

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

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1 (c) The assessor shall notify appellants by mail of the time and
2 place of their hearing.

3 (d) The assessor shall prepare for use by the board a summary of
4 assessment data relating to each assessment which is appealed.

5 (e) A city may appeal an assessment to the board of equalization
6 in the same manner as a taxpayer. Within five days after receipt of the
7 appeal, the assessor shall notify the person whose property assessment is
8 being appealed by the city.

9 ****Sec. 29.45.210. BOARD OF EQUALIZATION. (a) The assembly sits as a
10 board of equalization for the purpose of hearing an appeal from a determination
11 of the assessor, or it may delegate this authority to one or more boards
12 appointed by it. An appointed board may be composed of not less than three
13 persons, who may be members of the assembly, municipal residents, or a
14 combination of assembly members and residents. The assembly shall be ordinance
15 establish the qualifications for membership.

16 (b) The board is governed in its proceedings by rules adopted by
17 ordinance which are consistent with general rules of administrative procedure.
18 The board may alter an assessment of a lot or parcel only pursuant to an
19 appeal filed as the the particular lot or parcel.

20 (c) Notwithstanding other provisions in this section, a determina-
21 tion of the assessor as to whether property is taxable under law shall be
22 appealed directly to the superior court.

23 Sec. 29.45.220. HEARING. (a) If an appellant fails to appear the
24 board of equalization may proceed with the hearing in his absence.

25 (b) The appellant bears the burden of proof.

26 **** (c) The only grounds for adjustment are proof of unequal, excessive,
27 improper, or undervaluation based on facts which are stated in a valid
28 written appeal or proven at the appeal hearing. If a valuation is found to
29 be too low, the board of equalization may raise the assessment.

1 (d) The board shall certify its actions to the assessor within
2 seven days.

3 **** (e) Except as to supplementary assessments, the assessor shall
4 enter the changes and certify the final assessment roll by June 1.

5 **** (f) An appellant or the assessor may appeal the board's deter-
6 mination to the superior court as provided by rules of court applicable to
7 appeals from the decisions of administrative agencies. Appeals are heard on
8 the record established at the hearing before the board of equalization.

9 Sec. 29.45.230. SUPPLEMENTARY ASSESSMENT ROLLS. The assessor shall
10 include property omitted from the assessment roll on a supplementary roll,
11 using the procedures set out in this chapter for the original roll.

12 Sec. 29.45.240. TAX ADJUSTMENTS ON PROPERTY AFFECTED BY A NATURAL
13 DISASTER. (a) The assembly may provide for reassessment and reduction of
14 taxes for property destroyed, damaged, or otherwise reduced in value as a
15 result of a natural disaster.

16 (b) A reassessment may be made by the assessor only upon the
17 receipt of a sworn statement of the taxpayer that his losses exceed \$1,000.
18 A reduction of taxes may be made only on losses in excess of \$1,000 for the
19 remainder of the year following the disaster. Upon reassessment, the borough
20 shall recompute this tax and refund taxes which have already been paid.

21 (c) The borough shall make notice of assessment or reassessment
22 and shall hold an equalization hearing as provided in this chapter, except
23 that a notice of appeal is filed with the board of equalization within 10
24 days after notice of assessment is given to the person appealing. Otherwise,
25 the right of appeal ceases unless the board finds that the taxpayer is
26 unable to comply.

27 (d) In enacting an ordinance or resolution authorized by this
28 section, the assembly may, consistent with this section, prescribe
29

1 procedures, restrictions and conditions of assessing or reassessing property
2 and of remitting, refunding or forgiving taxes.

3 **** (e) In this section "disaster" means a major disaster declared by
4 the President of the United States under the provisions of the Federal
5 Disaster Act of 1950, Title 42, United States Code, sec. 1855-1855g, or
6 other federal law, or a disaster declared by the governor under AS 26.23.010
7 26.23.110.

8 Sec. 29.45.250. TAX LEVY AND RATE. ****(a) The power granted to the
9 assembly to assess, levy and collect a general property tax shall be exercised
10 by means of a general ordinance. The rate of levy, the date of equalization
11 and the date when taxes become delinquent shall be fixed by resolution.

12 (b) The assembly shall annually determine the rate of levy before
13 June 15. By July 1 the tax collector shall mail tax statements setting out
14 the levy, dates when taxes are payable and delinquent, and penalties and
15 interest.

16 Sec. 29.45.260. RATES OF PENALTY AND INTEREST. ****(a) If the taxpayer
17 is required to pay the entire tax on the due date set by the assembly, a
18 penalty not to exceed 20 percent may be added to all delinquent taxes, and
19 interest at the rate of 15 percent a year shall accrue upon all unpaid
20 taxes, not including penalty, from the due date until paid in full. If the
21 taxpayer is given the right to pay the tax in two installments penalty and
22 interest on an unpaid installment accrues from the date the installment
23 becomes due.

24 *Repeal* (b) If the assembly imposes a penalty for the nonpayment of property
25 taxes when due, or the late return of personal property assessment forms,
26 the rate of penalty or combined rates of penalty may not exceed 10 percent
27 of the tax due on the property concerned. *the amount*

28 **** (c) *change* Repeal.
29 *Repeal (b) ?*
repeal accepted

ARTICLE 2. ENFORCEMENT OF TAX LIENS

1
2 Sec. 29.45.290. VALIDITY. Certified assessment and tax rolls are
3 valid and binding on all persons, notwithstanding any defect, error, omission
4 or invalidity in the assessment rolls or proceedings pertaining to the
5 assessment roll.

6 Sec. 29.45.300. TAX LIABILITY. (a) The owner of personal property
7 assessed is personally liable for the amount of taxes assessed against his
8 property. The tax, together with penalty and interest, may be collected in
9 a personal action brought in the name of the borough.

10 **** (b) Property taxes, together with penalty and interest, are a
11 lien upon the property assessed, and the lien is prior and paramount to all
12 other liens or encumbrances against the property.

13 Sec. 29.45.310. ENFORCEMENT OF PERSONAL PROPERTY TAX LIENS BY DISTRAINT
14 AND SALE. The lien of personal property taxes may be enforced by distraint
15 and sale of the property. The assembly shall provide the procedure for
16 distraint and sale by ordinance. No seizure, levy or distraint is legal
17 unless demand is first made of the person assessed for the amount of the
18 tax, penalty and interest, and no sale is valid unless made at public auction
19 after 15 days notice is given by posting or publication. The seizure is
20 made by virtue of a warrant issued by the borough clerk to a peace officer.
21 If the property sold is not sufficient to satisfy the tax, penalty and
22 interest, and costs of sale, the warrant may authorize the seizure of other
23 personal property sufficient to satisfy the tax, penalty, interest and costs
24 of sale. If the property is sold for more money than is needed to satisfy
25 the tax, upon presentation of a proper claim, the municipality shall remit
26 the excess to the former record owner. A claim for the excess filed after
27 six months of the date of sale is forever barred.

28
29

1 Sec. 29.45.320. REAL PROPERTY TAX COLLECTION. (a) The borough shall
2 enforce delinquent real property tax liens by annual foreclosure, unless
3 otherwise provided by ordinance.

4 **** (b) If the tax on property described in AS 29.45.080 or on a
5 taxable interest in tax exempt property is not paid when due, a borough may
6 enforce the tax by a personal action against the delinquent taxpayer brought
7 in the district or superior court, in addition to other remedies available
8 to the borough to enforce the lien.

9 Sec. 29.45.330. FORECLOSURE LIST. (a) The borough shall

10 (1) annually present a petition for judgment and a certified
11 copy of the foreclosure list for the previous year's delinquent taxes in the
12 superior court for judgment;

13 (2) publish the foreclosure list for four consecutive weeks
14 in a newspaper of general circulation distributed within the borough or, if
15 there is no newspaper of general circulation distributed within the borough,
16 post the list at three public places for at least 30 days;

17 (3) within 10 days after the first publication or posting,
18 mail to the last known owner of each property as his name and address appear
19 on the list a notice advising of the foreclosure proceeding in which a
20 petition for judgment of foreclosure has been filed and describing the
21 property and the amount due as stated on the list.

22 (b) The list shall be arranged in alphabetical order as to the
23 last name and shall include

- 24 (1) the last known owner;
25 (2) the property description as stated on the assessment
26 roll;
27 (3) years and amounts of delinquency;
28 (4) penalty and interest due;

1 (5) a statement that the list is available for public inspection
2 at the clerk's office;

3 (6) a statement that the list has been presented to the
4 superior court with a petition for judgment and decree.

5 (c) Completion of the requirements of (a) of this section constitutes
6 and has the same force and effect as the filing of an individual and separate
7 complaint and service of summons to foreclose a lien against each property
8 described on the foreclosure list.

9 Sec. 29.45.340. CLEARING DELINQUENCIES. During the publication or
10 posting of the foreclosure list and up to the time of transfer to the borough
11 a person may pay the taxes, together with the penalty, interest and costs.
12 The collector shall note payment on the foreclosure list.

13 Sec. 29.45.350. LIST TO LIENHOLDER. A holder of a mortgage or other
14 lien on real property may request the clerk to send by certified mail notice
15 of a foreclosure list which includes such real property.

16 Sec. 29.45.360. GENERAL FORECLOSURE. The borough shall bring one
17 general foreclosure proceeding in rem against the properties included in the
18 list. If the owner is unknown, the property is proceeded against as belonging
19 to "unknown owner." Tax foreclosure proceedings have priority over all other
20 civil proceedings except board of adjustment appeals as provided in AS
21 29.33.130(e).

22 Sec. 29.45.370. ANSWER AND OBJECTION. A person having an interest in
23 a tract on the foreclosure list may file an answer within 30 days of the
24 date of last publication, specifying his objection. The court shall make
25 its decision in summary proceedings. The foreclosure list is prima facie
26 evidence that the assessment and levy of the tax is valid and that the tax
27 is unpaid.

28 Sec. 29.45.380. JUDGEMENT. The court shall in a proper case give
29 judgment and decree that the tax liens be foreclosed. It is a several
judgment against and a lien on each parcel.

1 Sec. 29.45.390. TRANSFER AND APPEAL. (a) Foreclosed properties are
2 transferred to the borough for the lien amount. When answers are filed the
3 court may enter judgment against and order the transfer to the borough of
4 all other properties on the list pending determination of the matters in
5 controversy. The court shall hear and determine the issues raised by the
6 complaint and answers in the same manner and under the same rules as it
7 hears and determines other actions.

8 (b) The court clerk shall deliver a certified copy of the judgment
9 and decree to the borough clerk. The certified judgment and decree consti-
10 tutes a transfer to the borough.

11 (c) The judgment and decree stops objections to it which could
12 have been presented before judgment and de ree.

13 (d) Appeal from a judgment and decree of foreclosure, or from a
14 final order in the proceeding, may be taken in the manner provided for
15 appeals in civil actions.

16 Sec. 29.45.400. REDEMPTION PERIOD. (a) Properties transferred to the
17 borough are held by the borough for at least one year. During the redemption
18 period a party having an interest in the property may redeem it by paying
19 the lien amount plus penalties, interest and costs, including all costs
20 incurred under Sec. 350(a) of this chapter. Property redeemed is subject to
21 all taxes, assessments, liens and claims as though it had continued in
22 private ownership. Only the amount applicable under the judgment and decree
23 must be paid in order to redeem the property.

24 **** (b) Repeal.

25 ****Sec. 29.45.410. EFFECT. Receipt of redemption money by the borough
26 releases the judgment obtained under AS 29.45.380. The clerk or his designee
27 shall record the redemption and issue a certificate containing a property
28 description, the redemption amount, and the dates of judgment and decree of
29 foreclosure. The clerk or his designee shall collect the recording fee at

1 the time or redemption and shall file the certificate with the record as
2 part of the judgment roll.

3 Sec. 29.45.420. ADDITIONAL LIENS. If a property included in a fore-
4 closure list is removed after payment of delinquencies or redemption by
5 another lienholder, the payment represented by receipt for payment constitutes
6 an additional lien on the property, collectible by the lienholder in the
7 same manner as the original lien.

8 Sec. 29.45.430. POSSESSION DURING REDEMPTION PERIOD. Foreclosure
9 does not affect the former owner's right to possession during the redemption
10 period. In the event that waste is committed by the former owner, or by
11 anyone acting under his permission or control, the borough may declare an
12 immediate forfeiture of the right to possession.

13 Sec. 29.45.440. EXPIRATION. ****(a) At least 30 days before the
14 expiration of the redemption period the clerk or his designee shall publish
15 a redemption period expiration notice. The notice shall contain the date of
16 judgment, the date of expiration of the period of redemption and a warning
17 to the effect that all properties ordered sold under the judgment, unless
18 redeemed, shall be deeded to the borough or city immediately on expiration
19 of the period of redemption and that every right or interest of any person
20 in the properties will be forfeited forever to the borough or city. The
21 notice is published once a week for four consecutive weeks in a newspaper of
22 general circulation distributed within the borough. If there is no newspaper
23 of general circulation distributed within the borough, the notice is posted
24 in three public places for at least four consecutive weeks. The clerk shall
25 send a copy of the published notice by certified mail to each record owner
26 of property against which a judgment of foreclosure has been taken and, if
27 the assessed value of the property is more than \$100,000, to all holders of
28 mortgages or other liens of record on the property. The notice shall be
29 mailed within five days of the first publication. The mailing shall be

1 sufficient if mailed to the property owner and to the holder of a mortgage
2 or recorded lien at the last address of record. The right of redemption
3 shall expire 30 days after the date of the first publication notice.

4 (b) Costs incurred in the determination of holders of mortgages
5 and other liens of record and costs of publication of notice incurred by a
6 municipality under (a) of this section are a lien on the property and may be
7 recovered by the municipality.

8 Sec. 29.45.450. DEED TO BOROUGH OR CITY. (a) Unredeemed properties
9 in the area of the borough outside cities are deeded to the borough by the
10 clerk of the court. Unredeemed properties within a city are deeded to the
11 city subject to the payment by the city of unpaid borough taxes and costs of
12 foreclosure levied against the property before foreclosure. The deeds shall
13 be recorded in the recording district in which the property is located.

14 **** (b) Conveyance gives the borough or the city clear title except
15 for prior recorded tax liens of the United States and the state.

16 (c) If unredeemed property lies within a city and if the city has
17 no immediate public use for the property but the borough does have an immediate
18 public use, the city shall deed the property to the borough. If unredeemed
19 property lies within the borough outside a city and if the borough does not
20 have an immediate public use for the property but the city does have an
21 immediate public use, the borough shall deed the property to the city.

22 **** (d) No deed is invalid for irregularities, omissions or defects
23 in the proceedings under this chapter unless the former owner has been
24 misled to his injury. After two years from the date of the deed, its validity
25 is conclusively presumed and any claim of the former owner or other person
26 having an interest in the property is forever barred.

27 Sec. 29.45.460. DISPOSITION AND SALE OF FORECLOSED PROPERTIES. (a)
28 The assembly of a borough or council of a city shall determine by ordinance
29 whether foreclosed property deeded to the municipality under Sec. 360 of

1 this chapter shall be retained by the municipality for a public purpose.
2 The ordinance shall contain the legal description of the property, the
3 address or a general description of the property sufficient to provide the
4 public with notice of its location, and the name of the last record owner of
5 the property as his name appears on the assessment rolls of the municipality.

6 (b) Tax-foreclosed properties conveyed to a borough or city by
7 tax foreclosure and not required for a public purpose may be sold. Before
8 the sale of tax-foreclosed property held for a public purpose, the assembly
9 or council, by ordinance, shall determine that a public need does not exist.
10 The ordinance shall contain the information required in (a) of this section.

11 **** (c) The clerk or his designee shall send a copy of the published
12 notice of hearing of an ordinance to consider a determination required by
13 (a) or (b) of this section by certified mail to the former record owner of
14 the parcel of property which is the subject of the ordinance. The notice
15 shall be mailed within five days of its first publication and shall be
16 sufficient if mailed to the last record owner of the property as his name
17 appears on the assessment rolls of the municipality.

18 (d) The provisions of (c) of this section do not apply with
19 respect to property which has been held by the municipality for a period of
20 more than 10 years after the close of the redemption period.

21 Sec. 29.45.470. REPURCHASE BY RECORD OWNER. (a) The record owner at
22 the time of tax foreclosure of property acquired by a borough or city, or
23 his assigns, may, at any time before the sale or contract of sale of the
24 tax-foreclosed property by the borough or city, repurchase the property.
25 The borough or city shall sell the property for the full amount applicable
26 to the property under the judgment and decree, with interest at the rate of
27 eight percent a year from the date of entry of the judgment of foreclosure
28 to the date of repurchase, delinquent taxes assessed and levied as though it
29 had continued in private ownership, and costs of foreclosure and sale,

1 Sec. 29.45.490. PAYMENT OF TAXES UPON PUBLIC UTILIZATION. If a city
2 or borough holds or takes title to tax-foreclosed property for a public
3 purpose, the city or borough shall satisfy unpaid taxes and assessments
4 against the property held by other municipalities, with accrued interest but
5 without penalty. If the amount required to satisfy the unpaid taxes and
6 assessments exceeds the assessed valuation of the property, the city or
7 borough shall pay the other municipalities the assessed valuation, which
8 shall be divided between the other municipalities in proportion to their
9 respective taxes and assessments against the property at the time of fore-
10 closure.

11 ****Sec. 29.45.510. REFUND OF TAXES. (a) If a taxpayer pays taxes under
12 protest, he may bring suit in the superior court against the borough for
13 recovery of the taxes. If judgment for recovery is given against the borough
14 or, if in the absence of suit, it becomes obvious to the assembly that
15 judgment for recovery of the taxes would be obtained if legal proceedings
16 were brought, the borough shall refund the amount of the taxes to the taxpayer
17 with interest at eight percent from the date of payment plus costs.

18 (b) If, in payment of taxes legally imposed, a remittance by a
19 taxpayer through error or otherwise exceeds the amount due, and the borough,
20 on audit of the account in question, is satisfied that this is the case, the
21 borough shall refund the excess to the taxpayer with interest at ^{eight}~~15~~ percent
22 from the date of payment. A claim for refund filed after one year of the
23 due date of the tax is forever barred.

24 (c) The assembly may correct manifest clerical errors at anytime.

25 ARTICLE 3. CITY PROPERTY TAX.

26 Sec. 29.45.530. POWER OF LEVY. Home rule and first class cities
27 within boroughs may levy a general property tax. A property tax, if levied,
28 shall be levied in the manner provided for borough levies in Sec. 170(a) of
29 this chapter and is subject to Secs. 10-25, 50-55 and 310-350 of this chapter.

1 The council shall by June 15 of each year present to the borough assembly a
2 statement of the city's rate of levy, unless a different date is agreed upon
3 by the borough and city.

4 Sec. 29.45.535. DIFFERENTIAL TAX ZONING. Cities may by ordinance
5 establish, alter and abolish differential tax zones to provide and levy
6 property taxes for services not provided generally within the city or a
7 different level of service than that provided generally within the city.

8 Sec. 29.45.540. LIMITED PROPERTY TAXING POWER FOR SECOND CLASS CITIES.
9 A second class city may by referendum levy real and personal property taxes
10 as provided for first class cities. However, levy by a second class city
11 may not exceed one-half of one percent of the assessed valuation of the
12 property taxed, except that the limit does not apply to a levy necessary to
13 avoid a default upon payment of principal and interest of bonded or other
14 indebtedness which is secured by a pledge to levy ad valorem or other taxes
15 without limit to meet debt payments.

16 **** Sec. 29.45.545. COMBINING PROPERTY TAX WITH INCORPORATION. A petition
17 for second class city incorporation may request that a property tax proposal
18 be placed in the same ballot. The petition must state the proposed tax
19 rate. The petition may request that incorporation be dependent upon the
20 passage of the property tax proposition. If so, the incorporation proposi-
21 tion fails if the property tax fails.

22 ARTICLE 4. BOROUGH SALES AND USE TAX

23 Sec. 29.45.570. SALES AND USE TAX. ****(a) A borough may levy and
24 collect a sales tax not exceeding six percent on sales, rents, and on services
25 made within the borough. The sales tax may apply to any or all of these
26 sources. Exemptions may be granted by ordinance.

27 (b) A borough levying a sales tax may also by ordinance levy a
28 use tax on the storage, use or consumption of tangible personal property
29 within the borough. The use tax rate must equal the sales tax rate and the
use tax shall be levied only upon buyers.

1 (c) A person who furnishes proof, in the form required by the
2 borough tax collector, that he has paid a sales tax on the source on which a
3 use tax is levied by the borough is required to pay the use tax only to the
4 extent of the difference between the amount of the sales tax paid and the
5 amount of the use tax levied by the borough. This subsection applies to a
6 sales tax levied in any taxing jurisdiction whether in or outside the state.

7 **** (d) If the assembly of a home rule or general law borough charges
8 interest on sales taxes not paid when due, the rate of interest may not
9 exceed 15 percent a year upon the delinquent taxes and shall be charged from
10 the due date until paid in full.

11 **** (e) A borough may provide for the creation, recording, and notice
12 of a lien on real or personal property to secure the payment of a sales or
13 use tax, and for interest, penalties and administration costs in the event
14 of delinquencies. A lien established under this section has the force,
15 priority and duration of a judgment lien.

16 Sec. 29.45.590. REFERENDUM, ADOPTION AND MODIFICATION. ****(a) A new
17 sales tax or an increase in the rate of levy of a sales tax approved by the
18 assembly by ordinance shall not take effect until ratified by a majority of
19 the voters voting on the question at a regular or special election.

20 (b) If the proposition receives a majority of the votes cast, the
21 assembly may enact the sales tax or increase the rate of the sales tax as a
22 levy upon buyers, sellers, or both. The sales tax is collected at the time
23 of sale or at the time of payment in credit transactions and transmitted to
24 the borough.

25 ARTICLE 5. CITY SALES AND USE TAXES

26 Sec. 29.45.610. POWER OF LEVY. Cities within a borough which levies
27 and collects sales or use taxes for areawide borough functions may levy
28 sales or use taxes upon all sources taxed by the borough in the manner
29 provided for boroughs.

1 Sec. 29.45.620. POWER OF LEVY AND COLLECTION. Cities within a borough
2 which does not levy and collect sales or use taxes for areawide borough
3 functions may levy and collect sales or use taxes in the manner provided for
4 boroughs.

5 Sec. 29.45.630. COMBINING SALES TAX WITH INCORPORATION. A petition
6 for second class city incorporation may request that a sales tax proposal be
7 placed on the same ballot. The petition must state the proposed tax rate.
8 The petition may request that incorporation be dependent upon the passage of
9 the sales tax proposition. If so, the incorporation proposition fails if
10 the sales tax fails.

CHAPTER 48. SPECIAL ASSESSMENTS

****Sec. 29.48.010. ASSESSMENT AND PROPOSAL. The governing body may assess against the property of a state or federal governmental unit and private real property benefited all or a portion of the cost of acquiring, installing or constructing capital improvements. The state shall pay an assessment levied, except as otherwise provided by law and subject to its right of protest under AS 29.48.020(a)(8). If a governmental unit other than the state benefited by an improvement refuses to pay the assessment, it shall be denied the benefit of the improvement. An improvement proposal may be initiated by

(1) petition to the governing body of the owners of one-half in value of the property to be benefited or

(2) the governing body.

Sec. 29.48.020. PROCEDURE. ****(a) The governing body may prescribe by ordinance the procedures relating to creating special assessment districts, making local improvements, levying and collecting assessments and financing of the improvements, including and subject to the following:

**** (1) a procedure for filing petitions;

(2) a survey and report by the borough or city executive concerning the need for, desirable extent of, and estimated cost of each proposed local improvement;

(3) a public hearing on the necessity for the local improvement;

**** (4) a resolution or ordinance of the governing body determining to proceed or not to proceed with the proposed local improvement;

(5) a public hearing by the assembly or council on the special assessment roll for the local improvement;

**** (6) published notice of each public hearing required by this section and mailing notice to each record owner of real property within the special assessment district;

1 **** (7) a resolution or ordinance confirming the special asses-
2 sment roll for the local improvement;

3 * (8) if protests as to the necessity of a local improvement
4 are made by owners of property which will bear 50 percent or more of the
5 estimated cost of the improvement, the assembly or council may not proceed
6 with the improvement until the objections have been reduced to less than 50
7 percent, except upon approval of not fewer than three-fourths of the govern-
8 ing body.

9 **** (b) To the extent that the governing body does not prescribe a
10 procedure for special assessments as permitted by this section, the govern-
11 ing body shall comply with the special assessment procedures set out in
12 AS 29.48.030 - 29.48.100.

13 Sec. 29.48.030. CREATION OF DISTRICT. **** (a) When an improvement
14 proposal has been filed with the municipal clerk and presented to the
15 governing body, it shall find by resolution or ordinance whether (1) the
16 improvement requested is necessary and should be made, and (2) if by petition
17 the request has sufficient and proper petitioners. The findings of the
18 governing body are conclusive.

19 (b) If the governing body approves an improvement proposal with
20 the necessary findings, it shall develop a proposed improvement plan
21 including the cost estimate and the percentage of the improvement plan cost
22 to be assessed against the property benefited. This plan is to be filed with
23 the municipal clerk.

24 (c) The governing body shall set a time for public hearing on the
25 improvement plan and the period for filing objections to the plan. The
26 governing body shall publish a notice of the hearing and of the period
27 during which objections may be filed at least once a week for four consecutive
28 weeks in a newspaper of general circulation if distributed within the
29 municipality and shall send notice by mail to every record owner of property
within the special assessment district.

1 ****Sec. 29.48.040. RECORD OWNER. The person in whose name property is
2 listed on the municipal property tax roll as owner is conclusively presumed
3 to be the legal owner of record. If the owner is unknown, the assessment
4 roll may designate "unknown owner."

5 ****Sec. 29.48.050. OBJECTIONS AND REVISION. (a) Objections to the improve-
6 ment plan may be filed during a period of 60 days after publication of
7 notice. The governing body may by resolution or ordinance approve the plan
8 and order the improvement subject to the limitation of (b) of this section.

9 (b) If objections are made in writing during the period set for
10 objections by the owners of property bearing one-half or more of the
11 estimated cost of the improvement, the governing body may not proceed with
12 the improvement unless it revises the plan to meet the objections and the
13 objections are reduced to less than 50 percent. A revised plan shall be
14 approved and adopted as an original plan in accordance with AS 29.48.030.

15 Sec. 29.48.060. ASSESSMENT ROLL. ****(a) At any time after project
16 approval, the governing body shall assess the authorized percentage of the
17 cost against property within the district in proportion to benefit received.

18 **** (b) The special assessment roll shall contain property descriptions,
19 names of record owners and assessment amounts.

20 (c) The assembly or council shall fix a time to hear objections
21 to the roll. The municipal clerk shall send an assessment and hearing
22 notice by mail to each record owner of an assessed tract not less than 15
23 days before the hearing.

24 ****Sec. 29.48.070. HEARING AND SETTLEMENT. After the public hearing, the
25 governing body shall correct errors and any inequalities in the roll. If an
26 assessment is increased, a new hearing shall be set and notice mailed,
27 except that a new hearing and notice is not required of all record owners of
28 property subject to the increased assessment consent in writing to the
29 increase. Objections to the increased assessment shall be limited to record

1 two or more persons are eligible for an exemption with respect to the same
2 property, the parties shall decide between or among themselves which shall
3 receive the benefit of the exemption. No real property may be exempted
4 under this subsection which the municipality determines, after notice and
5 hearing to the parties concerned, has been conveyed to the applicant primarily
6 for the purpose of obtaining the exemption. The determination of the
7 municipality is appealable under AS 44.62.560-44.62.570.

8 **** (b) No exemption may be granted under this section except upon
9 written application for the exemption on a form prescribed by the state
10 assessor for use by local assessors and in accordance with the following
11 requirements:

12 **** (1) the claimant must file the initial application during
13 the period of time between the date the assessment roll is confirmed and the
14 time of payment fixed by the governing body. Within one year of the date
15 the assessment roll is confirmed the governing body for good cause shown may
16 waive the claimant's failure to make timely initial application for the
17 exemption and authorize the assessor to accept the application as if timely
18 filed.

19 (2) a claimant receiving the exemption must file with the
20 department by March 15 of each subsequent year a separate application proving
21 eligibility as of January 1 in order to retain the exemption. Within the
22 same year the department for good cause shown may waive the claimant's
23 failure to make timely application and approve the application as if timely
24 filed.

25 (3) if an application is filed within the required time
26 under this subsection and is approved by the assembly or council, the
27 exemption shall be allowed in accordance with the provisions of this
28 section. If a waiver under this subsection is granted and the application
29 for exemption approved, the amount of any assessment, penalty or interest

1 which the claimant may have already paid on the assessment shall be refunded
2 to him. The municipality may at any time require proof in the form considered
3 necessary of the right and amount of an exemption claimed under this section.

4 (c) The state shall reimburse a home rule or general law municipali
5 for the sewer and water assessment revenues which it would receive but for
6 the operation of this section. Reimbursement under this subsection is a
7 lien in favor of the state against the property exempted to the extent of
8 the assessment against the property exempted. Upon recordation in the
9 recording office of the district in which the property exempted is located
10 the lien is prior and superior to other liens against the property except
11 for general taxes or other special assessments and may be enforced by lien
12 foreclosure as provided in AS 34.10.070-34.10.220. The lien becomes immediate
13 due and payable

14 (1) upon sale or other transfer of the property except to a
15 spouse, widow, widower, or minor heir; however, if the property is transferred
16 to a minor heir the lien becomes due and payable on the date the minor heir
17 reaches the age of 25 years; or

18 (2) when property exempted under (a)(1) or (2) of this
19 section receives more than one sewer connection or more than one water
20 connection; or

21 (3) when the claimant fails to prove eligibility under
22 (b)(2) of this section.

23 (d) In this section

24 (1) "resident" means a person who for 12 consecutive months
25 has maintained his permanent place of abode in the state;

26 (2) "real property" includes, but is not limited to, mobile
27 homes, whether classified as real or personal property for municipal tax
28 purposes.

1 (3) "minor heir" means a person who, at the time of transfer
2 of the property, has not attained the age of 19 years or who, if he has not
3 attained the age of 22 years, is a full-time student at an educational
4 institution or a member of the armed forces of the United States.

5 Sec. 29.48.100. REASSESSMENT. (a) The assembly or council shall
6 within one year correct any deficiency in a special assessment found by a
7 court.

8 (b) Notice and hearing must conform to the initial assessment
9 procedures.

10 (c) Payments on the initial assessment are credited to the property
11 upon reassessment.

12 (d) The reassessment becomes a charge upon the property notwith-
13 standing failure to comply with any provision of the assessment procedure.

14 ****Sec. 29.48.105. ALLOWABLE COSTS. (a) Whenever a special assessment
15 district is created, there may be included in the assessments

16 (1) all of the cost of acquiring, installing, making or
17 constructing the local improvement;

18 (2) the costs of all engineering and surveying to be done in
19 connection with creating the district or improvement;

20 (3) the cost of mailing and publishing of notices;

21 (4) interest on interim financing;

22 (5) the cost of legal services and other expenses incurred
23 in the formation of the special assessment district;

24 (6) the cost of completing the improvement and financing the
25 improvement, including the issuance of any bonds.

26 (b) The total amount of the assessment roll may not exceed actual
27 costs but actual costs may include reasonable estimates of the costs to be
28 incurred in connection with issuance of any bonds.

1 Sec. 29.48.110. OBJECTION AND APPEAL. (a) The regularity or validity
2 of an assessment may not be contested by a person who did not file with the
3 municipal clerk a written objection to the assessment roll before its confir-
4 mation.

5 (b) The decision of the assembly or council upon an objection may
6 be appealed to the superior court within 30 days of the date of confirmation
7 of the assessment roll.

8 (c) If no objection is filed or an appeal taken within the time
9 provided in this section, the assessment procedure shall be considered
10 regular and valid in all respects.

11 ****Sec. 29.48.115. INTERIM FINANCING. (a) The governing body may provide
12 by resolution or ordinance for the issuance of notes in payment of the costs
13 of any local improvement project, payable out of special assessments for the
14 improvement. The notes shall bear interest at a rate or rates authorized by
15 the resolution or ordinance and shall be redeemed either in cash or bonds
16 for the improvement project.

17 (b) All notes issued against assessments shall be claims against
18 the assessments which are prior and superior to a right, lien or claim of a
19 surety upon the bond given to the municipality to secure the performance of
20 its contract for a local improvement project or to secure the payment of
21 persons who have performed work or furnished materials under the contract.

22 (c) The municipal treasurer may accept notes against special
23 assessments upon conditions prescribed by the governing body in payment of

24 (1) assessments against which the notes were issued in order
25 of priority;

26 (2) judgments rendered against property owners who have
27 become delinquent in the payment of assessments; and

28 (3) certificates of purchase when property has been sold
29 under execution or at tax sale for failure to pay the assessments.

1 Sec. 29.48.120. SPECIAL ASSESSMENT BONDS. (a) The assembly or
2 council may by ordinance authorize the issuance and sale of special
3 assessment bonds to pay all or part of the cost of an improvement in a
4 special assessment district. The principal and interest of bonds issued
5 shall be payable solely from the levy of special assessments against the
6 property to be benefited. The assessments shall constitute a sinking fund
7 for the payment of principal and interest on the bonds. The property
8 benefited may be pledged by the assembly or council to secure a payment.

9 (b) Upon default in a payment due on a special assessment bond, a
10 bondholder may enforce payment of principal and interest and costs of
11 collection in a civil action in the same manner and with the same effect as
12 actions for the foreclosure of mortgages on real property. Foreclosure
13 shall be against all property on which assessments are in default. The
14 period for redemption shall be the same as in the case of a mortgage
15 foreclosure on real property.

16 **** (c) Before the governing body may issue special assessment bonds,
17 it shall establish a guarantee fund and appropriate to the fund annually a
18 sum adequate to cover any deficiency in meeting payments of principal and
19 interest of bonds issued by reason of nonpayment of assessments when due.
20 Money received from actions taken against property for nonpayment of
21 assessments shall be credited to the guarantee fund.

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1 CHAPTER 51. MUNICIPAL DEBT.

2 ARTICLE 1. REVENUE ANTICIPATION NOTES.

3 Sec. 29.51.010. BORROWING IN ANTICIPATION OF REVENUE. A municipality
4 of the state which is authorized to incur indebtedness may borrow money to
5 meet appropriations for any fiscal year in anticipation of the collection of
6 the revenues for that year but all debt so contracted shall be paid before
7 the end of the next fiscal year. Revenue anticipation notes may be issued
8 as evidence of the borrowing.

9 Sec. 29.51.020. ISSUANCE OF NOTES. The governing body of a munici-
10 pality may, by ordinance or resolution, authorize the issuance of revenue
11 anticipation notes and prescribe the form and details of the notes and the
12 manner of their execution. The governing body of the municipality may
13 delegate to its chief fiscal officer the power to issue the notes from time
14 to time under the terms and conditions of the ordinance or resolution which
15 provides for the manner of their sale.

16 Sec. 29.51.030. ISSUANCE OF NOTES IN ANTICIPATION OF STATE, FEDERAL
17 GRANTS. (a) The governing body of a municipality, upon adoption of a
18 long-range capital improvement budget by ordinance or resolution, may by
19 resolution provide for revenue anticipation notes in an amount not to exceed
20 the total amount of any state or federal grants finally committed for these
21 projects. The notes mature no later than the end of the next fiscal year.
22 The notes may be for single or multiple projects outlined in the adopted
23 capital improvement budget.

24 (b) If the state or federal grants for capital improvement
25 projects have not been paid to the municipality before maturity of the notes
26 issued in anticipation of the receipt of the revenue, the governing body of
27 the municipality may issue new notes in order to meet payment of the notes
28 then maturing or may renew the outstanding revenue anticipation notes. New
29

1 notes issued or renewals of outstanding revenue anticipation notes shall
2 mature not later than the end of the next fiscal year.

3 Sec. 29.51.040. PRIORITY OF REPAYMENT. The payment of the principal
4 and interest on revenue anticipation notes shall be payable from revenues,
5 and their payment additionally shall be secured by a pledge of the full
6 faith, credit and unlimited taxing power of the municipality issuing them.

7 ****Sec. 29.51.050. Repeal.

8 ARTICLE 2. BOND ANTICIPATION NOTES.

9 Sec. 29.51.080. BOND ANTICIPATION BORROWING. A municipality may
10 borrow money in anticipation of the sale of general obligation and revenue
11 bonds if

12 (1) the general obligation bonds to be sold have been auth-
13 orized by the assembly or council and ratified by a majority vote at a
14 regular or special election;

15 (2) the revenue bonds to be sold have been authorized by
16 ordinance.

17 Sec. 29.51.090. ISSUANCE OF NOTES. The assembly or council shall
18 issue negotiable or nonnegotiable notes for the amounts borrowed with a
19 maturity date not to exceed one year from the date of issue. All notes and
20 the interest on them are payable at fixed places on or before a fixed time,
21 from the proceeds of the sale of bonds in anticipation of which the original
22 note or notes were issued, unless the bonds have not been sold by the
23 maturity date of the notes.

24 Sec. 29.51.100. ISSUANCE OF NEW NOTES. If the sale of the bonds has
25 not occurred before the maturity of the notes issued in anticipation of the
26 sale, the assembly or council shall issue new notes in order to meet payment
27 of the notes then maturing or shall renew the outstanding bond anticipation
28 notes. New notes issued or renewals of outstanding bond anticipation notes
29 shall bear a maturity date not to exceed one year from the date of issue.

1 Notes, new notes, and renewals of notes shall not be outstanding for a total
2 elapsed time of more than three years.

3 Sec. 29.51.110. REPAYMENT OF NOTES. Every note is payable from the
4 proceeds of the sale of bonds which the notes anticipated or from the pro-
5 ceeds of the sale of new bond anticipation notes.

6 Sec. 29.51.120. SECURITY. (a) Notwithstanding any other provisions of
7 this chapter as to payment of notes, notes issued in anticipation of the
8 sale of general obligation bonds and the interest on them are secured by the
9 full faith, credit, taxing power and resources of the municipality. The
10 municipality may levy ad valorem taxes for payment without limitation of
11 rate or amount.

12 (b) Notes issued in anticipation of the sale of revenue bonds and
13 the interest on them are secured in the same manner as are the revenue bonds
14 in anticipation of which the notes are issued.

15 Sec. 29.51.130. LIMITATION. The total amount of notes issued and
16 outstanding shall at no time exceed the total amount of bonds authorized to
17 be issued.

18 Sec. 29.51.140. USE OF PROCEEDS. The proceeds from the sale of notes
19 shall be used only for the purposes for which the proceeds from the sale of
20 bonds may be used or to meet payment of outstanding bond anticipation notes.

21 ****Sec. 29.51.150. Repeal.

22 ARTICLE 3. GENERAL OBLIGATION BONDS.

23 Sec. 29.51.180. GENERAL OBLIGATION BONDS. A municipality may acquire,
24 construct, improve and equip capital improvements and issue negotiable or
25 nonnegotiable general obligation bonds for these purposes.

26 Sec. 29.51.190. VOTE AND NOTICE OF EXISTING INDEBTEDNESS REQUIRED.

27 (a) A municipality may incur general obligation bond debt only after a bond
28 authorization ordinance is approved by a majority of those voting on the
29 question at a regular or special election. Any municipal voter may vote in
the bond election, except as otherwise provided by charter or law.

1 (b) Before a general obligation bond issue election, the assembly
2 or council shall have published a notice of the municipality's total existing
3 bond indebtedness at least once a week for three consecutive weeks. The
4 first notice shall be published at least 20 days before the date of the
5 election. A notice shall include

6 (1) the current total general obligation bonded indebtedness,
7 including authorized but unsold bonds of the municipality;

8 (2) the cost of the debt service on the current indebtedness;

9 (3) the total assessed valuation within the municipality.

10 ****Sec. 29.51.200. Repeal.

11 Sec. 29.51.210. PAYMENT. (a) The full faith and credit of a munici-
12 pality are pledged for the payment of principal and interest on general
13 obligation bonds. The municipality may levy ad valorem taxes for payment
14 without limitation of rate or amount to pay or secure the payment of the
15 principal and interest on bonds, regardless of whether the bonds are in
16 default or in danger of default.

17 (b) General obligation bonds issued for acquiring, constructing,
18 improving and equipping a municipally-owned utility or other revenue-
19 generating enterprise may be additionally secured by a pledge of the revenue
20 derived from operation. Bonds so secured are not subject to a debt
21 limitation imposed by a borough or city home rule charter.

22 ARTICLE 4. REVENUE BONDS.

23 Sec. 29.51.240. REVENUE BONDS. ****(a) A municipality may issue
24 revenue bonds for a public enterprise or public corporation of the munici-
25 pality where the only security is the revenue of the public enterprise or
26 corporation.

27 (b) A municipality may issue its revenue bonds to finance the
28 purchase of residential mortgage loans. The revenue bonds issued under this
29 subsection are payable solely from the principal and interest of the mortgage

1 loans and from any other amounts pledged by the municipality, except the
2 pledge of revenues derived from taxes. Revenue bonds issued under this
3 subsection do not constitute a general obligation of the municipality.

4 **** (c) Repeal.

5 Sec. 29.51.250. NO ELECTION REQUIRED. No election is required to
6 authorize the issuance and sale of revenue bonds, unless otherwise provided
7 by ordinance.

8 Sec. 29.51.260. FORMS AND TERMS. The assembly or council shall fix
9 the date of the bonds, denominations, maturities, rate or rates of interest,
10 place and manner of payment, redemption terms, registration privileges,
11 manner of execution, signatures required, and other details of the bonds.
12 If an officer whose signature appears on the bonds or coupons ceases to be
13 an officer before delivery of the bonds, his signature is valid as if he had
14 remained in office until delivery.

15 ****Sec. 29.51.270. Repeal.

16 ****Sec. 29.51.280. CONSTRUCTION. The prohibitions of AS 37.10.085 shall
17 not apply to the issuance of revenue bonds or the use of proceeds from
18 revenue bonds by a home rule or general law municipality.

19 ARTICLE 5. REFUNDING BONDS.

20 Sec. 29.51.300. AUTHORIZATION. If a municipality has outstanding
21 general obligation or revenue bonds and the assembly or council determines
22 that it would be financially advantageous to refund the bonds, the assembly
23 or council may provide by ordinance for the issuance of general obligation
24 or revenue refunding bonds.

25 Sec. 29.51.310. EFFECT OF BONDS. The refunding bonds may take up and
26 refund all or any part of outstanding bonds at or before their maturity or
27 redemption date. The assembly or council may include various series and
28 issues of bonds in a single issue of refunding bonds.

1 Sec. 29.51.320. NO ELECTION REQUIRED. No election is required to
2 authorize the issuance and sale of refunding bonds. Their issuance may be
3 authorized and all proceedings with reference to them prescribed by ordinance
4 of the assembly or council. However, when it is desirable to use general
5 obligation bonds to refund a revenue bond issue, the governing body shall
6 call an election on the question.

7 Sec. 29.51.330. PAYMENT OF REFUNDING BONDS. General obligation
8 refunding bonds are payable according to Sec. 180 of this chapter. Revenue
9 refunding bonds are payable according to Sec. 220 of this chapter.

10 ****Sec. 29.51.340. SALE OF REFUNDING BONDS. General obligation or revenue
11 refunding bonds may, at the discretion of the governing body, be exchanged
12 for the bonds being refunded, or may be sold at public or private sale.
13 They may be issued and delivered at any time before the date of maturity or
14 redemption of the refunded bonds.

15 ****Sec. 29.51.350. OTHER MUNICIPAL FINANCING. (a) A municipality may
16 authorize by ordinance or resolution the issuance of revenue bonds to finance
17 any project which serves a public purpose, and the bonds shall be secured
18 and payable solely from the revenue and property of the project.

19 (b) Bonds issued under this section are not a debt or liability
20 of the municipality and do not create or constitute an indebtedness,
21 liability or obligation of the municipality nor do they constitute a pledge
22 of faith, credit or taxing power of the municipality. Each bond must contain
23 on its face a statement that the principal and interest on the bond are
24 payable solely from the revenues and property of the project being financed,
25 that the municipality is not obligated to pay the principal or the interest
26 on the bonds except from those sources, and that neither the faith and
27 credit nor the taxing power of the municipality is pledged to the payment of
28 principal or interest on the bond.

1 (c) A municipality may

2 (1) loan the proceeds of the bonds issued under this section;

3 (2) pledge, mortgage or assign money, leases, agreements,
4 property or other assets of the project being financed;

5 (3) enter into covenants and agreements concerning bonds
6 issued under this section which the municipality determines to be desirable;

7 (4) provide for any matter which effects the security of the
8 bonds.

9 (d) In this section

10 (1) "bonds" means bonds, notes, or other evidence of indebt-
11 edness;

12 (2) "project" includes but is not limited to commercial,
13 manufacturing, agricultural, industrial, residential housing, recreation,
14 tourism, and medical projects and programs.

15 ARTICLE 6. MISCELLANEOUS PROVISIONS.

16 ****Sec. 29.51.370. SALE. Bonds and notes issued under this chapter may
17 be sold at either public or private sale by the municipality in the manner
18 and at the price it determines.

19 ****Sec. 29.51.375. FORMS AND TERMS. The governing body may by ordinance
20 or resolution fix the date, denominations, maturities, rate or rates of
21 interest, redemption terms, registration privileges, manner of execution,
22 signatures required, purchase price, manner of sale, and other requirements
23 for issuing bonds or notes. If an official whose signature appears on the
24 bonds or coupons ceases to be an official before delivery of the bonds, his
25 signature is valid as if he had remained in office until delivery.

26 ****Sec. 29.51.380. INTEREST RATE. The interest rate payable on a bond or
27 note shall be determined by the governing body and is not subject to the
28 usury rate limitations of AS 45.45.010.

1 ****Sec. 29.51.390. Repeal.

2 Sec. 29.51.400. REDEMPTION BEFORE MATURITY. A bond or note may be
3 made subject to redemption before maturity as stated in the authorization or
4 in the bond or note.

5 ****Sec. 29.51.410. BOROUGH INDEBTEDNESS. (a) A borough may incur indebted-
6 ness

7 (1) on an areawide basis for areawide functions; or

8 (2) on a nonareawide basis for functions performed in the
9 area outside cities only; or

10 (3) on a service area basis for functions performed in a
11 service area only.

12 (b) Payment of debt principal and interest as well as other costs
13 shall be derived from the area incurring the debt under (a)(2) or (a)(3) of
14 this section, except that the full faith and credit of the entire borough
15 may be pledged to guarantee payment of principal and interest.

16 (c) If the bonded debt to be incurred by a borough is an areawide
17 debt, the vote is areawide; if the full faith and credit of the entire
18 borough is pledged for the payment of the debt of the area outside cities or
19 of a service area, an areawide election is held and the proposition must
20 pass both areawide and in the area which will benefit from the improvement;
21 if the bonded indebtedness to be incurred is limited to areas outside cities
22 only or to service areas, the vote is limited to voters in those areas and
23 only the full faith and credit of the area voting on the indebtedness is
24 pledged for the payment of the debt.

25 (d) The indebtedness of a municipality reclassified under
26 AS 29.08.040 is not affected by reclassification. Not less than all property
27 within a municipality which is reclassified remains subject to taxation to
28 amortize bonded or other indebtedness affecting the municipality and auth-
29 orized on the effective date of reclassification.

1 ****Sec. 29.51.420. Repeal.

2 ****Sec. 29.51.430. Repeal.

3 ****Sec. 29.51.440. SERVICE AREA DEBT. The indebtedness of a service area
4 acquired under AS 29.51.410 shall remain the indebtedness of the area which
5 incurred the debt notwithstanding a subsequent court determination that the
6 service area was not validly formed under law or by virtue of a defect in
7 the proceedings creating the service area. All the property within the
8 service area remains subject to taxation to pay the bonded indebtedness.

1 CHAPTER 62. STATE PROGRAMS

2 No change.

3
4 CHAPTER 65. GENERAL GRANT LAND5
6 No change.7
8 CHAPTER 68. MUNICIPAL PROGRAMS9
10 ARTICLE 1. INVOLVEMENT OF YOUNG PEOPLE IN LOCAL GOVERNMENT
11 Repeal.12
13 ARTICLE 2. HISTORICAL DISTRICTS.14
15 No change.16
17 CHAPTER 71. GENERAL PROVISIONS18
19 No change.

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

Municipality of Anchorage



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GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

January 7, 1981

TO: Title 29 Policy Committee Members

Re: Proposed Draft on Municipal Powers & Duties

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

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

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

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

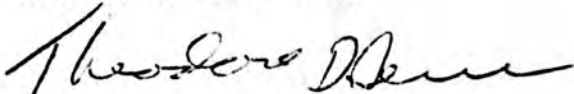
Aside from reorganization, the primary change in the proposed draft is to eliminate the "laundry list" approach to describing permissible municipal powers. The proposed statutes would identify those powers that can be exercised by the assembly or council for various classes of governments and would then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

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

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

Sincerely yours,

DEPARTMENT OF LAW



Theodore D. Berns
Municipal Attorney

TDB:gml
Attachments
cc: Tam Cook

29.33.110 (b)

The non-competitive grant of the exclusive right
to use a public street or right of way for more
than 5 years to a utility ^{for a transportation system} not certificated by the APUC

or ATC shall be valid only if approved by a majority

^{qualified}
of the voters, ¹ voting on the question at a regular
or special municipal election.

approved

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

CHAPTER 33. MUNICIPAL POWERS AND DUTIES

(CHAPTER 48. POWERS APPLICABLE TO ALL MUNICIPALITIES)

Article 1. GENERAL POWERS

OK
Sec. 29.33.010. (Sec. 29.48.010.) GENERAL POWERS.

All 1 Municipalities have the following general powers, subject to other provisions of law:

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

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

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

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

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

(6) to sue and be sued;

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

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

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

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

(11) to expend funds for ~~public~~ ^{to leave as is} community purposes for the good of the municipality;

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

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

Repeal Combining Offices 29.33.010(1) in Draft #3
Sec. 29.33.020. (Sec. 29.48.037.) EXTRATERRITORIAL

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

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

No Change
Sec. 29.33.030 (Sec. 29.73.02.) EMINENT DOMAIN. A home rule or general law municipality may exercise the powers of eminent domain and declaration of taking in the performance of an authorized power or function of the municipality, in accordance with AS 09.55.250-09.55.460.

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

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

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

What if borough has road power can it grant franchises in a city?

OK

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

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

retain existing (c)

Sec. 29.33.060. (Sec. 29.48.060.) PUBLIC UTILITIES RATES.

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

should city set rates utility being operated on an areawide basis by the borough?

OK with changes

Sec. 29.33.070. MUNICIPAL PROPERTY.

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

HOOD

No Change

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

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

No Change

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

No Change

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

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

Article 2. MANDATORY AREAWIDE POWERS

Sec. 29.33.110. (Sec. 29.33.010.) SCOPE OF AREAWIDE POWERS.

No change
(a) First and second class boroughs shall exercise the powers as specified and in the manner specified in this article on an areawide basis, both inside and outside cities within their boundaries.

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

No change
Sec. 29.33.120. (Sec. 29.33.050.) EDUCATION. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. A military reservation within an organized borough is not part of the borough school district until the military mission is terminated or until inclusion in the borough school district is approved by the Department of Education. However, operation of the military reservation schools by the borough school district may be required by the Department of Education under AS 14.14.110. If the military mission of a military reservation terminates or continued management and control by a regional educational attendance area is disapproved by the Department of Education, operation, management and control of schools on military reservation transfers to the borough school district in which the military reservation is located. *? existing law*

~~Hold the home rule application~~ (b) ~~applies to home rule and state~~
Sec. 29.33.130. (Sec. 29.33.030.) ASSESSMENT AND COLLECTION

changed
also change
OF TAXES. (ASSESSMENT AND COLLECTION) Boroughs shall assess ~~and~~ ^{and may collect} collect property, sales and use taxes levied within their boundaries, subject to ch. 45 (ch. 53) of this title. Taxes levied by a city ^{shall be} and collected by a borough ^{and} are returned in full to the levying city. (29.36.060)

Accepted
Sec. 29.33.140. LAND USE REGULATION. *planning, platting and*

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

accepted
Article 3. ADDITIONAL CITY AND BOROUGH POWERS

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

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

1. ^{provide} ~~providing~~ transportation systems
2. ^{provide} Water pollution control
3. ^{provide} Air pollution control as provided in AS 46.03.140-.240
4. Licens~~ing~~ of day care facilities
5. Regulation of animals (*use existing lang.*)

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

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

Sec. 29.33.160. SECOND CLASS BOROUGH POWERS. (a) In addition to the powers granted by Sec. .010 through ⁴⁰.150, a second class borough, in the area outside cities, may, by ordinance, exercise the following powers:

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

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

1. Providing transportation systems
2. Regulation of animals (use existing lang.)

10) the power to receive and expend grants for public purposes.

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

4. Water pollution control

5. Licensing of day care facilities

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

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

ok
Sec. 29.33.180. CITIES OUTSIDE ORGANIZED BOROUGHES. (a) Cities outside an organized borough may exercise any power not otherwise prohibited by law. *should this include 2nd class?*

ok 29.39.020
(b) (Cities) outside an organized borough may assess, levy and collect a general property tax and a sales or use tax. A property, sales or use tax if levied must be assessed, levied and collected as provided by Chapter 45 of this title for boroughs.

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

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

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

(Amw 29.36.100 am)
Sec. 29.33.190. ACQUISITION OF ADDITIONAL POWERS. (a) A borough acquires additional powers by holding an election on the question as provided by this section. For acquisition of areawide powers, the election shall be held areawide. For acquisition of powers in the area outside cities the election shall be held in the area outside cities only.

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

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

*identical
present
law*

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

Rechart

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

Article 4. CONSTRUCTION OF POWERS

(Chapter 48. Article 5. CONSTRUCTION OF POWERS)

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

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

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

*Note
Garbage
in final
report
29.33.080*

STATE OF ALASKA

THE LEGISLATURE

1980

Legislative
Resolve No.

Source

CSSCR 66

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.

CHANGE RECOMMENDED BY TECHNICAL COMMITTEE - Jan. 6, 7, 1981

Sec. 29.36.270. SERVICE AREAS. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. [The borough may include a city within a service area if the city council agrees by ordinance or if approval is granted by a majority of voters residing within the city and by a majority of voters residing within the boundaries of the proposed service area, but outside of the city.]

(The rest of the section is the same).

EXPLANATION: Makes it clear that a city may be included within a service area if the council or voters agree.

Approved

ISSUES TO BE IDENTIFIED IN A POLICY ADVISORY GROUP REPORT

1. How to provide representation for people living outside municipal boundaries, but within a municipal service area (as when a city extends utility service beyond its boundaries).
2. Should a uniform provision on executive sessions be included in Title 29 delineating specific occasions when it is appropriate to call for an executive session of a municipal governing body?
3. Should there be only two classes of borough -- home rule and general law?
4. Should there be only two classes of city -- home rule and general law?
5. Should villages which are currently unincorporated be recognized as municipal corporations under state law? Should IRA councils be recognized as municipal governing bodies?
6. Should the state or local government be primarily responsible for providing the following services: water system and sewage disposal inspections; subdivision review of on-site sanitation capabilities; sanitation inspections of restaurants, hotels, etc; clean-up of small oil spills; the issuing of oily waste burn permits and surface oiling permits; litter control; vehicular emissions control? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to meet applicable standards to qualify for federal funding and to avoid state liability if the programs are not properly carried out by the local governments?
7. Should the state or local government be primarily responsible for the provision of health services? If local governments should have more control in these areas, how may the state delegate these functions while insuring the programs continue to qualify for federal funding?
8. How to insure that local issues are dealt with in the unorganized borough, since the legislature rarely meets as the assembly for the unorganized borough.
9. How to avoid establishing multiple governmental and administrative bodies with duplicate functions in small communities which suffer from a lack of people to fill the positions.
10. Should there be a regionally elected body in the unorganized borough to manage local service programs and to deal with the state?

11) Merged to H.R.

12) Note

13) CRA Handbook

14) Provision of services and government in merged through

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

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

- (1) first class boroughs;
- (2) second class boroughs;
- (3) repeal
- (4) first class cities;
- (5) second class cities.

Sec. 29.06.040. RECLASSIFICATION. Section unchanged to:

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

- (h) repeal.
- (i) repeal.
- (j) repeal.

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

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

*at 3rd class borough go directly to Home Rule.
Haines to exist as it was on effective date of this Act.*

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

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

Note: ~~2nd~~ class cities which go H.R. will become school districts. If in the unorganized borough or 3rd class borough will have to providing planning, platting, and land use regulation under 29.39.050 (old) 29.43.040 (H.R. Amendment 33)

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

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

rejected

use Palmer's
Bill

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

- (1) not prohibited it by law or charter;
- (2) granted to home rule boroughs.

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

o/c

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

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

rejected
use 29.24.010
as previously approved

TECHNICAL GROJP RECOMMENDATIONS - 05 JAN 81

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

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

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

approved

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

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

rejected
use previous section

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

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

accepted

Sec. 29.24.680. PROHIBITIONS. Repeal.

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

~~rejected~~
use as amended
P. 67

OK P. 67
Title 14

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

The rest of the section is unchanged.

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

~~held~~
p 69

~~rejected~~
~~use~~

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

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

Approved

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

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

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

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

Approved

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.30.030. ELECTION DATES. (a) ~~The governing body shall give~~ ^{shall be} _{given.} ~~At~~ least 20 days notice of a regular or special election.

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

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

accepted

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

29.30.040. Voter Qualification. See amendment.

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

Other subsections as previously approved.

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

accepted

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

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

OK
(Note
requirement already
in 29.30.030)

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

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

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

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

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

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

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

accepted

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

Sec. 29.42.¹⁸⁰~~150~~. DELEGATIONS. The assembly may by ordinance authorize the planning commission and the platting authority to delegate powers to hear and decide cases under this chapter in a manner authorized by the ordinance, including but not limited to delegations to one or more members of the planning commission or platting authority, to other boards or commissions or to a hearing officer designated by the planning commission or platting authority.

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

accepted

TECHNICAL GROUP RECOMMENDATIONS - 05 JAN 81

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

use existing language of 29.620 (b) A city within a borough which does not levy and collect areawide sales or use taxes may levy and collect sales or use taxes in the manner provided for boroughs.

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

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

Hold
OK with change

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

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

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

accepted

p. 10
Palmer's
Bill

HOUSE BILL 13
A BILL

Accepted
by Policy Group
Jan 17, 1981

For an Act entitled: "An Act providing organizational grants to newly incorporated cities and boroughs, providing transitional assistance to newly incorporated boroughs; and providing for an effective date."

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

*Section 1. AS 29.18.180 is amended to read:

Sec. 29.18.180. Organization grants to cities. (a) For the purpose of defraying the cost of transition to [BOROUGH OR] city government and in order to provide for development and interim government operations, each [BOROUGH AND] city incorporated after January 1, 1968, or, in the case of a second class city, incorporated or reclassified after January 1, 1968, [OTHER THAN A UNITED MUNICIPALITY INCORPORATED UNDER THE PROVISIONS OF AS 29.85, OR A MUNICIPALITY INCORPORATED BY CONSOLIDATION], is entitled to a first year organization grant equal to \$50,000. [\$10 FOR EVERY VOTER WHO VOTED IN THE BOROUGH OR CITY INCORPORATION ELECTION. HOWEVER, EACH INCORPORATED BOROUGH AND EACH FIRST CLASS CITY INCORPORATED OR ESTABLISHED BY RECLASSIFICATION OUTSIDE AN ORGANIZED BOROUGH IS ENTITLED TO AT LEAST \$25,000.]

(b) Within 30 days after certification of the incorporation election favoring incorporation or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the city the total amount of first year organization money to which the city is entitled.

(c) A city eligible for and receiving a first year organization grant under subsections (a) and (b) of this section is entitled to a second year organization grant of \$25,000. Within 30 days after the beginning of the city's second fiscal year, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the city the total amount of second year organizational grant money to which the city is entitled.

*Sec. 2. AS 29.18 is amended by adding a new section to read:

Sec. 29.18.185. Organization grants to boroughs. (a) For the purpose of defraying the cost of transition to borough government and in order to provide for development and interim governmental operations, each borough incorporated after January 1, 1981, other than a unified municipality incorporated under the provisions of AS 29.68.030 - 440, or a municipality otherwise incorporated by consolidation, is entitled to organization grants for the first three full years of incorporation according to the following schedule: First year of incorporation the borough is entitled to \$300,000; second year of incorporation, the borough is entitled to \$200,000; third year of incorporation, the borough is entitled to \$100,000. In addition to state support provided in this section, the borough is also entitled to regular State Aid to Local Governments payment under AS 29.88.010 - 29.95.030.

(b) Within 30 days after the date of incorporation of a borough after January 1, 1981, the Department of Community and Regional Affairs shall determine the population of the borough.

(c) Within 30 days after completion of its findings, or as soon thereafter as money is appropriated to it for the purpose, the Department of Community and Regional Affairs shall transmit to the borough the total amount of money under this section to which the borough is entitled for the first year of incorporation. The second and third entitlements will be transmitted within 30 days after the beginning of the subsequent borough fiscal years, or as soon thereafter as money is appropriated to it for the purpose.

*Sec. 3. AS 29.18 is amended by adding a new section to read:

Sec. 29.18.186. Transitional Assistance to boroughs. Each borough incorporated after January 1, 1981, other than a unified municipality incorporated under the provisions of AS 29.68.030 -- 440, or a municipality otherwise incorporated by consolidation, is entitled to transitional assistance provided in (a) and (b) of this section. (a) The Department of Community and Regional Affairs shall provide assistance with establishment of the initial assessment and collection department for a borough that has adopted a sales tax.

(b) The department shall establish the initial assessment roll for a borough that has adopted a property tax. The initial assessment roll shall contain all the information required by AS 29.53.100(a). In the preparation of the initial assessment roll, the department may contract for the services of appraisers and others whose services are required to complete and report the initial assessment. ~~When completed, the initial assessment roll shall be certified by the commissioner, and the completed roll, together with all supporting information and materials prepared~~

~~roll, the department may contract for the services of appraisers and others whose services are required to complete and report the initial assessment.~~ When completed, the initial assessment roll shall be certified by the commissioner, and the completed roll, together with all supporting information and materials prepared by the department, shall be transmitted to the borough assembly. The department, to the extent appropriations are available for the purpose, shall continue to fund the assessment function and related staff for a period of three years after the completion of the initial roll.

(c) There is established in the Department of Community and Regional Affairs the transitional assistance to boroughs fund. The fund shall be administered by the Commissioner and shall be used to pay for transitional assistance under (a) and (b) of this section.

(d) An appropriation made for transitional assistance to a borough is valid for the three years of required assistance and the unexpended balance shall be carried forward to subsequent fiscal years for those years. Between July 1 and August 31 of each fiscal year, a statement supporting the amount of the unexpended balance required to complete transitional assistance projects for which the initial appropriations was made and the amount that may be lapsed shall be recorded with the Department of Administration.

*Sec. 4. AS 29.18 is amended by adding a new section in article 3 to read:

Sec. 29.18.187. Definitions.

(1) "assessment functions" include discovering and describing taxable property; appraising that property; and preparing an Assessment roll.

*Sec. 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

9.48.020

§ 29.48.030

MUNICIPAL GOVERNMENT

§ 29.48.033

Sec. 29.48.030. Municipal facilities and services. (a) A municipality may exercise the powers necessary to provide the following public facilities and services:

- (1) streets and sidewalks;
- (2) sewers and sewage treatment facilities;
- (3) harbors, wharves, and other marine facilities;
- (4) watercourse and flood control facilities;
- (5) health services and hospital facilities;
- (6) cemeteries;
- (7) police protection and jail facilities;
- (8) cold storage plants;
- (9) telephone systems;
- (10) light, power and heat;
- (11) water;
- (12) transportation systems;
- (13) community centers;
- (14) libraries, visual or performing arts centers, or museums;
- (15) recreation facilities;
- (16) airport and aviation facilities;
- (17) garbage and solid-waste collection and disposal service and facilities subject to AS 29.48.033;
- (18) fire protection service and facilities, not in conflict with AS 18.70.075, but not limited to AS 18.70.075;
- (19) parking and parking facilities;
- (20) housing and urban renewal, rehabilitation and development;
- (21) preservation, maintenance and protection of historic sites, buildings and monuments;
- (22) consumer protection;
- (23) emergency medical services and facilities

(am § 3 ch 215 SLA 1975; am § 4 ch 78 SLA 1978; am § 5 ch 62 SLA 1979)

Cross reference. — As to emergency medical services, see AS 18.08

Effect of amendments. — The 1975 amendment added, not in conflict with AS 18.70.075, but not limited to AS 18.70.075" to the end of paragraph (18) of subsection (a).

The 1978 amendment added paragraph (23) to subsection (a).

The 1979 amendment added, visual or

performing arts centers, or museums" to the end of paragraph (14).

As the rest of the section was not affected by the amendments, it is not set out.

Applied in *Lobby v. City of Dillingham*, Sup. Ct. Op. No. 2097, File No. 3861-612 P.2d 3, 1980.

Cited in *Graves v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1168, File No. 2016-506 P.2d 1221 (1975).

Sec. 29.48.033. Garbage and solid waste services.

(b) The council or governing body of any political subdivision may not prohibit a person holding a valid certificate from the Alaska Public Utilities Commission from continuing to collect and dispose of garbage, refuse, trash, waste material, or other related services in any area in

language to allow municipalities to install transfer sites instead of landfills, and operate them in lieu of landfills exempt from APUC regulations or transfer

the political subdivision if the certificate authorizes the collection and disposal of garbage, refuse, trash or other waste material and providing of other services in the area, and the certificate was originally issued before the political subdivision provided like or similar services. A political subdivision may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value and may exercise the right of eminent domain to determine fair market value.

(c) Repealed by § 6 ch 76 SLA 1973.
(am §§ 5, 6 ch 76 SLA 1973)

Effect of amendment. — The 1973 amendment rewrote subsection (b) and repealed subsection (c).

As the rest of the section was not affected by the amendment, it is not set out.

Definition of collect. — Collect is defined as the "bringing together into one body or place." *McClellan v. Kenai Peninsula Borough* Sup Ct Op No 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Definition of disposal. — Disposal means the act of passing over the control of solid waste to the operators of a disposal site. *McClellan v. Kenai Peninsula Borough*, Sup Ct Op No 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Dumpsters are garbage containers. — Drop-boxes and dumpsters, which are used as intermediate disposal facilities, are garbage and refuse containers. *McClellan v. Kenai Peninsula Borough*, Sup Ct Op No 1440 (File Nos. 2493,

2543, 565 P.2d 175 (1977).

And are not equivalent of final landfill sites. — Interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites is not reasonable in that it would allow the Borough to place dumpsters in such a pervasive fashion as to completely vitiate the requirement of subsection (b) of this section and AS 42.05.221(f) that certificate holders be compensated for their interests. *McClellan v. Kenai Peninsula Borough*, Sup Ct Op No 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Operation of garbage disposal sites does not constitute a utility service; it is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. *McClellan v. Kenai Peninsula Borough*, Sup Ct Op No 1440 (File Nos. 2493, 2543), 565 P.2d 175 (1977).

Sec. 29.48.035. Regulatory powers. (a) A municipality may regulate the operation and use of its public rights-of-way, public facilities and services. It may also regulate the following:

(1) vehicle, pedestrian, and other traffic, and licensing and operation of motor vehicles, including snow vehicles and off-highway vehicles, and operators not inconsistent with AS 28.01.010;

(2) licensing of drivers of taxicabs, for hire automobiles, motor buses, or other vehicles for the transportation of passengers or baggage not inconsistent with AS 28.01.010;

(3) vehicle parking not inconsistent with AS 28.01.010;

(4) transportation fares;

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John W. McCLELLAN, d/b/a Alpine
Refuse, and Homer Transfer Co.,
Inc., Appellants,

v.

KENAI PENINSULA BOROUGH, R. F.
Miller Enterprises, Inc., d/b/a Peninsula
Sanitation Co., and Burton Carver & Co.,
Inc., Appellees.

KENAI PENINSULA BOROUGH, R. F.
Miller Enterprises, Inc., d/b/a Peninsula
Sanitation Co., and Burton Carver & Co.,
Inc., Cross-Appellants.

v.

John W. McCLELLAN, d/b/a Alpine
Refuse, and Homer Transfer Co.,
Inc., Cross-Appellees.

Nos. 2493, 2543.

Supreme Court of Alaska

June 8, 1977

Holders of certificates issued by Alaska Public Utilities Commission allowing them to provide garbage and refuse collection and disposal utility service in borough filed suit against borough praying for injunctive relief and declaratory judgment after borough awarded to others contracts covering all hauling of refuse to sanitary landfills and maintenance and operation of transfer sites. The Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J. granted borough's motion for summary judgment and the plaintiffs appealed. The Supreme Court, Burke, J. held that: (1) borough was liable to appellants for fair market value of certificates of public convenience and necessity or that portion of certificate that would be affected; (2) defendant's motion for change of venue should have been granted; and (3) costs should have been awarded defendants.

Reversed and remanded.

1. Municipal Corporations — 607

Contracts which were awarded by city and which covered all hauling of refuse to

sanitary landfills and maintenance and operation of transfer sites pertained to "collection and disposal," within statute precluding political subdivision from providing for waste collection and disposal service in any area, to extent it lies within area granted to waste carrier by certificate issued by Public Utilities Commission, until subdivision has purchased certificate, equipment and facilities of carrier or that portion which would be affected at fair market value; thus city was liable for fair market value of certificate of public convenience and necessity issued by Commission or that portion of certificate that would be affected. AS 29.48.033(h), 42.05.221(f).

See publication Words and Phrases for other judicial constructions and definitions.

2. Venue — 37, 52(1)

Proceeding on motion for summary judgment qualifies as "preliminary or antecedent" hearing within statute providing that any preliminary or antecedent hearings or action shall be conducted in senate district within judicial district of location which would best serve convenience of parties and witnesses; thus defendants' motion for change of venue from Anchorage to Kenai should have been granted, where controversy arose in Kenai Peninsula Borough. Three defendants were located approximately 11 miles from courthouse in Kenai and one of plaintiffs had his principal place of business in Homer, approximately 95 miles from courthouse in Kenai. AS 22.10.030(d).

3. Venue — 46

Where party has brought action in improper locality and refuses upon request of other party to stipulate to change of venue to proper locality, venue statute is circumvented if, for even a hearing disposing of entire matter, court assumes venue. AS 22.10.030(d).

4. Costs — 155

To not protect defendants from having their right to proper venue denied, motion for costs for having to make change of venue motion is proper. AS 22.10.030(d).

5. Costs — 155

Where plaintiffs' refusal to stipulate to change of venue to proper locality forced counsel for defendants to travel to improper locality for hearings on continued motions for summary judgment and change of venue, defendants who moved for costs for having to make change of venue motion were entitled to such. AS 22.06.050(d).

John R. Strachan, Anchorage, for appellant.

John M. Stern, Jr., Anchorage, for appellant/inter-appellants.

Charles K. Cranston, Gallagher, Cranston & Snow, Anchorage, for appellees/inter-appellants.

Before BROCKHEVER, C. J. and BABE INOWITZ, CONNOR, ERWIN, and BURKE, JJ.

OPINION

BURKE, Justice.

This is an appeal by John W. McChesney, d/b/a Alpine Refuse, and Homer Transfer Co., Inc. from an order granting summary judgment to Kenai Peninsula Borough, R. F. Miller Enterprises, Inc. d/b/a Peninsula Sanitation Co., and Burton Carver & Co., Inc. The controversy centers on the power of the Borough of Kenai to set up intermediate sites for the disposal of solid waste products and to contract with private refuse companies to transfer the solid waste to final landfill areas. The dispute requires us to construe AS 29.48.033(b) and AS 42.05.221(f).

1. AS 42.05.221(f) includes the words "of the state" whereas AS 29.48.033(b) does not.

2. Transfer sites are distinguishable from the final disposal points in that the former serve as intermediate facilities where trash may be left off by private citizens rather than collected door to door.

The transfer sites were located at:
a) Nimlichuk and Anchor Point, Project E-74-11.

b) Kaslof, North Kenai and Sterling, Project E-74-12.

c) Cooper Landing, Hope and Moose Pass, Project E-74-13.

05.221(f), both of which provide in pertinent part:

"A political subdivision of the state¹ may not provide for a garbage, refuse, trash or other waste material collection and disposal service in any area to the extent it lies within an area granted to a garbage, refuse, trash or other waste material carrier by a certificate issued by the [Alaska Public Utilities] commission to the carrier until it has purchased the certificate, equipment and facilities of the carrier or that portion of the certificate which would be affected at fair market value.

On June 20 and June 27, 1974, the Borough allowed contractors to bid on one year contracts covering all hauling of refuse to sanitary landfills and maintenance and operation of transfer sites.² Pursuant to these bids, contracts were awarded to Peninsula Sanitation and Burton Carver & Co.

Appellants, holders of certificates issued by the Alaska Public Utilities Commission allowing them to provide garbage and refuse collection and disposal utility service in the Kenai Peninsula Borough,³ filed suit in the superior court against the Borough praying for injunctive relief and a declaratory judgment. The Borough made a cross-motion for summary judgment, establishing substantial agreement as to the facts. Judge When Lewis, in an order handed down March 10, 1975, granted the Borough's motion and held that

the system of disposition of solid waste of the Borough utilizing large boxes as intermediate disposal

The Alpine appeal only has reference to the hauling, collection and disposal of solid wastes in Project E-74-13, whereas the Homer Transfer Co. appeal deals with E-74-11 and E-74-12.

3. AS 42.05.701(2)(b) includes within the definition of a public utility the "collecting [off] collection and disposal of refuse, garbage, refuse, trash or other waste material."

This court in *Homer Electric Association, Inc. v. City of Kenai*, 423 P.2d 285, 286 (Alaska 1967), stated that a certificate of public convenience and necessity is a property right and as such is entitled to protection.

facilities to permit forces of through does not the regular customer solid waste.

The question of its commercial anyone collection would idea that meaning would mention of enacted? able to find would mean.

[1] In it may be certain phrase "collect AS 29.48.033 been stated.

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4. Record on A

5. E. Bracken Law Southern 4 at 41 (4th ed

facilities to be subsequently transported to permanent disposition sites by its own forces or through a contractor employed through normal contracting procedures does not preempt without compensation the regulated utility function of going to customers for the immediate collection of solid waste.

The question presented to this court is one of statutory interpretation. As one commentator has stated, "[i]t seems that anyone looking for principles of interpretation would first hit upon the rather obvious idea that the statute should be given the meaning which will express the actual intention of the legislator when the law was enacted." ⁵ In this case we have been unable to find any legislative guidance which would illuminate our path.

[1] In the situation at bar the dispute may be centered on the meaning of the phrase "collection and disposal" as used in AS 29.48.033(h) and AS 42.05.221(f). As has been stated, *the best rule of*

It is a basic rule of statutory construction that general words should be given a general construction, that is, they should be given their fair and natural meaning, unless the statute in some manner reveals that the legislative intent was otherwise.⁶

Given this principle we note that Webster's Seventh New Collegiate Dictionary (1963) defines *collection* as "the act or process of collecting" or "something collected." *Collect* is defined as the "bringing together into one body or place." The fact pattern presented is clear on the point that refuse was gathered at the various intermediate sites and was hence collected.

To accept the lower court's interpretation that dumpsters serving as intermediate dump sites qualify as the functional equivalent of final landfill sites would allow the Borough to place dumpsters in such a per-

vasive fashion as to completely vitiate the requirement of AS 29.48.033(h) and AS 42.05.221(f) that certificate holders be compensated for their interests. Such a result is not a reasonable reading of the statute.

In awarding Alpine Refuse and Homer Transfer their certificates of public convenience and necessity for the collection of refuse, the Alaska Public Utilities Commission, in an order dated February 26, 1974, endeavored to clarify the confusion generated by the legislature's failure to define "disposal," (AS 29.48.033(h) and AS 42.05.221(f)). The Commission found

that disposal in this instance means the act of passing over the control of solid waste to the operators of a disposal site. Hence, the operation of garbage disposal sites does not constitute a utility service. It is only the passing over of control of solid waste to the disposal site operator which is regulated as a utility function. (emphasis added)⁷

The Commission's apparent anticipation of the Borough's actions went on to state that they considered

drop-boxes and dumpsters which are used as intermediate disposal facilities to be garbage and refuse containers. Thus, in the future the Borough program includes the placement of drop-boxes, large disposal dumpsters, or large disposal containers as intermediate disposal facilities, the Commission is of the opinion that suitable arrangements can be made for the certificated utility in that area to service those facilities.⁸

We agree with the interpretation of AS 29.48.033(h) and 42.05.221(f). Therefore, we hold that the borough of Kenai is liable to the appellants for the fair market value of their certificates of public convenience and necessity or that portion of the certificate that would be affected and remand to the superior court for findings as to such value.

4. Record on Appeal, 145.

5. F. Farnsworth, Interpretation of AL-Webster's Law, *Sutherland Statutory Construction*, 2d ed. 4, at 41.14th ed. (1973) 40; Sands, 1973.

6. F. Crawford, *The Construction of Statutes*, 34 (1940).

7. Record on Appeal, 145.

8. *Id.* at 26.

CROSS APPEAL

"At the hearing on the parties' cross-motions for summary judgment, cross-appellant Borough made an additional motion for change of venue. Judge Lewis ruled that if both motions for summary judgment were denied, venue for trial would be changed from Anchorage to Kenai. Thus, he denied the motion for change of venue for the purpose of hearing the motions for summary judgment.

[2] Cross-appellants urge that the court erred in failing to grant their motion for change of venue prior to a hearing on the summary judgment motions. Their argument is predicated on AS 22.10.030(d) which states in pertinent part:

Subject to § 49 of this chapter, a trial and any precedent or antecedent hearings in an action shall be conducted in a senate district within the judicial district at a location which would best serve the convenience of the parties and witnesses. However, if there is any part of more than one senate district within the boundaries of a borough, the trial and related hearings shall be conducted within the borough's boundaries at a location which would best serve the convenience of the parties and witnesses. (emphasis added)

That the word "shall" is generally considered to signal a mandate from the legislature is buttressed by its definition in *Balentine's Law Dictionary* (3rd ed. at 1171) that it is

[o]rdinarily, a word of mandate in a statute, the equivalent of "must" where appearing in a statute.

A motion for summary judgment as Professor Wright has written⁹

9. C. A. Wright, *Law Of Federal Courts*, 441 (2d ed. 1970).

10. Rule 56(c), Alaska Rules of Civil Procedure provides in pertinent part:

Judgment shall be rendered forthwith if the pleadings, depositions and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact, and that any party is entitled to a judgment as a matter of law.

[p]ermits any party to a civil action to move for a summary judgment upon a claim, counterclaim, or cross-claim as to which there is no genuine issue of material fact and upon which the moving party is entitled to prevail as a matter of law. The motion may be made as to all or part of a claim of defense. It may be made on the pleadings or the record or it may be supported by affidavits. The motion strikes at the heart of the claim. In effect it argues that as a matter of law upon admitted or established facts the moving party is entitled to prevail.

It is noted that such a proceeding carries with it the potential final disposition¹⁰ of an action; it would appear to clearly qualify as a "precedent or antecedent" hearing as set out in AS 22.10.030(d). As such it should have been conducted in the senate district¹¹ within the judicial district at a location which would best serve the convenience of the parties and witnesses. In the case presented, the controversy arose in the Kenai Peninsula Borough, the three defendants are all located approximately 11 miles from the courthouse in Kenai and one of the plaintiffs, Homer Transfer Co., Inc. has its principal place of business in Homer, Alaska, which is approximately 90 miles from the courthouse in Kenai.¹²

As we have previously stated with respect to AS 22.10.030(d)

In enacting this provision, the legislature made explicit the fact that its purpose was "to make the administration of justice more accessible to the people of rural areas of the state."¹³

Given this legislative intent it follows that AS 22.10.030(d) should be read so as to effectuate its avowed purpose. Therefore, we find that the lower court erred in failing

11. It should be noted that Senate District K and a portion of Senate District S lie within the Kenai Peninsula Borough. Appellants' Brief at 7-8.

12. Record on Appeal 65-66.

13. *Alvaredo v. State*, 480 P.2d 841, 205 n. 40 (Alaska, 1971).

to grant the defendants' motion for change of venue.

[3-5] Prior to the hearing on the parties' cross-motions for summary judgment, cross-appellants offered to stipulate to venue. However, the court refused to grant their motion for change of venue. This refusal forced appellants to travel to Anchorage for the hearing on the cross-motions for summary judgment and refuses upon request to stipulate to change of venue or locality. AS 22.10.030(d) if, for every hearing in a matter, the court is to protect defendants from the expense of traveling to proper venue for having to make a motion is proper. In the present case, the defendants made a motion for change of venue in violation of AS 22.10.030(d) and the court's failure to grant it is also error. We reverse the lower court's decision in this matter to the superior court and award the defendants their costs.

REVERSED and set aside.

ROBIN CURTIS BLAIR, J.

STATE OF ALASKA

No. 17-12-010

Supreme Court

June 1, 1971

By a judgment of the Third Judicial District

1. AS 17.12.010 provides that any person who manufactures or sells a product which is defective or dangerous to the public health or safety shall be liable for damages.

to grant the defendant's motion for change of venue.

[3-5] Prior to the hearing on the motions for summary judgment the defendants offered to stipulate to a change of venue. However, the plaintiffs refused. This refusal forced counsel for the defendants to travel to Anchorage for the combined motions for summary judgment and change of venue. Where a party has brought an action in an improper locality, and refuses upon request of the other party to stipulate to change of venue to the proper locality, AS 22.10.030(d) is circumvented if, for even a hearing disposing of the entire matter, the court assumes venue. To help protect defendants from having their right to proper venue denied, a motion for costs for having to raise a change of venue motion is proper. In the case presented the defendants made such a motion. Given the violation of AS 22.10.030(d), the lower courts failed to grant costs to the defendant as his error. We therefore remand this matter to the superior court for a determination of what costs should have been awarded the defendants.

REVERSED and REMANDED.



Robin Curtis BROWN, Appellant,

v.

STATE of Alaska, Appellee

No. 2522

Supreme Court of Alaska

June 13, 1977

By a judgment of the Superior Court,
Third Judicial District Anchorage P. J. Ka-

1 AS 17.12.010 provides:

"It is prohibited, except as otherwise provided, to manufacture, possess, transport, sell, or distribute, compound, or interfere with the possession, use, or distribution of any controlled substance."

lamarides, J., the defendant was convicted, on his plea of guilty to indictment charging unlawful sale and distribution of marijuana and he appealed challenging constitutionality of statute. The Supreme Court held that while prohibition of possession of marijuana in the home for personal use could not be justified, there was no constitutional protection against the buying or selling of marijuana.

Affirmed.

Drugs and Narcotics — 76

While problems caused by marijuana do not present a sufficiently acute and substantial relationship to public welfare as to justify prohibition of its possession in the home for personal use, plaintiff could be properly convicted of aiding in the sale of a substantial quantity of marijuana, since neither the Federal nor Alaska Constitutions affords protection for buying or selling the marijuana. AS 17.12.010.

Philip P. Wedner, Drathman & Wedner, Anchorage, and Brian Stortell, Public Defender, Anchorage, for appellant.

Glen C. Anderson, Asst. Dist. Atty. Joseph A. Balfe, Dist. Atty., Anchorage, and Avram Gross, Atty. Gen., Juneau, for appellee.

Before BOOCHEVER, C. J., RABINOWITZ, CONNOR and BURKE, JJ., and DIMOND, J. Pro Tem.

OPINION

PER CURIAM

Robin Curtis Brown pled guilty to an indictment charging him with the unlawful sale and distribution of marijuana. Brown reserved the right to appeal the constitutionality of AS 17.12.010¹. Brown arranged for the sale of two pounds of marijuana by

possession, manufacture, transport, sale, or distribution of any controlled substance, except as otherwise provided, to manufacture, possess, transport, sell, or distribute, compound, or interfere with the possession, use, or distribution of any controlled substance."

Memorandum

Alaska Court System

TO: Legislative Affairs Agency
Att: Melissa Fouse

DATE : January 7, 1981

FROM: Jeanne R. Martin *JRM*
Secretary to Area Court
Administrator

SUBJECT: Use of Court Facilities

Attached is a form entitled Conditions of Use of Court Facilities, which should be signed and returned to me, at Mail Stop 4100, or Room 241 of the Alaska Court and Office Building. The copy should be retained for your files.

If you have any questions, please do not hesitate to call me at 465-3434.

Please stop at Room 241 on Friday, January 16, to get the key to Room 320.