29.23.310 indicating that the members of the third class borough school board are the members of the assembly and are elected and composed in accordance with 29.23.023 for assemblies. I would appreciate it if you would take a look at this situation.

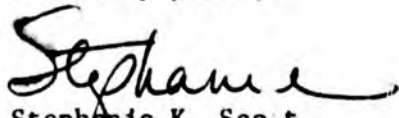
For ease of use, new section 29.24.240 Veto should contain a subsection (e) stating that the mayor of a third class borough has no veto power. The mayor is denied the veto power in 29.41.020 (old section number).

Similarly, in new section 29.24.150 Procedures of Legislative Bodies the first sentence should read

...except that in a borough which has adopted the manager form of government under AS 29.25.550, or in the third class borough, the mayor serves as presiding officer.

Thank you for looking at these four items. See you in Juneau on the 17th.

Sincerely yours,


Stephanie K. Scott
Administrative Secretary

cc Policy Group

WINGREN ENTERPRISES

(907) 225-4365
P.O. BOX 5197
KETCHIKAN, ALASKA 99901

10 January, 1981

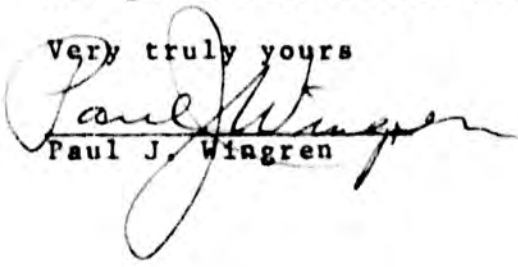
Senator Arliss Sturgulewski
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator Sturgulewski

I quote Alaska Statute 29.53.025. It reads, in part as follows:
(b) Municipalities may by ordinance
(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certified net tonnage; a tax based upon a tonnage valuation shall not exceed \$5 a year for a boat or vessel of less than five net tons and shall not exceed \$15 a year for a boat or vessel of more than five net tons;

The City of Ketchikan and the Ketchikan Gateway Borough has chosen to listen to the hue and cry from boat owners that if their taxes are increased, they will take their boats and their business elsewhere. I, along with numerous other taxpayers, feel that boats should be taxed on assessed valuation, the same as other real property, including airplanes. It is very unlikely that our local government will change to assessed valuation, as long as they have another option. It is also very unlikely that our local state legislators will ever push to amend the state law to make taxation on assessed valuation mandatory. I therefore appeal to you, whom I understand has given this matter some study, to introduce such legislation.

Very truly yours


Paul J. Wingren

STATE OF ALASKA

**DEPT. OF COMMUNITY &
REGIONAL AFFAIRS**
DIVISION OF LOCAL GOVERNMENT ASSISTANCE

JAY S. HAMMOND, GOVERNOR

**FOUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 485-4707**

July 15, 1980

Haines Borough Assembly
Box H
Haines, Alaska 99827

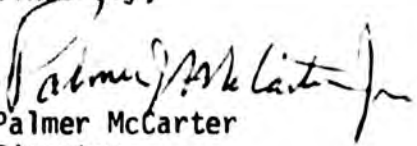
Dear Assembly Members:

Title 29, which contains the Alaska Statutes on municipal government, specifies that the mayor of a third class borough must be elected at-large for that position. An assemblyman cannot assume the position of mayor since the assemblyman was elected as a voting member of the borough's governing body and the mayor cannot vote. Each assembly member elected to that position has an obligation to vote.

As the mayor of a third class borough cannot vote or exercise the veto power, the assembly need not be concerned about affecting the present borough apportionment by the election of a mayor in addition to the assembly members. There would be no change to the present apportionment.

These comments are offered for your consideration as the Haines Borough prepares for its regular election this fall.

Sincerely,


Palmer McCarter
Director

PMc:MF:jh

cc: Stephanie Scott, Haines Borough
Thomas Blanton, Borough Attorney

Received 7/17/80 SKS

MEMORANDUM

FROM: FOLTA & ASPER, Borough Attorneys

TO: HAINES BOROUGH ASSEMBLY

RE: Voting By Borough Mayor

DATE: September 18, 1973

A question has come up under the new municipal code regarding the vote of the Borough Mayor in a Third-class Borough. Third-class Borough questions are difficult to resolve because Chapter 41 of Title 29, which refers to them, only briefly indicates what they can and cannot do. For questions not answered in Chapter 41 we assume that provisions governing First and Second class boroughs apply. The fact that Haines is the only Third class Borough in the state means that no guidance can be had on these questions from the experience of other municipalities in Alaska.

At the present time the assembly has chosen a mayor from among its members and the mayor is following section 29.23.160 which says that the mayor shall participate in assembly decisions but may not vote. Since Mr. Olerud, the present mayor, is a representative of the city of Haines he carries a weighted vote which is lost to city voters by his seeming inability to use it. Although to date the Mayors' non-voting has not affected the outcome of borough consideration on any matter, it is quite possible that this could happen in the future.

After reading the statutes it seems apparant that the problem lies in the fact that the mayor is also a member of the assembly. We have concluded, and our conclusion is agreed on by attorneys in the Local Affairs Agency, that the new municipal code

requires that there be a borough mayor, even in Third-class Boroughs, but that the mayor be a separately elected official, who is not a member of the assembly (Section 29.23.130). This official would be elected at large in the Borough and would be the chief administrator for the Borough, but would not vote. In a first or second class Borough the Mayor has a veto power to overrule the assembly, but this power is specifically denied the mayor in a third class Borough. (Section 29.41.020) The Assembly would continue in its present form but would choose a presiding officer to manage assembly meetings. (Section 29.23.060 (b))

Our recommendation at this time is that a Borough Mayor be elected in the Haines Borough whenever possible and in the meantime that Mr. Olerud resume voting with the understanding that his office is really that of Presiding Officer of the Assembly rather than the Borough Mayor as contemplated by the municipal code.

We would point out that the Borough Mayor scheme was primarily written into the municipal code for the use of the larger First and Second class Boroughs and may be too much government for this Third Class Borough, which is operating in good order now without a separately elected mayor. If the Borough must elect a mayor, as the statute seems to require then perhaps this presents a good opportunity to once again consider alternate forms of government for this area. The third class Borough has some very good points but this question and others indicate that it is a sort of Legislative afterthought which will continue to present problems which were never considered by the lawmakers when they enacted the municipal code.



City of Sitka

City and Borough of Sitka

P.O. BOX 79 · SITKA, ALASKA · 99835

January 13, 1981

Mr. Steve Van Sant, President
Alaska Assoc. of Assessing Officers
c/o Matanuska-Susitna Borough
Box B
Palmer, Alaska 99645

Re: Chapter 45
Municipal Taxation

Dear Steve:

I have reviewed the above draft and had our Municipal Attorney review it also. The following comments are submitted for your review and pass through to the legislative committee.

- P. 119 - Line 13 - "Exclusive for classroom space" - Amongst the various exempted uses, the above single use of any space appears unworkable.
- P. 129 - Line 29-30 - Assessor seek production of records? What records?
- P. 132 - Line 17 - "Which are consistant with general rules of administrative procedure." It appears to us that this ambiguous wording opens the door to suit by claim of "rules", This section should be specific.
- P. 134 - Line 18 - 20%
Line 26 - 10% Should these not be the same?
- P. 141 - Line 23 - "His assigns". We have had problems with this one where a person pays \$1.00 or \$2 for releases from old, old property foreclosed against then claims the property for only \$80 - \$60 back taxes. We feel this will specifically create problems unless a definite time period placed in this section. It has happened to us in Sitka. It could certainly happen elsewhere! Perhaps the way to handle it would be to add a paragraph "c" between lines 6 & 7 on page 142, to read;

January 13, 1981

- (c) the right of the former owner and his assigns to repurchase the property ceases 10 years after the end of the redemption period.

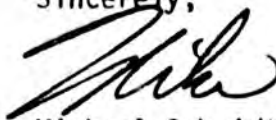
Page 143 - Line 21 - 15% interest. Paragraph (b) states if a remittance is made by a taxpayer even through error, the Borough must refund at 15% interest. Doesn't this open the door to allow deliberate over-payment to get 15% - that's better than any bank, time C.D., etc. Maybe I'm getting paranoid, but that seems like opening Pandora's Box. We need some sort of limitation clause.

Page 145 - Lines 4-7. Should also include a late filing penalty the same as real/personal property taxes.

Page 145 - Line 10 - Should include a statement--on that or any other property or item owned by the same person. This would make it clear a lien would not be just on specific property taxes not paid on, but could hamper other property. We have had instances where persons specifically attempt to apply taxes to only partial holdings rather than the total obligations.

Thank you for the opportunity to comment.

Sincerely,



Michael Schmidt
Planning Director/Assessor

cc: Fermin Gutierrez
Peter Hallgren
Earley - State Assessor
Tom Cook, Leg. Affairs

Mike Worley

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

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.

(1) 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.

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.

MEMORANDUM

State of Alaska

DEPARTMENT OF COMMUNITY & REGIONAL AFFAIRS

TO: Tanara Brandt Cook
Legislative Counsel
Legislative Affairs Agency

DATE: September 10, 1980

FILE NO:

TELEPHONE NO:

FROM: Palmer McCarter
Director
Local Government Assistance Division

SUBJECT: Title 29 Revision
Committee

Attached are five memos or letters which we have received making suggestions for changes in Title 29 or, in the case of Commissioner Mueller's memo, perhaps to the definition section of Title 46.

You may have already received some of these suggestions already, but on the chance you have not, I enclose all for your use.

Deputy Director Pat Poland and I will both plan to monitor the next meeting of the technical review committee in Anchorage on September 18. Since I will be out of town during the second meeting of the T29 Policy committee (scheduled for September 29-30 in Anchorage), I shall have Pat Poland attend on my behalf.

PMc:jh

cc: Commissioner Ernest Mueller

- Attachments:
- 1) August 14, 1980 memo from Commissioner Mueller to Commissioner McAnerney
 - 2) Packet of 4 draft bills amending sections of Title 29 relating to property taxation submitted by State Assessor.
 - 3) August 5, 1980 letter to State Assessor from Fairbanks North Star Borough
 - 4) August 20, 1980 memo from Division of Community Planning to Commissioner McAnerney
 - 5) September 3, 1980 letter from City of Valdez concerning Sr. Citizen Property Tax exemption.

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.

3 A

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 29.88.020(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.

fairbanks north star borough

p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761



August 5, 1980

Terry L. Earley
State Assessor
Dept. of Community
& Regional Affairs
Pouch B
Juneau, Ak. 99811

RECEIVED
AUG 11 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

Re: Senate C. R. 66

Dear Terry:

During my brief tenure, two provisions of title 29 pertaining to property taxes have caught my attention.

First, concerning the Farm Use Exemption; presuming its passage was directed toward encouraging agriculture in the State, and discounting the resistance some farmers in this area exhibit by their reluctance to sign up for it, I think the income requirement should either be reduced (say to 5%) or eliminated.

Take a farmer beginning a livestock operation. Nature dictates that it will be several years before productive breeder stock can be developed, let alone producing enough progeny to sell, sufficient to meet the income requirement.

Furthermore, any new farm venture demands high initial investment for equipment, clearing of land and the aforementioned stock development. They need an incentive to begin - not merely hope they will get relief if successful. I am prejudiced toward preferential treatment as an alternative. This is more consistent with current State agricultural use land sales, tending to establish land values in the eye of the taxpayer and creating a hard argument for and presumption of farm land value to overcome by local assessor.

Second, the Senior Citizen Exemption; and 29.53.020 (G) in particular. It is logical, and only fair, that reimbursement to the City or Borough be limited to that amount which exceeds a local exemption that was granted; but to extend it to a local exemption that if properly applied for "would have been granted" is too much. It is worse than ex post facto, it relates to something that never happened, and I fail to see any logic at all.

Possibly a third subject I would like to see addressed concerns Mobile Homes. I have experienced assessing them (twice now) and enjoyed the euphoria of not assessing them. By their very nature - mobile and subject to title ownership - they are hard to find outside of an established park and by collection time hard to catch up with, in many instances; even becoming personal property when repossessed. I realize this Borough is unique in Alaska regarding personal property, but that is not the basis for my objection to assessing them.

A much more efficient method of taxing them is to require a license (like motor vehicles) at which time a specific ownership tax is charged. That way

the tax is paid and collected at the beginning of the tax year and distributed according to the pro-ration formula of the property tax.

Although not changing existing law, I have several suggestions for additional statutes which I understand have been tried before and fly in the face of popular public opinion. Nevertheless, if the legislature is sincere in wanting to improve the administration of the property tax then serious consideration should be given them.

One, a Documentary Fee on Conveyance of Real Property. Enclosed is a copy of the Colorado law for what it is worth. I do know, however, that it worked beautifully and was an inestimable aid in the appraisal process.

Two, Confidentiality of Information as well as a corresponding penalty statute for divulging same. Enclosed are copies of pertinent statutes which I am familiar with. It is difficult to obtain written confirmation of verbal information relating, in particular, to income data, and in some instances cost data, if every Tom, Dick, and Harry has access to it. The penalty statute for divulging information is an added safeguard for the taxpayer as that puts the assessor under the gun in keeping confidential supportive data from which the final total assessment (clearly public information) may evolve.

Lastly, I am intrigued with assessing exempt property used by a non-exempt person. Terry, I refer to the Michigan statute, upheld by the Supreme Court, which allowed taxing such property. It was tried in Colorado (copy of law attached) but it was so emasculated by amendments ((3), (4), & (5) of enclosed law) that it was in the process of being declared unconstitutional as being discriminatory-i.e., the only property not excepted was Federal owned - when I last heard about it.

Such a law would cover our railroad, airport, and University of Alaska leases as well as State and Federal lands. Just a thought.

I guess that about covers it for now.

Very truly yours,



Dave Braden
Borough Assessor

P. S. Am enclosing a copy of our new property tax limitation ordinance for your information.

DB/dg

RECEIVED
AUG 11 1980

DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

★ **Documentary Fee on Conveyances of Real Property**

39-13-101. LEGISLATIVE DECLARATION. (1) The general assembly declares that in enacting laws relating to the general property tax, it has provided that certain property in each county of the state shall be appraised and the actual value thereof determined by the assessor and that one of the several factors to be considered by him in determining the actual value of any property shall be "comparison with other properties of known or recognized value."

(2) It further declares that such comparison may be best effected if there is available to the assessor a continuing record of the consideration paid or to be paid by purchasers of real property evidenced, prior to recording, on the document conveying title to such property and recorded in the office of the county clerk and recorder in the several counties of the state in the manner provided by law and that this article is enacted to provide a means of developing such continuing record and making such record available for use primarily by assessors. (L 67)

39-13-102. DOCUMENTARY FEE IMPOSED - AMOUNT - TO WHOM PAYABLE. (1) There is imposed and shall be paid, by every person offering for recording in the office of the county clerk and recorder any deed or instrument in writing wherein or whereby title to real property situated in this state is granted or conveyed, a fee, referred to in this article as "documentary fee," measured by the consideration paid or to be paid for such grant or conveyance, which documentary fee shall be in addition to any other fee fixed by law for the recording of such deed or instrument in writing.

(2) The amount of documentary fee payable in each case shall be as follows:

(a) When there is no consideration or when the consideration, inclusive of the amount of any lien or encumbrance against the property granted or conveyed, is five hundred dollars or less, no documentary fee shall be payable.

(b) When the consideration, inclusive of the amount of any lien or encumbrance against the property granted or conveyed, exceeds five hundred dollars, the documentary fee payable shall be computed at the rate of one cent for each one hundred dollars, or major fraction thereof, of such consideration.

(3) All documentary fees shall be payable to and collected by the county clerk and recorder.

(4) In those cases in which real property located in two or more counties is granted or conveyed in a single transaction, each county clerk and recorder shall collect a portion of the total documentary fee referred to in subsection (2) of this section in the same ratio that the consideration fairly attributable to the part of such property located in his county bears to the total consideration. The allocation of the total consideration between counties is to be made by the person offering such deed or instrument in writing for recording. (L 68)

39-13-103. EVIDENCE OF PAYMENT OF FEE. Each county clerk and

recorder shall evidence payment of the documentary fee imposed in this article by imprinting, typing, stamping, or writing in ink on the margin or other blank portion of every document to which such fee applies the words "State Documentary Fee," the amount of documentary fee paid, and the date upon which paid, which impression or notation shall be made on such document before it is recorded. (L 68)

39-13-104. EXEMPTIONS. (1) The documentary fee imposed in this article shall not apply to:

- (a) Any deed wherein the United States or any agency or instrumentality thereof or the state of Colorado or any political subdivision thereof is either the grantor or the grantee;
- (b) Any deed granting or conveying title to real property in consequence of a gift of such property;
- (c) Any public trustee's deed executed pursuant to the provisions of section 38-39-110, C.R.S. 1973;
- (d) Any treasurer's deed executed in accordance with the provisions of article 11 of this title;
- (e) Any sheriff's deed;
- (f) Any instrument which confirms or corrects a deed previously recorded;
- (g) Any deed granting or conveying title to cemetery lots;
- (h) Any executory contract for the sale of real property of less than three years' duration under which the vendee is entitled to or does take possession thereof without acquiring title thereto, nor to any assignment or cancellation of any such contract;
- (i) Any lease of real property or assignment or transfer of an interest in any such lease;
- (j) Any document given to secure payment of an indebtedness;
- (k) Any document granting or conveying a future interest in real property;
- (l) Any decree or order of a court of record determining or vesting title;
- (m) Any document necessary to transfer title to property as a result of the death of an owner thereof;
- (n) Any mineral deed or royalty deed;
- (o) Any rights-of-way and easements.

(2) Exemption from payment of the documentary fee imposed in this article must be claimed at the time a deed or instrument is offered for recording. (L 68)

39-13-105. NO DEED RECORDED UNLESS DOCUMENTARY FEE PAID. No deed or instrument in writing to which a documentary fee applies shall be recorded until and unless the documentary fee payable thereon has been paid and evidence of its payment has been imprinted, typed, stamped, or written in ink

thereon as provided in section 39-13-103. Any county clerk and recorder who willfully and knowingly records any document to which a documentary fee applies without having first collected such fee and evidence payment thereof as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars. (L 68)

39-13-106. UNLAWFUL ACTS - PENALTY. (1) It is unlawful for any person to commit the following acts:

(a) To fail or refuse to pay the documentary fee imposed in this article when such payment is required;

(b) To willfully and knowingly recite to the county clerk and recorder a consideration greater or less than the actual consideration referred to in section 39-13-102 (2) (a) and (2) (b) in connection with the granting or conveying of title to real property by any deed or instrument in writing to which the documentary fee applies.

(2) Any person who commits either of the acts set forth in subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than three months, or by both such fine and imprisonment. (L 67)

39-13-107. ASSESSOR TO COMPILE CONTINUING RECORD. It is the duty of each assessor to examine at least once each year all documents recorded in his county upon which a documentary fee has been paid and to determine in each case the consideration upon which such fee was computed and paid. He shall compile and maintain in his office a continuing record of all such consideration to assist him in appraising property and determining the actual value thereof as required by the provisions of section 39-1-103 (5). (L 67)

39-13-108. DISPOSITION OF FEES. All documentary fees collected by the county clerk and recorder shall be deposited with the county treasurer at least once each month and credited by him in the manner prescribed by law. (L 67)

31-25-107 (9) (a), C.R.S. 1973, for payment of taxes according to the provisions of said section, so long as said division remains in effect. (L 75)

39-1-112. TAXES AVAILABLE - WHEN. All taxes levied pursuant to the provisions of articles 1 to 13 of this title shall be available for expenditure by the political subdivision for which levied during its fiscal year, as collected. (L 64)

39-1-113. ABATEMENT AND REFUND OF TAXES. No abatement or refund of taxes erroneously or illegally levied shall be made by the board of county commissioners unless a hearing is had thereon, at which hearing the assessor shall have the opportunity to be present. Whenever any abatement or refund is recommended by the board of county commissioners, an application therefor, reciting the amount of such abatement or refund and the grounds upon which it should be allowed, shall be submitted to the administrator for his review pursuant to section 39-2-116. If an application is approved, the board of county commissioners shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board of county commissioners shall order the refund of taxes pro rata by all taxing jurisdictions receiving payment thereof. (L 77)

39-1-114. WHO MAY ADMINISTER OATH. Whenever any fact, matter, or thing is required by the provisions of articles 1 to 13 of this title to be verified by oath or affirmation, any assessor, treasurer, or county clerk and recorder, or a deputy of any of said officers, may administer such oath or affirmation. The deputy need not certify the oath in the name of the principal. (L 64)

39-1-115. RECORDS PRIMA FACIE EVIDENCE. The assessment rolls, the tax warrants, the entries made in the books of the treasurer, and the lists of lands sold for taxes recorded by the treasurer or the county clerk and recorder, or a certified copy thereof, shall be prima facie evidence of all things appearing therein in all courts and places. (L 64)

★ **39-1-116. PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION.** Except when pursuant to an order of any court of competent jurisdiction, or as otherwise provided by law, any person who divulges or makes known in any way the contents of any private document, as specified in section 39-4-103 or in section 39-5-120, to any person not authorized to have access to such documents is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. (L 64)

39-1-117. PRIOR ACTIONS NOT AFFECTED. Nothing in articles 1 to 13 of this title shall apply to or in any manner affect any valuation, assessment,

or demolished subsequent to the assessment date in any year, it is the duty of the owner thereof or his agent to promptly notify the assessor of such destruction or demolition and the date upon which the same occurred. In all such cases, such personal property or improvements shall be valued by the assessor at the proportion of its valuation for the full calendar year that the period of time in such year prior to its destruction or demolition bears to the full calendar year. Failure of the owner thereof or of his agent to so notify the assessor prior to the date taxes are levied shall be considered a waiver, and no proportionate valuation by the assessor shall then be required. (L 64)

39-5-118. FAILURE TO RECEIVE SCHEDULE - VALIDITY OF VALUATION. No determination of the actual value of any taxable personal property made by the assessor shall be rendered invalid by reason of his failure to secure or receive the personal property schedule required to be completed and returned to him prior to his determination of such value. (L 64)

39-5-119. REFUSAL TO ANSWER - COURT ORDER. Whenever any person refuses to be interviewed by the assessor or his deputy or refuses to answer any pertinent questions relative to taxable property owned by him, or in his possession, or under his control, then, in the discretion of the district court having jurisdiction in the county and upon affidavit of the assessor or his deputy showing such refusal to be interviewed or to answer such questions, such person shall be cited before such court and shall be required by the court then and there to submit to such interview and to answer such questions. All costs of such proceedings shall be assessed by the court against such person, and judgment and execution shall be entered therefor as in other civil cases. (L 67)

★ **39-5-120. TAX SCHEDULES ENDORSED AND FILED - AVAILABILITY FOR INSPECTION.** All personal property schedules and exhibits or statements attached thereto returned to or secured by the assessor shall be endorsed with the name of the person whose taxable personal property is listed therein and shall be filed in either alphabetical or numerical order and retained for a period of six years, after which time they may be destroyed. Such schedules and accompanying exhibits or statements shall be considered private documents and shall be available on a confidential basis only to the assessor and the employees of his office, the treasurer and the employees of his office, the executive director of the department of revenue and the employees of his office, and the administrator and the employees of his office. Such exhibits or statements shall be available on a confidential basis to the board and the county board of equalization when information contained in such documents is pertinent to an appeal or protest. (L 76)

39-5-121. NOTICE OF INCREASED VALUATION. No later than May 24 in each year, the assessor shall mail to each person whose taxable personal

39-3-110. PAYMENT OF TAXES ESTINGUISHES LIEN. Payment to the treasurer of prorated taxes for the current year, as provided in sections 39-3-108 and 39-3-109, together with payment of any other unpaid taxes and penalty interest or charges, shall extinguish the lien for taxes on such property, or a portion thereof; but if only a portion of any parcel, tract, or lot of property becomes legally exempt from general taxation and no taxes are collected at that time, the lien of taxes levied or to be levied shall attach to the remaining portion of said property. (L 64)

39-3-111. CONDEMNATION BY TAX EXEMPT AGENCY - TREASURER'S DUTIES. In all cases where an entire property, or a portion of any parcel, tract, or lot of property is likely to become legally exempt from general taxation through exercise of the power of eminent domain, the treasurer shall be joined as a party respondent in any such action, and upon joinder and notice of the proceedings, he shall assert a claim for the amount of any prorated taxes for the current year on such property, and all other unpaid taxes, penalty interest, or charges thereon with the clerk of the court in which the proceedings are filed. Upon institution of any such proceedings, the lien of general taxes levied and to be levied shall be transferred from the property acquired or sought to be acquired to any money awarded or to be awarded for the taking of such property. Nothing in this section shall require any treasurer to file a claim in any such proceedings involving acquisition of only a portion of any property, if he is satisfied that there is sufficient taxable property remaining after the taking of such portion to satisfy any lien for the amount of taxes payable on such portion taken. (L 64)

★ **39-3-112. TAXATION OF EXEMPT PROPERTY - TAXES NOT TO BECOME LIEN.** (1) When any property which for any reason is exempt from taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user thereof shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property, except as provided in this subsection (1) and as provided in subsections (3), (4), and (5) of this section. (L 75)

(2) Taxes shall be assessed to such lessee or user of property and collected in the same manner as taxes assessed to owners of such property; except that such taxes shall not become a lien against the property. When due, such taxes shall be a debt due from the lessee or user to the board of county commissioners for the county where said property is located, and in the city and county of Denver to such other body as is authorized by law to levy taxes, and shall be recoverable by such body by direct action in debt on behalf of each governmental entity for which a tax levy has been made. (L 75)

(3) This section shall not vary in any manner the taxation of mines or oil and gas or oil shale or geothermal leaseholds and lands under articles 1 to 13 of this title. The valuation for assessment of mines or oil and gas or oil shale or geothermal leaseholds and lands shall be determined pursuant to articles 6 and 7 of this title. (L 75)